

PROPERTY MANAGEMENT SERVICES AUTHORITY

Best Practice Guide on Protection of Personal Data

Guide No.: G8/2021

Effective Date: 22 October 2021

Preamble

For the purpose of enabling licensees¹ to comply more effectively and professionally with the guidelines set out in the code of conduct² entitled “Protection of Personal Data” (Code No.: C8/2021) (“Code”) issued by the Property Management Services Authority (“PMSA”) on 22 October 2021, the PMSA provides relevant guidelines in this best practice guide (“Guide”) pursuant to section 44³ of the Property Management Services Ordinance (Cap. 626) (“PMSO”). While licensees are encouraged to use their best endeavours to follow the Guide, failure to comply with the Guide will, however, not be regarded as a disciplinary offence referred to in section 4 of the PMSO.

Personal data protection principles

Code: A(1) A licensed PMC has to formulate a policy on personal data⁴ protection for its business in providing property management services (“PMSs”). The policy has to include the following data protection principles—

- (a) purpose and means of personal data collection;
- (b) accuracy and retention period of personal data;
- (c) use (including disclosure) of personal data;
- (d) security of personal data;

¹ The term “licensee” means the holder of the following licence: a PMC licence; a PMP (Tier 1) licence; a PMP (Tier 2) licence; a provisional PMP (Tier 1) licence; or a provisional PMP (Tier 2) licence.

² With regard to the code of conduct containing practical guidance issued by the PMSA under section 5 of the PMSO for the purpose of section 4 of the PMSO (disciplinary offences), although a licensee does not incur a legal liability only because the licensee has contravened a provision of the code of conduct, the code of conduct is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the code of conduct may be relied on as tending to establish or negate a matter that is in issue in the hearings.

³ Section 44 of the PMSO provides: “*The Authority may do anything it considers appropriate for it to do for, or in relation to, the performance of its functions*”.

⁴ The term “personal data” has the same meaning as defined by section 2 of the Personal Data (Privacy) Ordinance (Cap. 486), which means “*any data—(a) relating directly or indirectly to a living individual; (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and (c) in a form in which access to or processing of the data is practicable*”.

(e) openness of personal data policy and practice; and

(f) access and correction of personal data.

A(2) A licensed PMC has to ensure that the policy set out in paragraph A(1) of the Code is duly communicated to its directors, staff, agents and subcontractors.

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a(1) A licensed PMC should refer to the “Guidance on Property Management Practices”⁵ issued by the Office of the Privacy Commissioner for Personal Data (“PCPD”) and the examples at **Appendix 1** in order to ensure that its policy on personal data protection covers the essential data protection principles and policies.

a(2) To comply with the guidelines set out in paragraph A(1) of the Code, a licensed PMC should, so far as reasonably practicable, appoint a designated staff member to be the data protection officer⁶, so that personal data protection measures can be promoted more effectively within the PMC.

Collection of personal data

Code: B(1) A licensee who, for the purpose of provision of PMSs (e.g. issuing resident cards or club house cards or handling complaints) —

(a) collects personal data, has to ensure the personal data collected is necessary and adequate but not excessive, and the means of collection has to be lawful and fair;

(b) before collecting the personal data, has to inform the data subject⁷ of the purpose of collection, and whether it is obligatory or voluntary for the data subject to supply the personal data; where it is obligatory for the data subject to supply the data, the consequences for the data subject if he/she fails to supply the data,

⁵ Please refer to https://www.pcpd.org.hk/english/resources_centre/publications/files/property_e.pdf and the relevant guidelines updated/issued from time to time.

⁶ A data protection officer may be responsible for establishing, designing, implementing and monitoring a privacy management programme including all procedures, training, monitoring/auditing, documentation, evaluation and follow-up. For details, please refer to “Privacy Management Programme — A Best Practice Guide” issued by the PCPD.

⁷ The term “data subject” has the same meaning as defined by section 2 of the Personal Data (Privacy) Ordinance i.e. “*in relation to personal data, means the individual who is the subject of the data*”.

the classes of persons to whom the data may be transferred, and his/her rights and the ways to access to and to request for correction; and

- (c) before collecting the personal data, has to discuss with the owners' organization⁸ (if any) the details of data collection (e.g. the purpose of data collection, types of data to be collected, and whether the owners' organization is a data user⁹), and disclose to the data subject the relevant details before collecting the personal data.

B(2) For security reasons, a licensee may ascertain the identity of the visitors who enter the property for which the licensee provides PMSs by recording the Hong Kong Identity ("HKID") Card number of the visitors at the entrance of the property but before doing so, the licensee has to consider whether there may be less privacy-intrusive alternatives to the collection of the HKID Card number, and where practicable, give the visitors the option to choose any such alternative instead of providing HKID Card number. If there is no other alternative, then the licensee may record the HKID Card number of the visitors to ascertain their identity.

Guide

- b(1) A licensee should, for the purpose of providing PMSs, only collect personal data that is generally sufficient for the purpose. For details, please refer to the relevant paragraphs on "Personal data to be collected for issuing resident cards" and "Handling of complaints from residents" in the "Guidance on Property Management Practices" issued by the PCPD.
- b(2) To comply with the guidelines set out in paragraph B(1)(b) of the Code, a licensee should provide and set out in or append to the relevant application forms or documents (e.g. resident card application forms and documents) the "Personal Information Collection Statement" (see example in **Appendix 2**). For details, please refer to the relevant guidelines in the "Guidance on Preparing Personal Information Collection Statement and Privacy Policy Statement"¹⁰ issued by

⁸ The term "owners' organization" has the same meaning as defined by section 2 of the PMSO i.e. "*in relation to a property, means an organization (whether or not formed under the Building Management Ordinance (Cap.344) or a deed of mutual covenant) that is authorized to act on behalf of all the owners of the property*".

⁹ The term "data user" has the same meaning as defined by section 2 of the Personal Data (Privacy) Ordinance, i.e. "*in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data*".

¹⁰ Please refer to https://www.pcpd.org.hk/english/publications/files/GN_picspps_e.pdf and the relevant

the PCPD.

- b(3) To comply with the guidelines set out in paragraph B(2) of the Code, a licensee should refer to the relevant guidelines in the relevant paragraphs on “Recording of HKID Card numbers of visitors” in the “Guidance on Property Management Practices” and the “Code of Practice on the Identity Card Number and other Personal Identifiers”¹¹ issued by the PCPD.

Accuracy and retention period of personal data

Code: C(1) If a licensee has reasonable ground to believe that the personal data held by itself is not accurate, the licensee must not use (including disclose) the relevant data.

C(2) A licensee has to formulate a policy on the retention period for different kinds of personal data, and the retention period should not be longer than is necessary for the fulfillment of the original purpose for which the data is used.

C(3) The personal data collected by a licensee has to be erased as soon as reasonably practicable once the purpose of collection is fulfilled.

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- c(1) To comply with the guidelines set out in paragraph C(1) of the Code, a licensee should, before using the personal data, take reasonable and practicable steps to ensure that the concerned data is accurate.
- c(2) The data in the visitor log book should be erased regularly and should not be retained for over one month if no incident of security concern arises. For details, please refer to the relevant paragraphs on “Visitors’ log book” in the “Guidance on Property Management Practices” issued by the PCPD.

Use and disclosure of personal data

Code: D(1) Unless there is voluntary and express consent from the data subject, the personal data collected by a licensee can only be used for the original purpose when collecting the data but not for any new purpose¹². A data

guidelines updated/issued from time to time.

¹¹ Please refer to https://www.pcpd.org.hk/english/data_privacy_law/code_of_practices/files/picode_en.pdf and the relevant guidelines updated/issued from time to time.

¹² A new purpose means any purpose other than the purpose for which the data was to be used at the time of the

subject may by a written notice withdraw his/her consent previously given.

- D(2) When disclosing personal data, a licensee has to disclose it on a need-to-know basis.
- D(3) Whenever a licensee in the course of providing PMSs displays a notice publicly, it has to carefully consider and assess the necessity and extent of publicizing information containing an individual's personal data, and the personal data which is not relevant to the purpose or not necessary for the purpose of posting the notice must not be displayed.
- D(4) If a licensee displays publicly in a property for which it provides PMSs a notice of legal proceedings¹³ with regard to the property, the licensee has to fully display the content of the notice. However, the sensitive personal data of any party (e.g. HKID card number and telephone number) has to be properly covered before the display.

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- d(1) To comply with the guidelines set out in paragraph D(2) of the Code, when a licensee discloses any personal data, it has to consider whether the recipient is the person who needs to know the data (e.g. whether the recipient has to know the information for carrying out his/her work or duty) and it should disclose adequate but not excessive data to such persons (including the internal staff of the company, a complainant or a complaine, subcontractors or a third party organization, etc.).
- d(2) To comply with the guidelines set out in paragraph D(3) and D(4) of the Code, a licensee should refer to the relevant paragraphs on "Display of notices containing personal data" in the "Guidance on Property Management Practices" issued by the PCPD.
- d(3) A licensee should, so far as reasonably practicable, display the notice or the notice of legal proceedings mentioned in the respective paragraphs D(3) and D(4) of the Code in a prominent place of every building in the property.

Security of personal data

Code: E(1) A licensed PMC has to, within the reasonable extent, take practicable

collection of data or a directly related purpose.

¹³ e.g. Writ of summons, judgments or orders issued by the Judiciary, execution of judgments or orders, etc.

steps to ensure that documents containing personal data are stored in a safe and secured place.

E(2) A licensee has to take practicable steps to conceal the data of others in the visitor log book from visitors.

E(3) If the personal data is stored by electronic means, a licensee has to, so far as reasonably practicable, make use of appropriate systems and procedures to protect the personal data against unauthorized or accidental access, processing, erasure, loss or use.

Guide

e(1) To comply with the guidelines set out in paragraph E(1) of the Code, a licensee should—

- (a) where practicable, store the documents containing personal data in a designated lock device properly kept by an authorized person¹⁴ for inspection by “need-to-know” persons;
- (b) properly record the concerned access of data for future auditing and tracing; and
- (c) where practicable, store the documents containing personal data in a designated lock device during non-office hours of the authorized person.

e(2) To comply with the guidelines set out in paragraph E(3) of the Code, a licensee should—

- (a) set password control on the files containing personal data;
- (b) restrict the files containing personal data to be accessed, and the relevant passwords to be kept, only by the authorized person; and
- (c) regularly update the relevant passwords and electronic system, and so far as reasonably practicable, use the most updated versions of software and hardware.

e(3) To comply with the guidelines set out in paragraph E(1) and E(4) of the Code, a licensee should not casually dispose of documents containing personal data, and should ensure that the concerned documents and personal data stored by electronic means to be completely erased once the purpose of collection is

¹⁴ An authorized person means the person designated by the licensed PMC.

fulfilled.

- e(4) When there is a data breach incident, a licensee should refer to the “Guidance on Data Breach Handling and the Giving of Breach Notifications”¹⁵ issued by the PCPD for taking appropriate follow-up actions.

Handling requests of access and correction of personal data

Code: F(1) A licensee has to comply with a data access or correction request made by a data subject.

Guide

- f(1) To comply with the guidelines set out in paragraph F(1) of the Code, a licensee should comply with a data access or correction request made by a data subject within 40 days after receiving such request. If the licensee does not hold the data requested, the licensee still has to notify the data subject, explaining the reasons in writing within the same time limit¹⁶.

Outsourcing the processing of personal data to data processors¹⁷

Code: G(1) When a licensee engages a data processor (no matter the engagement is in Hong Kong or not) to process personal data on its behalf, the licensee has to adopt contractual or other practicable means to —

- (a) prevent any personal data transferred to the data processor from being kept longer than is necessary for the processing of the data; and
- (b) prevent unauthorized or accidental access, processing, erasure, loss, or use of the personal data transferred to the data processor.

Guide

- g(1) To comply with the guidelines set out in paragraph G(1) of the Code, a licensee should refer to the relevant paragraphs on “Outsourcing of services” in the

¹⁵ Please refer to https://www.pcpd.org.hk/english/resources_centre/publications/files/DataBreachHandling2015_e.pdf and the relevant guidelines updated/issued from time to time.

¹⁶ Sections 19 and 21 of the Personal Data (Privacy) Ordinance refer.

¹⁷ The term “data processor” has the same meaning as defined by section 2(4) of Schedule 1 to the Personal Data (Privacy) Ordinance, which means “a person who—(a) processes personal data on behalf of another person; and (b) does not process the data for any of the person’s own purposes”.

“Guidance on Property Management Practices” and the guidelines in the information leaflet of “Outsourcing the Processing of Personal Data to Data Processors”¹⁸ issued by the PCPD.

Installation and use of Closed Circuit Television

Code: H(1) A licensee has to ensure that the Closed Circuit Television (“CCTV”) (if any) installed in the common areas of the property is in a proper position so that it will not unnecessarily intrude into the privacy of individuals, and has to explicitly inform the concerned persons that they are subject to CCTV surveillance, and has to protect the whole CCTV system and handle CCTV records properly.

Guide

h(1) To comply with the guidelines set out in paragraph H(1) of the Code, a licensee should refer to the relevant guidelines in the relevant paragraphs on “Use of CCTV covering common areas of building” in the “Guidance on Property Management Practices” and the guidelines in the “Guidance on CCTV Surveillance and Use of Drones”¹⁹ issued by the PCPD.

Use of personal data for direct marketing²⁰

Code: I(1) If the personal data collected may be used for direct marketing or transferred to a third party for direct marketing, a licensee has to comply with the relevant regulations on “Use of Personal Data for Direct Marketing and Provision of Personal Data for Use in Direct Marketing” in the Personal Data (Privacy) Ordinance²¹.

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i(1) To comply with the guidelines set out in paragraph I(1) of the Code, a licensee should, as soon as possible, inform the data subject of the intention of using

¹⁸ Please refer to https://www.pcpd.org.hk/english/resources_centre/publications/files/dataprocessors_e.pdf and the relevant guidelines updated / issued from time to time.

¹⁹ Please refer to https://www.pcpd.org.hk/english/resources_centre/publications/files/GN_CCTV_Drones_e.pdf and the relevant guidelines updated/issued from time to time.

²⁰ The term “direct marketing” has the same meaning as defined by section 35A of the Personal Data (Privacy) Ordinance, which means “(a) the offering, or advertising of the availability, of goods, facilities or services; or (b) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes, through direct marketing means”.

²¹ Part 6A of the Personal Data (Privacy) Ordinance refers.

his/her personal data for direct marketing, and attach the “Personal Information Collection Statement” to the relevant application form or documents for the provision of information regarding the use of personal data for direct marketing (see example in **Appendix 2**).

- i(2) A licensed PMC should keep a list recording persons who do not agree that his/her personal data is to be used for direct marketing (i.e. opt-out list), deliver the list to all staff members who deal with direct marketing activities, and update the opt-out list timely.

— END —

If there is any inconsistency between the Chinese version and the English version of this Guide, the Chinese version shall prevail.

Personal Data Protection Policy¹

(Name of Company) (“Company”), in the course of providing property management services (“PMSs”) business, has to protect and respect personal data ² . All sole proprietor/partners/directors* and staff (hereafter referred to as “personnel”) must comply with this personal data protection policy and the associated rules/guidelines/code of conduct*.

- Our Company and all personnel have to observe the Personal Data (Privacy) Ordinance (Cap. 486) and relevant laws to fulfill the duties and requirements as appropriate.
- Our Company takes all reasonably practicable steps to make known to data subjects the personal data policy and practices, the types of personal data we hold and for which purpose the data is used, so as to ensure openness and transparency of our Company’s personal data policy.
- Our Company and all personnel, for the purpose of provision of PMSs, collect personal data by lawful and fair means, and the personal data collected is necessary and adequate but not excessive.
- Our Company will comply with the data access request or data collection request made by the data subjects.
- Our Company takes all reasonably practicable steps to ensure the personal data collected is accurate and not kept longer than is necessary for the fulfillment of the purpose for which the data is used.
- Any personnel in breach of personal data protection policy will be subject to internal disciplinary action, including written warning, termination of appointment and/or referral to relevant law enforcement agencies.
- Unless with the data subject’s³ express and voluntary consent, our Company and all personnel will not use the personal data collected other than for the purpose which the data is collected.
- Our Company will render full assistance to law enforcement agencies in the investigation of contravention relating to personal data protection.
- Our Company takes all reasonably practicable steps to safeguard the personal data from unauthorized or accidental access, processing, erasure, loss or use.

Signature⁴(s): _____

* delete as appropriate

¹ While it may not be necessary for a company to use the exact wording in the sample, the standard and requirements adopted by the company shall be on par with, or not inferior to, that of this sample.

² The term “personal data” has the same meaning as defined by section 2 of the Personal Data (Privacy) Ordinance (Cap. 486), which means “any data—(a) relating directly or indirectly to a living individual; (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and (c) in a form in which access to or processing of the data is practicable”.

³ The term “data subject” has the same meaning as defined by section 2 of the Personal Data (Privacy) Ordinance i.e. “in relation to personal data, means the individual who is the subject of the data”.

⁴ The policy has to be endorsed and signed by the top management of the Company (e.g. Executive Director).

Personal Information Collection Statement¹

 (Name of Company) (“Company”), at or before collecting personal data² from individuals for the purpose of providing property management services (“PMSs”) business, will provide the following “Personal Information Collection Statement” to the concerned persons.

Purpose of collecting personal data

- In the course of providing PMSs, our Company will request the concerned person to provide his/her personal data for the purpose of (e.g. application for resident cards or club house cards/ordering goods/events/handling complaints/emergency contact).

Obligation on providing data and consequences of not providing data

- It is necessary for our Company to collect personal data from individuals in order to provide suitable and relevant PMSs. A person may voluntarily provide the relevant personal data. Failure to provide the required information may give rise to consequences (e.g. affecting the application result, the PMSs provided or complaints handling, etc.)

Disclosure of and transferring personal data

- The relevant personal data may be used for (e.g. handling complaints/internal statistics/investigations/analysis), and may be disclosed to (e.g. owners’ organization/our group of companies and its associated companies/succeeding property management company (if any)) or transferred to (e.g. owners’ organization/our group of companies and its associated companies/succeeding property management company (if any)).
- A data subject³ may decide not to disclose his/her personal data to (e.g. owners’ organization/our group of companies and its associated companies/succeeding property management company (if any)) or not to transfer his/her personal data to (e.g. owners’ organization/our group of companies and its associated companies/succeeding property management company (if any)).

¹ While it may not be necessary for a company to use the exact wording in the sample, the standard and requirements adopted by the company shall be on par with, or not inferior to, that of this sample.

² The term “personal data” has the same meaning as defined by section 2 of the Personal Data (Privacy) Ordinance (Cap. 486), which means “any data—(a) relating directly or indirectly to a living individual; (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and (c) in a form in which access to or processing of the data is practicable”.

³ The term “data subject” has the same meaning as defined by section 2 of the Personal Data (Privacy) Ordinance i.e. “in relation to personal data, means the individual who is the subject of the data”.

Regarding the use of and/or provision of personal data for direct marketing⁴ (if applicable)

- Our Company will not use and/or provide the data subject’s personal data for direct marketing unless the data subject’s consent is obtained.
- In respect of direct marketing, our Company may use the following personal data:
_____ (e.g. name/telephone numbers/address, etc.)

and/or provide the personal data to the following party:
_____ (e.g. our group of companies and its associated companies/supplier of goods and services, etc.)

for the purpose of the following direct marketing (products and services):
_____ (e.g. products/services)

- A data subject may, at any time, request our Company to stop using and/or providing the concerned personal data for direct marketing. Please call [telephone numbers], email [email address] or write to [address] to inform our Company of such request, if necessary. Our Company will not charge the data subject when complying with the relevant instruction.

Data access request or data correction request

- A data subject has the right to access, correct or update the relevant personal data held by our Company. A data subject also has the right to know the privacy policy of and the details of the types of personal data held by our Company.
- Please email or write to the data protection officer⁵ (name and post) of our Company to make the above-mentioned request.

(Data protection officer)
(Property management company)
Telephone no.: (852) xxxx xxxx
Fax: (852) xxxx xxxx
Address: xxxxxxxxxxxxxxxx

Signature of data subject: _____

⁴ The term “direct marketing” has the same meaning as defined by section 35A of the Personal Data (Privacy) Ordinance, which means “(a) the offering, or advertising of the availability, of goods, facilities or services; or (b) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes, through direct marketing means”.

⁵ A data protection officer may be responsible for establishing, designing, implementing and monitoring a privacy management programme including all procedures, training, monitoring / auditing, documentation, evaluation and follow-up. For details, please refer to “Privacy Management Programme—A Best Practice Guide” issued by the Office of the Privacy Commissioner for Personal Data.