Personal Data (Privacy) Law in Hong Kong

A Practical Guide on Compliance

Third Edition

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Chapter 1

Introduction

1.1 The Personal Data (Privacy) Ordinance (Cap. 486) ("the Ordinance") aims to protect the privacy of individuals ("data subjects") in relation to their personal data. It is, by design, principles-based and technology neutral. It is generally more instructive than prohibitive and remedial rather than punitive as regards contravening acts. Its core instructive provisions are encapsulated in the six data protection principles ("DPPs") found in Schedule 1 of the Ordinance. These principles are the cornerstones of the Ordinance.

1.2 The enactment of the six DPPs aimed to promote a culture of protecting the privacy of personal data at every stage (from collection, holding, processing and use to deletion) based on international data protection standards enshrined in the *OECD Privacy Guidelines* of 1980[1] and the EU Data Protection Directive of 1995.[2] Contraventions of the DPPs by a data user do not per se constitute criminal offences. A data user only becomes criminally liable under the Ordinance if he fails to comply with the terms of an enforcement notice issued by the Privacy Commissioner for Personal Data (the "Commissioner") when a contravention is found. A data user will also commit an offence if, having undertaken to comply with an enforcement notice, he intentionally performs an act or omission specified in the enforcement notice. An enforcement notice issued by the Commissioner after an investigation will direct the non-compliant data user to take steps to remedy and prevent recurrence of the contravention of the Ordinance. Contravention of DPPs can also form the basis of a civil lawsuit by the aggrieved individual for compensation of damage suffered,[3] whether or not an enforcement notice has been issued.

1. *OECD Privacy Guidelines 1980* is a commonly used abbreviated title for the original 1980 version of the *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*.
2. In formulating the Ordinance, the Law Reform Commission of Hong Kong also made reference to the then draft version of Directive 95/46/EC of the European Parliament and Council.
3. Section 66 of the Ordinance.

1.3 After its enactment in 1995, the Ordinance was amended upon the passing of the Personal Data (Privacy) (Amendment) Ordinance in 2012 ("Amendment Ordinance 2012")[4] with the introduction of, inter alia, Part 6A regulating direct marketing activities, which came into force on 1 April 2013. In 2021, the Ordinance underwent another major amendment. The Personal Data (Privacy) (Amendment) Ordinance 2021 ("Amendment Ordinance 2021") aims to combat doxxing acts that are intrusive to personal data privacy, through the criminalisation of such acts and confers on the Commissioner statutory powers to issue notices to demand the cessation or restriction of disclosure of doxxing messages. The amendments that came into operation on 8 October 2021 also confer on the Commissioner power to conduct a criminal investigation and institute prosecution for doxxing-related offences, to strengthen enforcement against doxxing cases.

1.4 As personal data has become more valuable and ubiquitous in the digital age and contravention of the DPPs may have legal consequences, it is in every data user's interest to understand and comply with the Ordinance. However, some provisions of the Ordinance may need to be construed constructively beyond their literal meaning. Data users would undoubtedly benefit from the Commissioner's explanation of compliance requirements with practical examples and cases decided in the local context as illustrations.

1.5 Relatively few decisions and judgments concerning the protection of personal data privacy provide authoritative interpretations of the provisions of the Ordinance, including the DPPs. However, the Commissioner has handled a considerable number of enquiries, complaints and compliance checks and investigations in respect of potential or actual contraventions of the requirements of the Ordinance. The Commissioner's decisions, based on interpretation of the relevant provisions of the Ordinance, have occasionally been tested in Court and in appeals to the Administrative Appeals Board ("AAB"),[5] whose determinations carry authoritative weight and precedential value.

1.6 Against this background, it is in the public interest for the Commissioner to state openly the criteria, principles and approaches applied in the discharge of the Commissioner's roles as regulator, facilitator and educator, when interpreting, administering and enforcing the provisions of the Ordinance.

4. Amendment Ordinance 2012 was gazetted on 6 July 2012.

5. Under the relevant provisions of the Ordinance and the Administrative Appeals Board Ordinance (Cap. 442), certain decisions of the Commissioner may be appealed.

It is hoped that such clarification and explanation will:

- help data users understand and comply with the requirements of the Ordinance;
- help the legal advisors of both data users and data subjects give correct and practicable advice to their clients;
- help data subjects understand the Commissioner's likely position on a particular issue when they consider lodging a complaint with the Commissioner;
- provide reference material for consideration by the Court or the AAB in cases relating to the Ordinance; and
- provide academics and other interested persons with materials for further study and research.

Regulatory Approach

1.7 Broadly, the Commissioner's regulatory approach is consistent with common law rules on statutory interpretation, in particular the principles of interpretation[6] laid down by the Interpretation and General Clauses Ordinance (Cap. 1), particularly section 2A(1), which provides as follows:

> All laws previously in force shall be construed with such modifications, adaptations, limitations and exceptions as may be necessary so as not to contravene the Basic Law and to bring them into conformity with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

and section 19, which provides that:

> An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.[7]

6. These include the "literal rule," which accords primacy to the literal meaning of the language used in the legislation; the "golden rule," which is a presumption that an absurd result is not intended; and the "mischief rule" that legislation has targeted a particular mischief and provided a remedy for it.

7. In how to apply the rule of "fair, large and liberal" construction and interpretation, reference can be made to the Court of Final Appeal in the case of *The Medical Council of Hong Kong v. David Chow Siu Shek* [2000] 2 HKLRD 874. In determining the proper interpretation of sections 21(1) and 25(3) of the Medical Registration Ordinance (Cap. 161) as to whether there is automatic restoration of the name of a medical practitioner who was removed from the register for a specified period, the Court took the following five interpretative factors into account: (i) striking a balance; (ii) interpretation in the context of other statutes dealing with comparable matters; (iii) avoiding circularity; (iv) according meaning and substance to each provision; and (v) reluctance to find a radical change through a side-wind.

1.8 The Commissioner is mindful of the generally recognised principle of "presumption against absurdity" in statutory interpretation,[8] which is explained in *Bennion on Statutory Interpretation*[9] as follows:

> Section 312. Presumption that "absurd" result not intended
>
> (1) The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament. Here the courts give a very wide meaning to the concept of "absurdity", using it to include virtually any result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief.[10]
>
> (2) In rare cases there are overriding reasons for applying a construction that produces an absurd result, for example where it appears that Parliament really intended it or the literal meaning is too strong.

1.9 In the judgment of the Court of First Instance of the High Court on appeal from a criminal conviction under Part 6A of the Ordinance,[11] Wong J (as he then was) cited the approach taken by the Court of Final Appeal in interpreting a statute, i.e., to adopt a purposive approach:[12]

> A purposive interpretation was adopted. The statutory language was construed, having regard to its context and purpose. Words were to be given their ordinary and natural meaning unless their context or purpose pointed to a different meaning. Context was to be considered in first instance, not only when ambiguity was thought to arise. Context was to be taken in its widest sense and included other statutory provisions and the general law. The purpose of a statutory provision might be evident from the provision itself, the recommendation of a report such as that by the Law Reform Commission, the Explanatory Memorandum to the relevant bill or a statement by the responsible official of the Government in relation to that bill in the Legislative Council.[13]

8. Otherwise known as the "golden rule" of interpretation, that whatever the literal meaning of the language used in the legislation, there is a presumption that it did not truly intend to bring about an absurd result.
9. Sixth Edition, LexisNexis Butterworths.
10. The rule was followed in the case of *HKSAR v. Hung Chan Wa* [2005] 3 HKLRD 291 concerning the proper interpretation of section 47 of the Dangerous Drugs Ordinance (Cap. 134) in which the Court stated that "any exercise in statutory interpretation should seek an interpretation, that does not result in absurdity, provided it is reasonably possible so to do" (paragraph 58 of the judgment).
11. *HKSAR v. Hong Kong Broadband Network Limited* [2018] 2 HKLRD 1049 (HCMA 624/2015, on appeal from TWS 6311/2015).
12. *HKSAR v. Cheung Kwun Yin* (2009) 12 HKCFAR 568.
13. Ibid at paragraph 64.

1.10 The principles of statutory interpretation were helpfully summarised by Ma CJ (as he then was),[14] as follows:

> (1) In construing statutory provisions, the Court does not merely look at the relevant words. It construes the relevant words having regard to their context and purpose.
>
> (2) The context of the relevant statutory provision should be taken in its widest sense and will of course include the other provisions of the statute. It may also be relevant in any given case to look at the history of the relevant provisions.
>
> (3) Ascertaining the purpose of the statutory provision is obviously relevant, not only to help provide the relevant context, but to give meaning to the words used. In this latter respect, it is to be observed that often the meaning of words by themselves will not be clear unless regard is paid to the context and purpose. Words have to be construed but they must not be construed in vacuum.
>
> (4) The purpose may be clear from the provision itself or it may be necessary to look at the Explanatory Memorandum to the bill introducing the provision or a ministerial or official statement may be utilised for this purpose.

1.11 The Commissioner notes that the Law Reform Commission Report entitled *Reform of the Law Relating to the Protection of Personal Data* published in August 1994 has often been referred to in interpreting the Ordinance. The Commissioner is also mindful of the observation by Fok PJ[15] that:

> The modern approach to statutory construction is not in issue. The proper starting point is to look at the relevant words or provisions having regard to their context and purpose. … The purpose of a statutory provision may be gleaned from the provision itself or from a relevant report of the Law Reform Commission or the Explanatory Memorandum to the bill or from a statement of a responsible official to the Legislative Council in respect of a bill …
>
> Nevertheless, the object of the exercise is to ascertain the legislative intent of the language of the statute and, in this regard, a court cannot attribute to a statutory provision a meaning which the language, understood in the light of its context and statutory purpose, cannot bear.

1.12 Hence, in dealing with cases that require the interpretation of a particular DPP and/or provision of the Ordinance that, according to its language, seems

14. *Town Planning Board v. Town Planning Appeal Board* (2017) 20 HKCFAR 196 at paragraph 29.
15. *T v. Commissioner of Police* (2014) 17 HKCFAR 593 at paragraphs 194–195.

to be open to more than one interpretation, the Commissioner will adopt the interpretation that does not produce an absurd or impractical result, in regard to its context and purpose, bearing in mind that the primary purpose of the Ordinance is to protect individuals' right to privacy in relation to their personal data.

1.13 The Commissioner will strictly adhere to the applicable legal principles under the Ordinance and will adopt a consistent approach to interpreting the provisions of the Ordinance, including the DPPs. However, the Commissioner may find it necessary to re-consider a stance that she previously adopted in light of her regulatory experience and changes in circumstances in furtherance of the underlying objectives of the Ordinance, i.e., to protect individuals' personal data privacy. Such circumstances may include amendments to the Ordinance, the possibility that an interpretation previously adopted may later be shown to be erroneous or incomplete by the Court or the AAB, the views of other relevant judicial authorities or developments in the handling and processing of personal data and social values, locally and around the globe.

Disclaimer

1.14 Statements made or views expressed in this publication are intended for reference only. They shall not give rise to any liability on the part of the Commissioner or to any defence or estoppel of any kind in proceedings involving the Commissioner. They shall not bind the Commissioner in the exercise of the Commissioner's statutory functions in any way. Readers are advised to seek professional advice, where necessary, on the application of the Ordinance to any given situation.

Abbreviations Used in This Book

1.15 "AAB" means the Administrative Appeals Board, established under section 5 of the Administrative Appeals Board Ordinance (Cap. 442).

"AAB Ordinance" means the Administrative Appeals Board Ordinance (Cap. 442).

"Amendment Ordinance 2012" means the Personal Data (Privacy) (Amendment) Ordinance 2012.

"Amendment Ordinance 2021" means the Personal Data (Privacy) (Amendment) Ordinance 2021.

"Commissioner" means the Office of the Privacy Commissioner for Personal Data, established under section 5(1) of the Personal Data (Privacy) Ordinance (Cap. 486) in general and, where the context otherwise permits, also means and includes the person appointed by the Chief Executive under section 5(3).

"DPP" means Data Protection Principle(s) under Schedule 1 of the Ordinance.

"GDPR" means the General Data Protection Regulation of the European Union, which took effect on 25 May 2018.[16]

"HKID Card" means the Hong Kong Identity Card.

"LRC" means the Law Reform Commission of Hong Kong.

"LRC Report" means the Law Reform Commission Report entitled *Reform of the Law Relating to the Protection of Personal Data* published in August 1994.

"Ordinance" means the Personal Data (Privacy) Ordinance (Cap. 486, Laws of Hong Kong).

"PCPD" means the Office of the Privacy Commissioner for Personal Data, Hong Kong.

"PICS" means Personal Information Collection Statement, which is a form of written notification under the requirements of DPP1(3).

"PIPL" means the Personal Information Protection Law of the Mainland which took effect from 1 November 2021.[17]

"PPS" means the Privacy Policy Statement incorporating the privacy policy and practices adopted by the data user to be made generally available under DPP5.

"Website" means the Commissioner's website at www.pcpd.org.hk.

1.16 Unless the context requires otherwise, all words in the masculine gender appearing in this publication include the feminine and neuter gender, and all words in the singular include the plural, and vice versa.

16. The Commissioner published a booklet entitled *European Union General Data Protection Regulation 2016* to enhance understanding and raise the awareness of stakeholders in Hong Kong of the law and its possible impact. An updated edition was published on 12 June 2020 and can be downloaded from the Website.

17. The Commissioner published a booklet entitled *Introduction to the Personal Information Protection Law of the Mainland* in November 2021 to introduce the background and major requirements of the PIPL and provide a brief overview of the similarities and differences between the Ordinance and the PIPL. The booklet is available on the Website.

Chapter 2

The Meaning of "Personal Data"

The main questions:

- What constitutes "data"?
- What constitutes "personal data"?
- How does each of the conditions laid down in paragraphs (a), (b) and (c) of the definition of personal data apply?
- Do IP addresses, email addresses, fingerprints, examination scripts, mobile phone numbers, digital content on mobile phones and a person's whereabouts constitute "personal data" under the Ordinance?
- Can fabricated information be regarded as an individual's personal data?
- What is the distinction between an "identified" individual and an individual capable of being "identified"?
- How should the existing definition of "personal data" be construed in light of overseas trends and rapid technological advancements?

Introduction — Meaning of the Term "Data"

2.1 The definition of the term "data" is provided under section 2(1) of the Ordinance as follows:

> "data" means any representation of information (including an expression of opinion) in any document, and includes a personal identifier.

2.2 The term "document" is defined in section 2(1) as follows:

> "document" includes, in addition to a document in writing –
>
> (a) a disc, tape or other device in which data other than visual images is embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and
>
> (b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device.

2.3 It follows from the above that, for information to constitute data, such information must have been recorded in a document as defined. This point may seem obvious, but it is worth emphasising to avoid misunderstanding.

2.4 Information not represented in any document (hence not constituting personal data) may be found in situations where, for example, information is committed to a person's memory, or spoken but not recorded. The question of whether a verbal utterance amounts to disclosure of personal data was considered in *AAB No. 21/1999*, in which a civil servant came to know certain sensitive personal information about the complainant through handling her complaint. Since there was no evidence to prove that the sensitive personal information had ever existed in a recorded form, the AAB ruled that no personal data was involved and thus the case fell outside the jurisdiction of the Commissioner. In *AAB No. 6/2004*, the verbal replies (not recorded) given by certain employees to the employer in relation to questions about the number of private telephone calls made by a particular staff member and the contents thereof did not constitute personal data of that staff member. Further, in *AAB No. 17/2017*, it was held that conversations between the complainant and a property officer outside the complainant's flat and in the management office did not amount to personal data.

Definition of "Personal Data"

2.5 "Personal data" is defined under section 2(1) of the Ordinance as follows:

> "personal data" 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.

2.6 The meaning of the term "data" as described in paragraphs 2.1–2.4 above is reasonably clear. Whether any data constitutes personal data therefore depends on whether such data satisfies all three of the conditions laid down in paragraphs (a), (b) and (c) in the definition of personal data. However, given the generic nature of the terms used in those paragraphs, uncertainty may arise in their application, as discussed below.

Paragraph (a) — "Relating Directly or Indirectly to a Living Individual"

2.7 The condition laid down in paragraph (a) in the definition of personal data requires the data in question to be "relating directly or indirectly to" a living individual. However, given that the concept of "relatedness" is a matter of degree, this may give rise to difficulty in the application of paragraph (a).

2.8 The question of "relatedness" was considered by the Court of Appeal of England and Wales in detail. In *Durant v. Financial Services Authority* [2003] EWCA Civ 1746, it was held that in determining what constituted personal data, two relevant considerations are:

- whether the information was biographical in a significant sense; and
- that the information should have the individual as its focus rather than some other person with whom he may have been involved.

However, applying the arguments or principles of this English authority to Hong Kong cases must be undertaken with great care. As pointed out by the learned judge in *Wu Kit Ping v. Administrative Appeals Board* [2007] 4 HKLRD 849:

> I have come to the conclusion that the substantial differences between the English legislation and the Hong Kong legislation means that great care must be taken in

attempting to apply either arguments or principles used in the English cases when considering issues arising under the Ordinance. Consequently, rather than attempt to approach the issues on same point of view as the English courts, I have found it more appropriate to examine the language of the legislation and to attempt to discern its true interpretation.[1]

2.9 In the case of data that bears only an indirect relationship to an individual, it is questionable whether there in fact exists a certain point (and, if so, how to determine such a point) beyond which the relationship may be considered to be so remote that it fails to satisfy the condition laid down in paragraph (a). For example, while it should be reasonably obvious that in the case of an unincorporated business owned by an individual, data about debts owed by the business relates directly to the sole proprietor, whether or not a relationship exists may become progressively less clear in cases where, for instance, the business is owned by a partnership in which the individual is one of the partners, or where the business is owned by a company and the individual is merely one of many shareholders.

2.10 In the case of *Wu Kit Ping*, the complainant made a data access request to a data user asking them to supply her with written statements concerning her medical treatment, which had been given by medical officers to the data user. The data user supplied the relevant documents to the complainant but made certain redactions, which can be divided into three categories:

(i) the names of the writers and recipients (not being the complainant) in several letters and a statement concerning the complainant's diagnosis, treatment and use of medications;

(ii) a statement concerning the writer's own conduct of the treatment of the complainant in his professional capacity, in a letter from the writer to a recipient who was not the complainant; and

(iii) the writer's general statements made in a letter.

2.11 The Court considered that the names of the writers and recipients in category (i) were the personal data of the writers and recipients, not the complainant, and they did not fall within the scope of personal data "relating directly or indirectly" to the complainant. The redactions were therefore lawful. In respect of category (ii), the Court considered that the redacted part was an opinion related directly

1. The cases of *Durant* and *Wu Kit Ping* have been referred to by the Hon Bharwaney J in his judgment in *Chan Yim Wah Wallace v. New World First Ferry Services Limited* (HCPI 820/2013). See further in Chapter 12.

to the complainant, and hence it was her personal data, and should have been disclosed to the complainant. Since the general statements in category (iii) have broad general application and did not directly or indirectly relate to the complainant, the Court concluded that they were not her personal data.

2.12 In *AAB No. 49/2001*, a sentence contained in the minutes of a meeting stating that "as Mr X did not have the contact telephone number of Mr Y" was ruled not to be the personal data of Mr Y but merely a record of the reason why Mr Y could not be reached for an appraisal interview.

2.13 The question of whether the views and opinions expressed by an owner in an owners' committee meeting were his personal data was examined in *AAB No. 28/2010*. The AAB held that the views and opinions expressed by the owner on how the owners' committee should be conducted and how the observer should behave during the meetings did not amount to personal data of the owner as these views and opinions were not related directly or indirectly to the owner. It can therefore be seen that while the definition of data includes the expression of opinion under the Ordinance, such opinions must relate directly or indirectly to a living individual for them to fall within the scope of personal data protected under the Ordinance.

2.14 From a plain reading of the section, it is perhaps difficult to infer a strict requirement in paragraph (a) that the relationship in question must be important and not trivial. However, when dealing with a complaint, the Commissioner may be inclined to avoid an absurd result if the relationship between the data concerned in the complaint and the complainant is none but trivial, and may exercise her discretion to refuse to investigate such a complaint on the ground of triviality provided under section 39(2)(b) of the Ordinance.

2.15 In *AAB No. 14/2007*, the AAB considered that an invoice, which was a document relevant to the legal proceedings to which the concerned individual was a party, was not the personal data of the individual. According to the AAB, the invoice, although addressed to a named individual, related to the trading price in a business transaction rather than to the individual personally.

2.16 The Ordinance protects the personal data of living individuals and does not extend to that of deceased persons. This is illustrated by the decision of *AAB No. 27/2005*, in which the complainant, who was the grandson-in-law and lawful guardian of an elderly woman, complained about a social worker because she had disclosed to the elderly residential care home the fact that the elderly woman had died. The AAB held that for the Ordinance to apply, the personal data must relate to a living individual, and it does not include that of a deceased person.

Similarly, in *AAB Nos. 16 & 17/2019*, the AAB ruled that the complainant was not entitled to request access to information about her deceased father, as it did not fall within the scope of personal data under the Ordinance.

Paragraph (b) — "From which it is Practicable for the Identity of the Individual to be Directly or Indirectly Ascertained"

2.17 In applying the condition laid down in paragraph (b) to personal data, the first thing to note is that the word "practicable" wherever it appears in the Ordinance, is defined under section 2(1) to mean "reasonably practicable".

2.18 In the case of *AAB No. 16/2000*, the appellant made a complaint to the Commissioner about a public transport company because whenever he entered or exited through the toll gates using his senior citizen concessionary payment card, indicator lights flashed and an alarm went off. This would reveal to all persons nearby that he was over 65, which, according to him, amounted to disclosure of his personal data. The AAB in its decision confirmed the Commissioner's view that there had been no disclosure of information regarding the complainant's age and the card could be purchased or possessed by anyone. The fact that the light and sound were emitted when the appellant used a concessionary payment card to pass through the toll gate did not make it reasonably practicable for the identity of the appellant to be directly or indirectly ascertained. The light and sound signals only identified the type of card used, not the person using it.

2.19 Secondly, in deciding whether certain data held by a party satisfies the condition laid down in paragraph (b) and, in particular, in considering the meaning of the words "from which" in that paragraph, the Commissioner takes the view that reference to the individual should be able to be construed from the context of all the relevant information that is available, of which the personal data of that individual forms part. For example, an employer holding a personnel file on one of his employees would not necessarily have the name of or other identifying information about the employee explicitly stated on every page. If the employer should be asked whether the information contained on one such page constitutes the personal data of the employee, it would be unreasonable and contrary to the Commissioner's regulatory view for the employer to say "no" simply because that particular page alone does not reveal the identity of the employee. Conversely, when it is not practicable on the face of the data or from other information that it holds for the identity of the data subject to be directly or indirectly ascertained, the condition laid down in paragraph (b) is not satisfied.

2.20 In applying the condition laid down in paragraph (b), the Commissioner will take into account all relevant data controlled by the party in question. If it is practicable for that party to ascertain from the totality of such data the identity of the individual, each and every part of the data (including, in the example given above, any individual page within the personnel file) also satisfies the condition laid down in paragraph (b). This totality approach is equally applicable to the situation where the data is contained in several documents, which, when read or construed together, constitute the personal data of an individual. For example, when a separate note of address is found attached to a personnel file created for a particular employee, although no name is specifically stated on the note, it is likely to be construed as personal data belonging to the employee when read with other documents in the file and taking into account the nature of the matter as a whole.

2.21 This can also be illustrated by a scenario where fingerprint data is collected by an employer for the purpose of recording attendance. While it may not be practicable for the identity of an employee to be ascertained solely from the fingerprint data, it can be linked with other data held by the employer, for example, the staff number assigned to each employee, which in turn will point to the identity of a particular staff member. It will then become practicable for the employer to ascertain the identity of an employee who swipes a fingerprint scanner installed for recording attendance to gain access to the office premises.

2.22 Where part of the personal data is anonymised so that it is not reasonably practicable for the identity of the data subject to be ascertained from it, the Commissioner will generally regard the condition laid down in paragraph (b) not to be met, hence failing to satisfy the definition of personal data.

2.23 The question of whether it is practicable to ascertain an individual's identity from the data was determined in a complaint in which an individual complained about his name being uploaded onto the web page of a discussion forum set up by the residents of an estate. The individual alleged that the three Chinese characters of his name were used in a poetic expression posted on the forum. The Commissioner opined that it was not practicable to identify the individual from the data and decided not to investigate the complaint. On appeal, in *AAB No. 67/2005*, the AAB took into account the individual's own interpretation of some other characters and numbers displayed on the forum as his nickname and address, and concluded that the data, taken together, was personal data, as