

Changing Life Stories:
Understanding the Legal Aspects of
Working with Children and Families

Introduction to Data Privacy



An Introductory Manual for Child Welfare Professionals

About the Authors



母親的抉擇
Mother's Choice

Mother's Choice is a charity serving the many children without families and pregnant teenagers in Hong Kong. We join hands with our community to give hope, and change the life stories of vulnerable girls and babies. We are a champion for children and a voice for every child to be in a safe, loving and permanent family.

www.motherschoice.org

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Introduction

Introduction

NGOs handle huge amounts of personal information of their staff, volunteers, donors, event participants, and clients, including children.

In the course of handling child abuse cases, NGOs will collect and receive personal information of clients. It may be necessary for this personal information to be shared with third parties (such as law enforcement officers and/or hospital workers) for the purpose of protecting a child.

The collection and use of personal information is governed by the Personal Data (Privacy) Ordinance ("PDPO") in Hong Kong.

Introduction to the Personal Data (Privacy) Ordinance

WHAT IS THE PERSONAL DATA (PRIVACY) ORDINANCE?

The Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) regulates the use of and prohibits the misuse of personal data by data users who control the handling, processing, transfer, collection, retention and use of the personal data from within Hong Kong, regardless of where the data subjects are located.

The Office of the Privacy Commissioner for Personal Data ("PCPD"), an independent statutory body, oversees the enforcement of the PDPO.

WHAT IS PERSONAL DATA?

"Personal data" means any data relating directly or indirectly to a living individual (i.e. the data subject), which can be used to identify that individual, and in a form in which access to or processing of the data is practicable.

NOTE

Data of a deceased individual is not "personal data", and is not afforded the protections of "personal data" under the PDPO. Thus, deceased individuals' data should be treated differently.

EXAMPLES OF PERSONAL DATA PROTECTED BY THE PDPO INCLUDE:

- NAMES
- PHONE NUMBERS
- ADDRESSES
- IDENTITY CARD NUMBERS
- PHOTOS
- MEDICAL RECORDS
- EMPLOYMENT RECORDS

WHO IS RESPONSIBLE UNDER THE PDPO?

A "data user" is defined as a person who, either alone or with others, controls the collection, holding, processing or use of the personal data of a data subject.¹



The definition of data user covers all legal entities, including corporations, partnerships and trusts, and organisations (both *private* and *public*).

An NGO worker becomes a data user when he/she collects personal information from a client, the data subject. An NGO is also regarded as a data user as the processor and holder of the personal data collected by the worker.

WHAT IS REGULATED UNDER THE PDPO?

1. Collection of personal data
2. Use and disclosure of personal data, with specific provisions for use and disclosure for the purposes of direct marketing
3. Retention of personal data, including how long it can be retained, accuracy and security
4. Granting of access to and correction of personal data

In their day-to-day work, social workers need to collect, use and if needed, disclose (share) the personal data collected from clients to third parties to protect the best interest of the client. All of such activities are regulated by the PDPO.

¹ Section 2 of PDPO.



General Practices

What are the **6** Data Protection Principles (Annex 1)?

Under the PDPO, there are data protection principles (DPPs) that all data users must comply to (with exemptions).

PRINCIPLE 1 – PURPOSE AND MEANS OF COLLECTION OF PERSONAL DATA

Personal data must be collected in a **lawful and fair manner**. The purpose of collection must be directly related to a function or activity of the data user. The data collected should be:

- i. necessary for or directly related to that purpose
- ii. must not be excessive.

Before collecting any data or first using the data for the purpose for which it was collected, data users must notify data subjects:

- a. the purpose for which the data is to be used
- b. to whom the data may be transferred
- c. whether it is obligatory or voluntary for them to supply the data. If obligatory, the consequences of failure to supply the data
- d. their rights to request access to and correction of the data
- e. the name or title and address of the individual who handles requests made to the data user.

The above would usually be contained in the data user's Personal Information Collection Statement ("**PICS**") to be provided to the data subject. Before collection of personal data from clients, NGOs should pass a copy of their PICS to them for noting/signing, and be familiar with the contents of the PICS to address any potential queries from clients.

PRINCIPLE 2 – ACCURACY AND RETENTION OF PERSONAL DATA

The data user must take all practical steps to ensure the personal data is accurate and not being kept longer than necessary to fulfil the purpose for which it is collected.

If there is reasonable ground for believing personal data is inaccurate, the data must be erased or not used for the collection purpose until after rectifying the data.

PRINCIPLE 3 – USE AND DISCLOSURE OF PERSONAL DATA

A data user must only use or disclose personal data:

- a. for the purpose for which it was originally collected
- b. for a directly related purpose
- c. for a purpose to which the data subject has consented

In other words, a data user must not use personal data for a new purpose unless:

- a. with *prescribed consent* of the data subject. "Prescribed consent" means the express consent given voluntarily by the data subject².
- b. It fits an exemption in Part VIII of the PDPO, which will be discussed in Section 5³.

4-STEP GUIDING QUESTIONS to consider whether disclosure of personal data can be made :

1. Is there disclosure of personal information?
2. If there is disclosure, is the disclosure for a new purpose?
3. If the disclosure is for a new purpose, did the data subject give prescribed consent to such disclosure?
4. If no consent was given, are there any applicable exemptions?

If the answer is "**Yes**", to all questions, you can consider disclosing the personal data.



PRINCIPLE 4 - SECURITY OF PERSONAL DATA

A data user needs to take all practicable measures to protect personal data from unauthorised or accidental access, processing, erasure, loss or use.

The data user must consider:

- a. the nature of data and the damage that could result from unauthorised or accidental access, process, erasure, loss or use
- b. the physical location where the data is stored
- c. any security measures used for the equipment where the data is stored
- d. any measures taken for ensuring the integrity, discretion and competence of persons having access to the data
- e. any measure taken for ensuring the secure transmission of the data.

2 Section 2 of the PDPO.

3 Sections 51 to 63 of the PDPO.

PRINCIPLE 5 - INFORMATION TO BE GENERALLY AVAILABLE

A data user must take practicable steps to ensure that any person can ascertain the personal data policies and practices in relation to personal data, including the types of personal data it holds and how the data is used.

PRINCIPLE 6 - ACCESS TO AND CORRECTION OF PERSONAL DATA

A data subject is entitled to access to his/her personal data and allowed to make corrections if it is inaccurate⁴.

When a data subject makes a personal data access or correction request, a data user must respond within 40 days of receiving the request or otherwise as soon as is practicable.

What Happens if PDPO is not Complied With?

Whilst non-compliance with the PDPO does not directly constitute a criminal offence, it may result in an inquiry and/or investigation being initiated by The Office of the Privacy Commissioner for Personal Data (PCPD).

Criminal Liability - If the PCPD determines that a DPP has been breached, they may serve an enforcement notice directing the data user to remedy the contravention and/ or instigate the prosecution action. Not responding to this enforcement notice is an offence which could result in a maximum fine of HK\$50,000 and 2 years of imprisonment, and a daily penalty of HK\$1,000 if the offence continues to be committed.

Civil Liability - An individual who suffers damage, including injured feelings, by reason of contravention of the PDPO in relation to his or her personal data may seek compensation from the data user concerned and/or an injunction prohibiting disclosure by way of civil proceedings.

4 A personal data access or correction request may be refused if specific exemptions to this data principle apply. The exemptions relate to staff planning and employment, personal references, the awarding of contracts/awards.



What are the Relevant Exemptions in Handling Child Abuse Cases ?

The PDPO provides a few exemptions to the DPPs in relation to crime, health, and emergency situations.

CRIME PREVENTION AND DETECTION

Section 58 of the PDPO provides an exemption from DPP3 (use and disclosure of data for original purpose, etc.) if the compliance would likely **prejudice the detection or prevention of crime or the prevention, preclusion or remedying** (including punishment) **of unlawful or seriously improper conduct.**

For example, you should consider disclosure to the Police if the client has provided you with information identifying himself/herself to be a victim of abuse.

HEALTH

Section 59 of the PDPO provides an exemption from DPP3 (use and disclosure of data for original purpose, etc.) for personal data relating to the physical or mental health of the data subject if the compliance would likely **cause serious harm to the physical or mental health** of the data subject or any other individuals.

For example, you should consider disclosure of client information to hospital staff if the client indicates he/she is suicidal.

PARAGRAPH 4.13

PROCEDURAL GUIDE FOR HANDLING CHILD ABUSE CASES⁵

Claiming this exemption, professionals (e.g. medical practitioners, residential child care staff) may share health record of service users, including suspected abusers and victims of child abuse, with other concerned professionals on a need-to-know basis **for the purpose of protecting a child from serious physical and/or mental harm.**

5 Social Welfare Department, December 2015 (https://www.swd.gov.hk/en/index/site_pubsvc/page_family/sub_fcwprocedure/id_1447/)



HANDLING LIFE-THREATENING EMERGENCY SITUATIONS

Personal data is exempt from DPPs 1 and 3 if applying these principles would be likely to prejudice:

- a. identifying the individual who is reasonably suspected to be, or is, involved in a life-threatening situation
- b. informing the individual's *immediate family members* or relevant persons of the individual's involvement in the life-threatening situation
- c. carrying out of emergency rescue operations or provision of emergency relief services.⁶

Immediate family member in relation to a data subject means another person who is related to that person by blood, marriage, adoption or affinity. Care must be taken when informing an immediate family member in circumstances where a suspected abuser is a close relative or caregiver (see section 6.5 below).

For example, you should consider disclosure to the client's parents or Legal Guardian if he/she is in a life-threatening situation, or disclosure to the Police/Fire Services to facilitate rescue from a life-threatening situation.

Can I Use and Disclose Personal Information in Child Abuse Cases?

CAN I DISCLOSE CLIENT'S PERSONAL INFORMATION TO RELEVANT THIRD PARTIES?

Social workers collect and use personal information from clients on a day-to-day basis for the purpose of taking case follow-up actions. There are situations where a social worker might find it necessary to disclose the personal information to a third party, e.g. to report crime to the Police, and/or to preserve the safety of the client. The disclosure constitutes a change of purpose to which the information is collected and requires consent of the data subject or an exemption to be made.

HOW DO I OBTAIN CONSENT FROM THE CLIENT (INCLUDING MINORS)?

The relevant consent should be obtained from the data subject, where possible or practicable.

Special treatment applies in the case where the data subject is a **minor**, an individual whose age is below 18. In the case of a minor, consent can be given by a **relevant person** to the minor, namely, a person who has parental responsibility for the minor or is their Legal Guardian⁷. The relevant person can also request for data access/correction on behalf of the minor.

However, the minor has the right to refuse disclosure of his/her personal data to his or her parents (i.e. relevant persons). The Education Bureau's *Points to Note on School Administration and Management*⁸ provides that if the minor objects to the disclosure of his/her data to his/her parents, the parent would not be considered to be acting on behalf of the minor. In this scenario, the consent of the relevant persons (i.e. the parents) would not suffice and the consent of the minor would be required.

6 Section 63C of the PDPO

7 Section 2 of the PDPO.

8 Accessible at Education Bureau's website: <https://www.edb.gov.hk/attachment/en/sch-admin/admin/about-sch/personal-data-ordinance-cap486-note/privacy.pdf> (at page 16)

DOES A CHILD HAVE THE RIGHT TO REFUSE HIS OR HER DATA TO BE DISCLOSED TO A PARENT OR GUARDIAN WHEN ARRESTED OR ADMITTED TO HOSPITAL?

A child may refuse his or her data to be disclosed to a parent or guardian when arrested or admitted to hospital. However, there are exemptions that may apply in both circumstances to make such disclosure, if certain conditions are met:

I. IF THE CHILD IS ARRESTED

If the child informs the Hong Kong Police Force or the Customs and Exercise Department that they do not want a parent or guardian informed, or otherwise refuses a parent or guardian to be notified of their arrest, then section 59A of the PDPO provides an exemption to DPP3 regarding use or disclosure of personal data. In these circumstances, the police or customs officer may disclose personal data to the parent or guardian where the purpose of the disclosure is:⁹

- a. to facilitate the parent or guardian to exercise proper care and guardianship of the child
- b. in the interest of the child, and
- c. the application of DPP3 would be likely to prejudice the exercise of proper care and guardianship of the child by the relevant person.

Further, if the child is under the age of 16 and the officer has applied section 59A and determined that they should disclose the personal data to the parent or guardian, the officer is required to make all reasonable efforts to inform the parent(s) or guardian of the child to come to the station where the child is being held.¹⁰

II. IF THE CHILD IS ADMITTED TO HOSPITAL

As noted in section 5.3, an exemption applies to disclose personal data to an immediate family member in a life-threatening situation, but taking care in circumstances where a suspected abuser is a close relative. Where a child seeks confidential medical advice (including admission to hospital) in non-life-threatening situations, common law principles apply. Doctors and healthcare providers are required to exercise their professional judgement to assess whether the child has sufficient understanding and intelligence to understand the nature and to consent to medical treatment, applying the following considerations:¹¹

1. If the doctor is of the view that the procedure could be said to be in a child's best interests;
2. If the doctor cannot persuade the child to tell his/her parents or guardian; and
3. The child is able to understand the nature and consequences of the medical procedure.

9 Section 59A of the PDPO.

10 Section 3 of the Police General Orders.

11 This test is derived from UK case of *Gillick v West Norfolk and Wisbech AHA* [1986] AC112, [1985] 3 All ER 402.

WHAT SHALL I DO IF A CHILD HAS DISCLOSED CHILD ABUSE INCIDENTS BUT REQUESTED THE SOCIAL WORKER TO KEEP THE INFORMATION CONFIDENTIAL?

It should be explained to the child in a child-friendly way that a social worker can not make these promises. The social worker should assure the child that the goal of any follow up actions is for his/ her best interests to keep them safe and provide support services for the child.

SHOULD DISCLOSURE OF PERSONAL INFORMATION BE MADE EVEN IF THERE IS NO CONSENT FROM THE CLIENT?

The primary concern is always the welfare and safety of the client. Whilst the starting point is that client information is confidential, there may be circumstances that may justify disclosure (in case of crime, health, or emergency situations).

The social worker should balance the interest between confidentiality and protecting the best interest of the client, and make the necessary disclosure to prevent harm or perpetration of a crime.

WHAT INFORMATION SHOULD BE PROVIDED TO RELEVANT THIRD PARTIES SUCH AS LAW ENFORCEMENT OFFICERS AND/OR THE MEDICAL PROFESSIONALS?

In handling reports of child abuse, the paramount concern of all parties is to protect the safety and best interests of children, especially where the suspected abusers are often their close relatives or caregivers. The Police may need to gather evidence including testimonies of child(ren) concerned and witnesses, case exhibits, medical/ forensic evidence and any other circumstantial evidence, in order to establish the allegation.

In an investigation, a social worker may need to provide information including full records of such interviews, whether in the form of a written report, audio/ video recordings or otherwise, including date, time, location, persons involved, purpose of the communications, process of the events, and personal observations, etc.¹²

You may also need to disclose personal information of a client to medical professionals on a need-to-know basis to facilitate appropriate treatment. Relevant information would include the client's medical history (including any allergies, pregnancies) and details of the acts causing harm to the client.

PARAGRAPH 4.4

PROCEDURAL GUIDE FOR HANDLING CHILD ABUSE CASES

Relevant information relating to child protection may include:

- a. health and development of a child and his/her exposure to possible harm
- b. child care ability of a parent or caregiver that may pose danger to the child under his/her care
- c. act that may cause harm to a child
- d. actual harm to the child.

12 Annex VI to Chapter 4 of the Procedural Guide for Handling Child Abuse Cases

When deciding whether disclosure should be made, it should be noted that each case is decided on its own merit, but the paramount concern is always the welfare of the client.

HOW MUCH INFORMATION SHOULD BE DISCLOSED TO THE RELEVANT THIRD PARTIES?

Social workers should disclose only the necessary (but not excessive) amount of confidential information that is directly relevant to the purpose for which the disclosure is made.

For example, for prevention of crime, only facts relating to the crime or facts that would facilitate the police to investigate the crime should be revealed. Other information that does not assist this purpose (e.g. medical history unrelated to the crime) should not be disclosed.

According to the **Guidelines on Code of Practice for Registered Social Workers**¹³, reasonable efforts should be made to remove any information from case material that may reveal the identity of clients to someone casually related to clients, such as neighbours, colleagues and school teachers.

CAN I VERBALLY DISCUSS PERSONAL INFORMATION OF THE CLIENT WITH OTHER SOCIAL WORKERS RELATING TO CHILD PROTECTION?

If the personal data are to be used and shared to prevent crime (child abuse investigation) or prevent harm to clients (for example, when a social worker is alerted of a child abuse case and it occurs to him/her to be necessary to involve another social worker who is the primary case handler of or has better access to that client), the disclosure may be exempt from DPP3.

REMEMBER

“4.17 Confidential information should not be discussed in any setting unless confidentiality can be ensured. Hence, discussion in public or semi-public areas such as hallways, waiting rooms, elevators and restaurants should be avoided.

...

4.19 All professionals should not disclose identifiable information of any service user in the course of discussion for teaching or training purposes or seeking advice from a third party outside their organisation unless the service user has consented to the disclosure of confidential information.”

Chapter 4 of the Social Welfare Department Procedural Guide

13 Social Workers Registration Board, 15 January 2010, at paragraph 8.2 (<https://www.swrb.org.hk/en/Content.asp?UId=15>)



Conclusion

- Personal data of clients should be collected, used, stored and disclosed in accordance with the PDPO.
- Whether an exemption to disclose data applies to a particular case should be considered on a case-by-case basis, always having regard to the best interest of the client.
- Keep your organization informed as soon as practicable to facilitate discussion on whether disclosure should be made, and if so, the extent of disclosure.
- Keep a clear record of the considerations taken and the discussions made when deciding whether disclosure to be made, which can be used as evidence if and when a decision to disclosure is subject to any challenge by any parties. In the event of uncertainty or doubt, legal advice should be sought on whether disclosure should be made.

Annex 1 – 6 Data Protection Principles at a Glance

6 DATA PROTECTION PRINCIPLES



DATA COLLECTION PRINCIPLE

Personal data must be collected in a lawful and fair way, for a purpose directly related to a function or activity of the data user.

Data subjects must be notified of the purpose and the classes of persons to whom the data may be transferred. Data collected should be necessary but not excessive.



ACCURACY & RETENTION PRINCIPLE

Practicable steps shall be taken to ensure personal data is accurate and not kept longer than is necessary to fulfil the purpose for which it is used.



DATA USE PRINCIPLE

Personal data must be used for the purpose for which the data is collected or for a directly related purpose, unless voluntary and explicit consent with a new purpose is obtained from the data subject.



DATA SECURITY PRINCIPLE

A data user needs to take practicable steps to safeguard personal data from unauthorised or accidental access, processing, erasure, loss or use.



OPENNESS PRINCIPLE

A data user must take practicable steps to make personal data policies and practices known to the public regarding the types of personal data it holds and how the data is used.



DATA ACCESS & CORRECTION PRINCIPLE

A data subject must be given access to his/her personal data and allowed to make corrections if it is inaccurate.

What are the Rights of the Child?

We have a responsibility to uphold children's rights. How does understanding the rights of children help us to be the voice for vulnerable children and families?

- 1 Everyone under 18 has these rights
- 2 **All children have rights, and I should be treated fairly and equally no matter who I am, what I look like, where I live, what language I speak, what my religion is, whether I am a boy or a girl and whether I have a disability.**
- 3 Adults must do what is best for me.
- 4 The government has a responsibility to make sure my rights are protected and respected.
- 5 **My family has the responsibility to help me learn to exercise and protect my rights.**
- 6 I should be supported to live and grow.
- 7 I have the right to a name, and to belong to a country.
- 8 I have the right to an identity which no one can take away.
- 9 **I have the right to live with a family who cares for me.**
- 10 I have the right to be together with my family if we live in different countries.
- 11 I have the right to be protected from kidnapping.
- 12 **I have the right to be listened to, and to be taken seriously.**
- 13 I have the right to find out and share information, unless it harms or puts someone in danger.
- 14 I have the right to have my own beliefs and choose my own religion, with my parents' guidance.
- 15 I have the right to meet with friends and join groups, unless it harms or puts someone in danger.
- 16 I have the right to my privacy.
- 17 **I have the right to get information in lots of ways, and adults have a responsibility to make sure it is not harmful.**
- 18 I have the right to be raised by both parents if possible.
- 19 **I have the right to be protected from abuse - from being hurt or badly treated in body and mind.**
- 20 & 21 **I have the right to special protection, care and support if I cannot live with my parents. I have the right to have care and protection if I am adopted or living in foster care.**
- 22 If I am a refugee (if I have been forced to leave my home country), I have the same rights as children in my new country.
- 23 **If I have a disability, I have the right to special care and education.**
- 24 I have the right to good quality healthcare, to clean water, and good food.
- 25 **If I am waiting for my safe, loving, and permanent family, I have the right for my care to be reviewed regularly to make sure it is good for me.**
- 26 I have the right to receive help from the government if my family doesn't have enough money.
- 27 I have the right to a safe place to live, food, and clothing to help me reach my potential.
- 28 I have the right to an education, and I should be encouraged to go to school to the highest level I can.
- 29 I have the right to an education which allows me to thrive, live peacefully, protect the environment, and respect others.
- 30 I have the right to speak my own language, and follow my family's religion and culture if I choose.
- 31 **I have the right to play and rest.**
- 32 If I work, I should be paid fairly, and I should not be made to do work that is dangerous or hinders my education and development.
- 33 I should be protected from dangerous drugs.
- 34 **I have the right to be free from sexual abuse. No one should touch me in ways that make me feel uncomfortable, unsafe, or sad.**
- 35 I should not be kidnapped, or sold.
- 36 I have the right to protection from being taken advantage of.
- 37 I have the right not to be punished in a cruel or hurtful way.
- 38 I have the right to not be enlisted in the army until I am 15 (18 years old in HK).
- 39 I have the right to help if I have been hurt, neglected, or badly treated.
- 40 I have the right to legal help and to be treated fairly if I have been accused of breaking the law.
- 41 If my country has laws that treat me better than the UNCRC, then those laws apply.
- 42 **I have the right to know my rights! And everyone around me should learn about my rights.**
- 43 - 54 These articles are about how governments and international organizations will work together to give children our rights.

Hong Kong agreed to the United National Convention on the Rights of the Child (UNCRC) in 1994.

I am a child, and I have all of these rights.

As I grow older, I have more responsibility to make choices and exercise my rights.

These rights will help me thrive and reach my full potential.

