

PROPERTY MANAGEMENT SERVICES AUTHORITY

Code of Conduct

Protection of Personal Data

Code No.: C8/2021

Effective Date: 22 October 2021

Preamble

The following code of conduct (“Code”) is issued by the Property Management Services Authority pursuant to section 5 of the Property Management Services Ordinance (Cap. 626) (“PMSO”) and contains practical guidance for the purposes of section 4 of the PMSO (disciplinary offences). Although a licensee¹ does not incur a legal liability only because the licensee has contravened a provision of the Code, the Code is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the Code may be relied on as tending to establish or negate a matter that is in issue in the hearings.

Code

Personal data protection principles

- A(1) A licensed PMC has to formulate a policy on personal data² 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;
 - (e) openness of personal data policy and practice; and
 - (f) access and correction 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 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”.

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.

Collection of personal data

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 subject³ 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, 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' organization⁴ (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 user⁵), 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 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.

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 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*”.

⁵ 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*”.

Accuracy and retention period of personal data

- 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.

Use and disclosure of personal data

- 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 purpose⁶. A data 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 proceedings⁷ 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.

Security of personal data

- E(1) A licensed PMC has to, within the reasonable extent, take practicable steps to ensure that documents containing personal data are stored in a safe and secured place.

⁶ A new purpose means any purpose other than the purpose for which the data was to be used at the time of the collection of data or a directly related purpose.

⁷ e.g. Writ of summons, judgments or orders issued by the Judiciary, execution of judgments or orders, etc.

- 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.

Handling requests of access and correction of personal data

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

Outsourcing the processing of personal data to data processors⁸

- 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.

Installation and use of Closed Circuit Television

- 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.

Use of personal data for direct marketing⁹

- 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

⁸ 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*”.

⁹ 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*”.

regulations on “Use of Personal Data for Direct Marketing and Provision of Personal Data for Use in Direct Marketing” in the Personal Data (Privacy) Ordinance¹⁰.

— END —

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

¹⁰ Part 6A of the Personal Data (Privacy) Ordinance refers.