



JUCC IS Conference

How relevant are Personal Data (Privacy) Ordinance and six Data Protection Principles to the academics

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19 May 2010



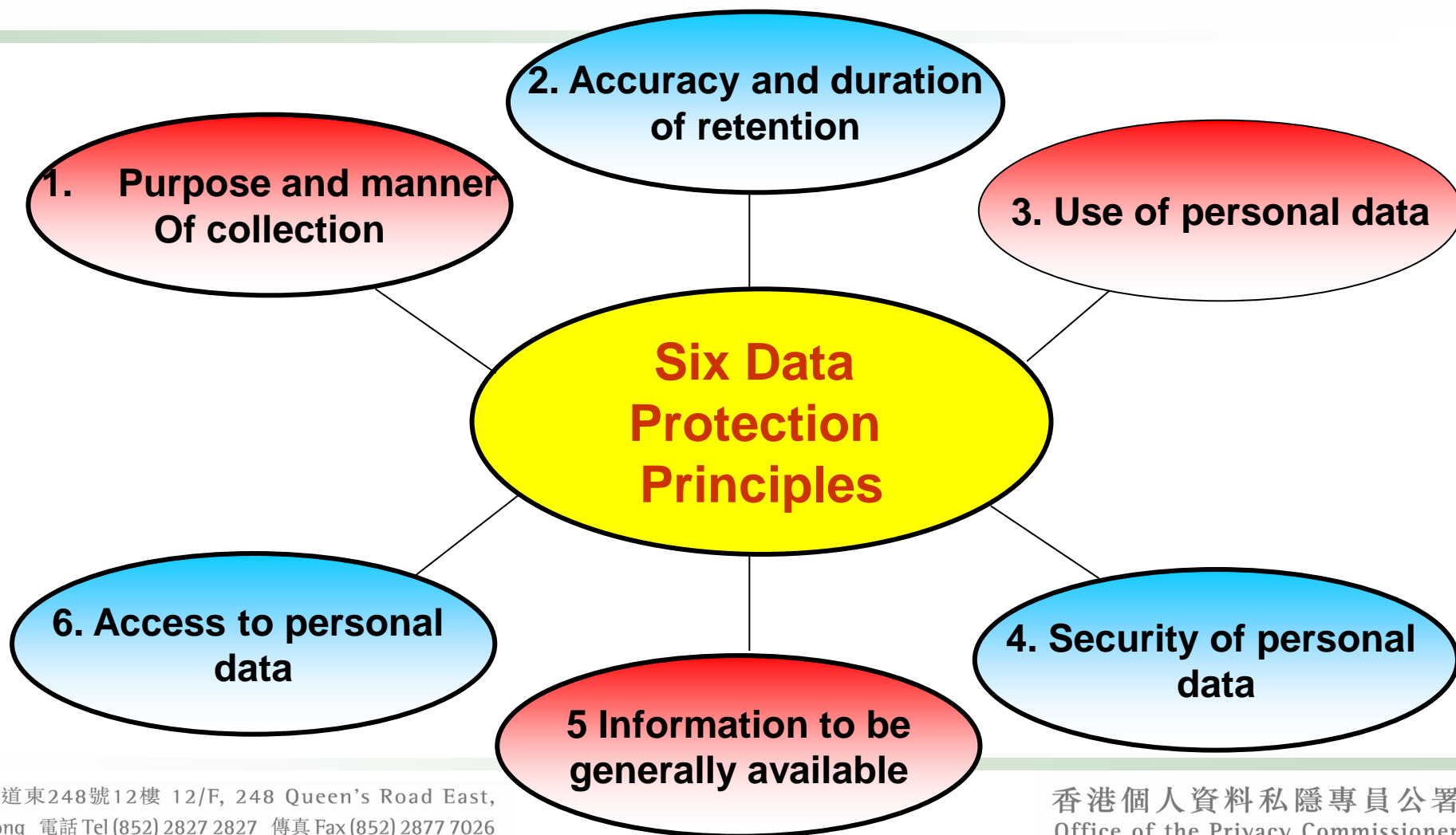
Personal Data (Privacy) Ordinance

The Ordinance became effective in December 1996.

Around 40 jurisdictions have data protection laws, which are based on internationally accepted data protection principles.



Data Protection Principles





Data Protection Principle 4

Security of Personal Data

All practicable steps shall be taken to ensure that personal data held by a data user are protected against unauthorized or accidental access.



Data Protection Principle 4

- **Harm that could result**
- **Physical location**
- **Security measures incorporated**
- **Competence of persons**
- **Secure transmission**



Personal Data (Privacy) Ordinance

Section 4 of the Ordinance
requires that a data user shall not
do an act, or engage in a practice,
that contravenes a data protection
principle



Personal Data (Privacy) Ordinance

Section 64 (10)

A data user who contravenes any requirement under this Ordinance (other than a contravention of a data protection principle) for which no other penalty is specified in this section commits an offence.



Case Study 1

The Eastweek Case HK Court of Appeal Decision (CACV 331/1999)



Case Study 1 : Facts

A reporter used a long-range lens to take a photograph of a woman while she was exercising her right as a citizen to use a public street. That photograph, which was taken without her knowledge and consent, appeared in an article in *Eastweek*.



Case Study 1 : Judgment

“It is ... of the essence of the required act of personal data collection that the data user must thereby be compiling information about an identified person or about a person whom the data user intends or seeks to identify”



Case Study 2

Prosecution of an individual for contravening section 26 of the Ordinance.



Personal Data (Privacy) Ordinance

Section 26

A data user shall erase personal data held by the data user where the data are no longer required for the purpose for which the data were used.



Case Study 2

Facts :

On 26 November 2008, a large quantity of documents containing personal data were left unattended in the public corridor of a housing estate in Tseung Kwan O.



Case Study 2

Prosecution :

The data user was charged for failing to erase personal data no longer required in contravention of a requirement under section 26(1) of the Personal Data (Privacy) Ordinance.



Case Study 3

Whether examination papers and answers are candidates' personal data in respect of which they can make a valid Data Access Request under section 18 of the Ordinance ?



Personal Data (Privacy) Ordinance

Section 18 - Data Access Request

An individual, or a relevant person on behalf of an individual, may make a request :

- (a) to be informed by a data user whether the data user holds personal data of which the individual is the data subject;**
- (b) if the data user holds such data, to be supplied by the data user with a copy of such data.**



Case Study 3

Commissioner's Findings :

Examination papers and answers generally do not constitute personal data of the candidates because they do not refer to their personal information.



Case Study 3

However, personal information of a candidate contained in answer books are **personal data** of the candidate.



Personal Data

Whether the information

(a) is biographical in a significant sense, and

(b) has the individual as its focus

*Lord Justice Auld, [2003] EWCA Civ 1746
Court of Appeal, UK*



Privacy

***“It is not a culture-bound value only relevant to advanced western democracies. Whilst the exact content and priorities protection will differ from one country to another and will vary as between different cultures, the core value is the same.*”**



Privacy

It inheres in the dignity of each individual human being. It gathers universal significance because of the dynamic forces of global technology : the Internet, global e-commerce and the Human Genome Project.”

The Hon. Justice Michael Kirby,

High Court of Australia



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