



澳門特別行政區政府
Governo da Região Administrativa Especial de Macau
個人資料保護辦公室
Gabinete para a Protecção de Dados Pessoais

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Guidelines on publication of personal data on the Internet

As Internet becomes popular, more and more people use it as a medium for data disclosure and transmission, which involves personal data to a great extent. For example, a government agency displays on its webpage a top-down list of exam results of a recruitment exam; a school posts online a list of its awarded students with their photos; an individual uploads his or her friend's photos to a webpage and blog; another posts a celebrity's picture on an online forum ... and so on. While Law 8/2005 (the Personal Data Protection Act) becomes better known to the public, more and more citizens start wondering whether practices like these are subject to the provisions of the Act. If they are, do they constitute any undue restriction on freedom of speech and freedom of the press?

With these considerations, this Office has prepared the following guidelines for the general public.

I. The application of the Personal Data Protection Act

1. The application of the Act

Article 3 of the Personal Data Protection Act provides that:

“1) This Act shall apply to the processing of personal data wholly or partly by automatic means, and to the processing other than automatic means of personal data which form part of manual filing systems or which are intended to form part of manual filing systems.

2) This Act shall not apply to the processing of personal data carried out by a natural person in the course of a purely personal or household activities, save those with the purposes of systematic communication or dissemination.

3) This Act shall apply to video surveillance and other forms of capture, processing and dissemination of sounds and images allowing persons to be identified, provided the controller is domiciled or based in the f Macao Special Administrative Region (the MSAR) or makes use of a computer or data communication network access provider established on the MSAR territory.

.....”

Article 4, Paragraph 1, Subparagraph (1) of the Personal Data Protection Act defines personal data as *“any information of any type, irrespective of the type of*



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medium involved, including sound and image, relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an indication number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”.

Therefore, when information published on the Internet by institutions or individuals relates to “*an identified or identifiable natural person*”, including sound and image, such publication is subject to the provisions of the Personal Data Protection Act.

An exception to this provision can be found in the case where data processing by a natural person in the course of a purely personal or household activity, given that it is not for systematic communication or dissemination. Under the circumstance, the person responsible for the disclosure must be the natural person (an individual); the purposes of the disclosure must pertain to a “purely personal or household activity”. Given that the Internet is itself a medium which lends to systematic data communication or dissemination, the person who discloses such data must take adequate and effective restriction measures to allow access to only certain identified family members, relatives or friends. For instance, having returned from a trip, someone uploads to his personal website pictures of himself and his friends spending time together during the journey; the webpage is password protected, allowing access only to his family members and friends. Such a case satisfies the conditions of exception, to which the Personal Data Protection Act does not apply.

Another exception is where the data disclosed on the Internet relate only to the person who made the disclosure, as in the case of someone posting his or her own pictures online. While the law respects people’s right to handle and use their own personal data, and the Act does not intervene in this sort of practice, this Office advises that the data subjects should be prudent when posting their personal data online. If they choose to do so, disclose only such data that do not compromise their legal rights and interests, in a way that does not violate any law.

In general, apart from the exceptions mentioned above, publishing personal data online by institutions or individuals is subject to the provisions of the Personal Data Protection Act.

2. Publication of personal data on an intranet

Special attention should be paid the difference between the Internet and an



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intranet. Most institutions have their own intranets that allow access only to their staff, in which the contents relate to an institution's internal affairs exclusively. Given that data processing on an intranet is the institution's "internal affair", and that the users are its employees, posting personal data on an intranet may be viewed as the institution's internal personal data processing. While such processing is nonetheless subject to the provisions of the Personal Data Protection Act, it is different from disclosing personal data on the Internet. However, once the users of an intranet begins to include people other than the institution's staff, as in the case of an educational institution (where students may become users), or an instance of data processing beyond the scope of internal affairs (as in the case of an institution's forum on which staff choose to disclose information), then it should be deemed equivalent to disclosing personal data on the Internet, to which the guidelines herein become applicable.

II. Data controllers

Where personal data disclosure falls in the scope of application of the Personal Data Protection Act, it is necessary to identify the Data controllers as defined by law.

Article 4, Paragraph 1, Subparagraph (5) of the Personal Data Protection Act defines a data controller as "*the natural or legal person, public entity, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data*". Obviously, the key factor in the identification is the right to determine and control the data processing.

Example 1: staff travel photos – (Part 1)

Following a morale-rallying staff travel, company X instructs its employee Y to post on the company intranet some staff's pictures taken during the journey. Company X is the party that decides on and controls the posting; therefore, it is the data controller in this instance of data processing whereas employee Y is not.

If employee Y also posts on his personal website or the company's online forum some pictures of himself together with other staff, then he becomes the party in control of the posting and thus becomes another data controller. Moreover, regarding employee Y's posting on X's online forum, company X is nonetheless responsible for maintaining the online forum and, in accordance with the related terms and conditions, may manage its content by deleting, screening or denying access to certain users, etc. Therefore, X also possesses some right of control and decision, and hence is also a data controller in this case.



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Data controllers must abide by the Personal Data Protection Act, and be responsible for their breach of the Act.

III. The legality of data sources

Article 2 and Article 5 of the Personal Data Protection Act provide that personal data posted on the Internet should be legally collected in the first place.

Sometimes data published on the Internet are collected by illegal means in the first place. For instance, an employee of a company defaults his obligation of confidentiality and posts on his personal website an entertainer's personal data in the company's possession; an individual hacks into a company's computer server, steals certain customers data and uploads them to his personal website. Publishing illegally collected personal data online may constitute administrative offence or crime as defined in the Act, or crime defined in others laws (e.g. Law Against Computer Crime). The guilty parties will have to take the related legal consequences.

IV. Criteria of legitimacy for data processing

Even if personal data are legally collected in the first place, it does not follow that publishing such data online will also be legal. For instance, the fact that a person's (A) friend (B) voluntarily gives his phone number and address to A does not mean that A may legally post them on his personal website. Whenever any institution or individual intends to publish personal data online, their publication must satisfy the criteria of legitimacy provided for in the Personal Data Protection Act.

1. General criteria of legitimacy for data processing

Article 6 of the Personal Data Protection Act provides that publication of personal data on the Internet must at least satisfy one of the following criteria of legitimacy:

- (1) with the unambiguous consent of the data subjects;
- (2) for the performance of a contract or to take steps to entering one;
- (3) for compliance with a legal obligation;



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- (4) to protect the vital interests of the data subject who is unable to consent;
- (5) for the performance of a task for the public interest or in the exercise of official authority;
- (6) for an overriding legitimate interests;

In general, obtaining the consent of the data subjects is relatively a simple and straightforward approach; but care must be taken to allow the data subjects to freely object or withdraw their consent; and once their consent is withdrawn, given that no other criteria of legitimacy is met, the data processing in question becomes no longer legitimate.

Example 2: Posting a picture of two persons on a personal website

Someone (A) posted on his personal website a picture of himself and another person (B) with B's consent; but later B changed his mind and withdrew the consent. As A is in no position to meet the other criteria of legitimacy for posting the picture, A must immediately delete the picture from his website and should no longer make it public.

Where a data controller is unable to obtain data subjects' unambiguous consent, nor does he want to rely on such consent for publishing personal data, then he must meet one of the other five criteria of legitimacy.

Example 3: Online publication of a news commentator's brief biography – (Part 1)

A website master (A) has entered a service contract with a news commentator (B), which stipulates that B should write for the website every week and get paid for it, and that the website should have the right to disclose B's brief biography online. Website master A can then meet the criteria of legitimacy for his data processing by this contractual provision.

2. Criteria of legitimacy for processing sensitive data

According to Article 7 of the Personal Data Protection Act, sensitive personal



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data include *personal data revealing philosophical or political beliefs, political society or trade union membership, religion, privacy and racial or ethnic origin, data concerning health or sex life, including genetic data*. The law in principle prohibits the processing of sensitive personal data, with derogations for processing under one of the following circumstances, with guarantees of non-discrimination and with the security measures provided for in Articles 15 and 16:

- (1) when the processing is authorized by legal provisions;
- (2) when the processing is on important public interests ground and authorized by the Office for Personal Data Protection;
- (3) when the data subject has given his explicit consent;
- (4) when it is necessary to protect the vital interest of the data subject or of another person, and the data subject is physically or legally incapable of giving his consent;
- (5) when it is carried out with the data subject's consent in the courses of it is legitimate activities by a legal person or non-profit seeking body with a political, philosophical, religious or trade union aim and on certain conditions;
- (6) when it relates to data which are manifestly made public by the data subject, provided his consent for their processing can be clearly inferred from his declarations;
- (7) when it is necessary for the establishment, exercise or defense of legal claims and is exclusively carried out for that purpose;
- (8) when the processing of data relating to health and sex life, including genetic data, is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services;

In most cases, online publication of sensitive data relies on (3) or (6) of the above.

Example 3: Online publication of a news commentator's brief biography – (Part 2)

Let us carry on the example of website A and news commentator B for our discussion. Suppose B is a cancer patient, and website A sees a good example in him for the public and wants to publish this piece of health information to attract attention and traffic to the website. If B has on other occasions made this information public, and his consent for the disclosure of this information can be clearly inferred from his declaration, then it is legitimate for website A to publish this piece of B's health data. If B explicitly consents website A to disclose his data on the website (including verbal, written or provisions to this effect in the service contract), website A also has the legitimacy to do so. However, if B simply consents



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the website to process his data but does not indicate that the website may publish it (for example, he provided this health information to website A in order to explain that he could not provide articles for publication on time), this Office holds that website A should not publish it, because here it evokes the application of Article 7, Paragraph 2 of the Personal Data Protection Act, and therefore calls in the data security requirement as provided for in Article 16 of the same law, which makes public disclosure impractical. Under this circumstance, if website A does intend to publish the data, it would be advisable for A to ask B's explicit consent for it.

This Office would remind all institutions and individuals of the fact that, in order to safeguard the data subjects' rights, freedom and security, the Personal Data Protection Act sets stringent regulations on personal data processing. Data controllers should develop a proper understanding of the spirit of the law, and take measures to respect data subject's rights, avoiding online publication of other people's sensitive data.

3. Criteria of legitimacy for processing data relating to illegal activities

According to Article 8 of the Personal Data Protection Act, strict criteria of legitimacy must be met before processing personal data relating to persons suspected of illegal activities, criminal and administrative offences and decisions applying penalties, security measures, fines and additional penalties.

In general, apart from government agencies that are invested with specific powers by legal provisions, most other institutions or individuals do not have legitimacy in processing such data, let alone disclosing such data online.

Under special circumstances, institutions and individuals may invoke Article 8, Paragraph 2 of the Personal Data Protection Act for processing such data, if the processing meets three conditions at the same time:

- (1) it is necessary for pursuing the legitimate purposes of the controller;
- (2) the fundamental rights and freedoms of the data subject are not overriding;
- (3) it subjects to observance of the rules for the protection of data and the security of information.

However, in general, given the rules for the protection of data and the security of information, institutions and individuals may find it hard to claim that it is legitimate



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for them to publish such data on the Internet by meeting these three conditions at the same time, except some media institutions.

Example 4: Online disclosure of a theft's personal data

A citizen X is convicted and sentenced to prison terms for stealing company B's belongings. To help with the police investigation, B has prepared and submitted to the police some evidences that point to X's theft offence; it is appropriate for B to have done so. However, it is obviously illegitimate for B to have also made online publication of the information relating to X on its website, including X's name, the offence X has committed and the prison terms X has been sentenced to, etc., even though the disclosure is intended to warn others who may be inclined to commit the same offence.

This Office would remind all institutions and individuals of the fact that, in order to safeguard the data subjects' rights, freedom and security, the Personal Data Protection Act sets stringent regulations on personal data processing. Data controllers should develop a proper understanding of the spirit of the law, and take measures to respect data subject's rights, avoiding online publication of personal data relating to persons suspected of illegal activities, criminal and administrative offences and decisions applying penalties, security measures, fines and additional penalties.

V. The principle of proportionality

Given that the data controller's online publication of other people's personal data is legitimate, the data controller must nonetheless abide by the principle of proportionality as provided for in the Personal Data Protection Act. In other words, the publication must be "*adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed*". Where it is sufficient to disclose relatively few data or data that would have less impact on the data subjects' rights, freedom and safeguard, the data controller involved should not disclose more data than necessary, or data that will affect the data subjects to a greater extent.



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Example 5: Online publication of recruits list – (Part 1)

Institution A published online the list of its recruits in accordance with its recruiting regulations, on which relied its legitimacy. However, the disclosed data included names, exam permit numbers, identification documents numbers and cell phone numbers of the recruits. Obviously, it would have been sufficient if the institution had disclosed only names and exam permit numbers. The disclosure of the recruits' identification documents numbers and their cell phone numbers was in fact in breach of the principle of proportionality.

VI. The rights of data subjects

The Personal Data Protection Act provides that data subjects have the right to information, the right of access and to rectify, the right to object, the right not to be subject to automated individual decisions and the right to indemnification.

Of these, the right to information, the right of access and to rectify, the right to object and the right to indemnification are the major ones of data subjects that should to be considered before making online publication of personal data.

1. The right to information

Article 10 of the Personal Data Protection Act provides that, except where the laws provide otherwise, in general, when a data controller collects personal data from data subjects, the data controller or its representative should inform the data subjects of the following, unless the data subjects are already aware of them:

- (1) The identity of the controller or of its representative, if any;
- (2) The purposes of the processing;
- (3) Other information such as:
 - i. The recipients or categories of recipients;
 - ii. Whether replies are obligatory or voluntary, as well as the possible consequences of failure to reply;
 - iii. The existence and conditions of the right of access and the right to rectify, provided they are necessary, taking account of the specific circumstances of collection of the data in order to guarantee the data subject that they will be processed fairly.



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Example 5: Online publication of recruits list – (Part 2)

Let us carry on the example of institution A making online publication of its recruits list. When A collected data from job seekers in the first place, it should, by appropriate means (such as a Personal Data Collection Statement or Recruitment Terms), provide job seekers with relevant information including an indication that it would publish online the recruits list, to satisfy the legal requirement and ensure that the data subjects' right to information be duly respected.

Where data processing is for journalistic purposes or the purposes of artistic and literary expressions, there are some special provisions regarding the data subjects' right to information, which we will discuss later.

2. The right of access and to rectify

Article 11 of the Personal Data Protection Act provides that, except where the laws provide otherwise, the data subject has the right to obtain from the controller without constraint at reasonable intervals and without excessive delay or expense:

- (1) Confirmation as to whether or not data relating to him are being processed and information as to the purposes of the processing, the categories of data concerned and the recipients or categories of recipients to whom the data are disclosed;
- (2) Communication in an intelligible form of the data undergoing processing and of any available information as to their source;
- (3) Knowledge of the reason involved in any automatic processing of data concerning him;
- (4) The rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Act, in particular because of the incomplete or inaccurate nature of the data;
- (5) Notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (4), in which case the third parties are required to rectify, erase or block the data accordingly, unless this proves impossible, or would involve a disproportionate effort.



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Example 5: Online publication of recruits list – (Part 3)

Let us take the discussion further using example 5. Suppose a recruit (Y) noticed that his name was on the recruits list, but against a wrong exam permit number. Y exercised his right of access to see if anything was wrong. Later, Institution A verified that another person's exam permit number was listed against Y's name due to a system error. Given this is the case, Y might exercise his right to rectify by demanding Institution A to correct the erroneous data.

For processing of data solely for journalistic purposes or the purposes of artistic and literary expressions, the right of access is exercised through this Office, securing the rules applicable, in particular those guaranteeing freedom of expression and information, freedom of the press and the professional independence and secrecy of journalists. The application forms for this purpose is available for download on the Office's website.

Apart from that, the data controller must seriously consider its relationship with the data source if the data subjects exercise rights of access to find out the data source but the data source is a natural person. In certain cases, the data source may be a user of the data controller's services, as in the relationship between the host of an internet forum and its users. Under this circumstance, the data controller must ensure that the user's personal data is also duly safeguarded, and avoid unnecessarily disclosing data to a third party on no legal grounds. When facing situations related to personal data of different data subjects, data controllers must be prudent, and should consult legal opinions whenever it is necessary.

3. The right to object

According to Article 12, Paragraph 1 of the Personal Data Protection Act, save where otherwise provided by law, the data subject has the right to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, and where there is a justified objection the processing instigated by the controller may no longer involve those data.

This is the case when a data subject objects to an institution or individual regarding its publication online of his personal data after his knowledge, demanding



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that his data be removed from the website. The data controller should respond to the request as soon as possible. In reality, the institution or individual may have no legitimacy to process such data, or in violation of the legal provisions regarding the data subjects' right to information, etc., but the data subjects do not intend to charge the offender. For example, person A discloses a friend B's photos online without B's knowledge or consent. For this data processing in breach of legal provisions on personal data protection, the data subject is exercising his right to object and the right to rectify at the same time. According to the provisions of the right to rectify, the data subject can demand rectification, erasure or blocking of data the processing of which does not comply with the provisions of the Personal Data Protection Act. In line with the principle that the rights of data subjects should be claimed by the data subjects, this Office in general does not intervene in cases where the data subjects do not lodge complaints or press charges against those who infringed on their rights. However, the data controller should not take this to mean that its conduct is lawful. Should it infringe on the data subjects' rights to objection and rectification, it will be brought to bear the legal consequences when complaint is lodged with this Office or law suit is brought against it.

It is also common to find more than one data controller involved in a case, where data subjects may raise objection to any of them. Any data controllers receiving data subjects' objection must, to the best of its ability, take the required measures on its own. They may not refuse to take action on the pretext that other data controllers are also involved.

Example 1: Staff travel photos – (Part 2)

Let us take example 1 further. Suppose employee Y posts some travel photos of himself together with his colleagues on the staff online forum of company X. While company X is a data controller, if employee Z, whose image is involved, chooses to object to the posting, Z may raise his objection to employee Y as well as company X, demanding that the photos be removed. Company X should nonetheless act in compliance with the law by removing or screening the photos, after receiving the request from employee Z, even if employee Y chooses not to do so.

4. The right not to be subject to automatic individual decisions

According to Article 13 of the Personal Data Protection Act, unless the laws provide otherwise, every person shall have the right not to be subject to a decision



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which produces legal effects concerning him or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him, in particular his performance at work, creditworthiness, reliability or conduct.

Online publication of personal data rarely involves violation of this right of the data subjects.

5. The right to indemnification

According to Article 14 of the Personal Data Protection Act, any person who has suffered damage as a result of an unlawful processing operation or of any other act incompatible with legal provisions or regulations in the area of personal data protection is entitled to receive compensation from the controller for the damage suffered. The controller may be exempted from this liability, in whole or in part, if he proves that he is not responsible for the event giving rise to the damage.

Where a data controller inappropriately publishes other people's personal data, and these data subjects have suffered as a result, they may claim compensation from the controller.

VII. Journalistic, artistic and literary expression and freedom of speech

Article 27 of the Basic Law of the Macao Special Administrative Region provides that “*Macao residents shall have freedom of speech, of the press and of publication...*” Article 30 of the same law provides that “*the human dignity of Macao residents shall be inviolable...Macao residents shall enjoy the right to personal reputation and the privacy of their private and family life.*” Article 32 provides that “*the freedom and privacy of communication of Macao residents shall be protected by law...*”

As in most countries and regions, freedom of speech, of the press and of publication is one of the fundamental rights, as is the right to personal data privacy, which are in parallel to each other. In exercising one right one must take the other into due account. In other words, one should attempt to strike a balance between the two using the principles of lawfulness, of good faith and of proportionality.

Article 29 Data Protection Working Party points out in its “Recommendation



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1/97 - Data protection law and the media” that “*the two fundamental rights must not be seen as inherently conflicting. In the absence of adequate safeguards for privacy individuals may be reluctant to freely express their ideas...*” The controversial phenomenon of “online personal identity hunt (human fresh search engine)” in recent years may come in as a good example: If you air your personal opinion online, those who are opposed to your opinion will search for your personal data and compile them and disclose them to the public, it is obvious what your freedom of speech will end up in.

Regarding the safeguards of “freedom of speech, of the press and of publication”, the Personal Data Protection Act has provided for certain special device of safeguards, especially by means of restricting the exercise of right to information, right of access and right to rectify. As far as the right to information is concerned, Article 10, Paragraph 6 of the Act provides that with respect to the basic right of the data subject under Article 11, Paragraph 3, the obligation to provide information under Article 10 shall not apply to the processing of data carried out solely for journalistic purposes or the purpose of artistic or literary expression. As to the right of access and to rectify, Article 11, Paragraph 3 provides that it is exercised through this Office, securing the rules applicable, in particular those guaranteeing freedom of expression and information, freedom of the press and the professional independence and secrecy of journalists. Article 11, Paragraph 4 provides that under the circumstances provided for in Article 11, Paragraph 3, if communication of the data might prejudice freedom of expression and information or the freedom of the press, this Office shall only inform the data subject of the measures taken within the limits of maintaining the targeted value of protection described therein.

1. The publishing institutions

Regarding the safeguards and restrictions on freedom of speech, of the press and of publication, and the safeguards of the data subjects, Law No. 7/90/M (the Publication Law) has relevant provisions for them. From the perspective of the Personal Data Protection Act, if a publishing institution chooses to publish personal data online, its legitimacy should base on the following:

- (1) For the overall data processing, apart from the data subjects’ unambiguous consent, legitimacy can be from pursuing the legitimate interests of the publishing institution or the third party to whom the data are disclosed, except where such interests should be overridden by the interests for fundamental rights, freedoms and guarantees of the data subject, in compliance with Article 6, Subparagraph (5) of the Act;



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- (2) For the processing of sensitive data, apart from the data subjects' explicit consent, legitimacy may be from provisions in Article 7, Paragraph 2, Subparagraph (1), with authorization by the Publication Law;
- (3) For the processing of personal data relating to persons suspected of illegal activities, criminal and administrative offences and decisions applying penalties, security measures, fines and additional penalties, according to Article 8, Paragraph 2 of the Act, such processing may be carried out, subject to observance of the rules for the protection of data and the security of information, when it is necessary for pursuing the legitimate purposes of the publishing institution, provided the fundamental rights and freedoms of the data subject are not overriding.

If a publishing institution publishes personal data online, it must observe the principles of data processing provided for in the Personal Data Protection Act, including principle of proportionality, apart from meeting the criteria of legitimacy of data processing. According to Chapter 5 of the Publication Law, such a publishing institution shall be responsible for its illegal conduct committed in the course of publishing.

Personal data processing by a publishing institution is diversified and is not limited to online publication of personal data. Different institutions may have different understandings on the legal provisions. This Office believes that a Code of Conduct elaborated by the publishing sector as a way of self-regulation may be an effective way to respect and protect the rights of personal data privacy, while at the same time protecting the freedom of publication.

2. Other institutions and individuals

Much of the online publication of personal data is made by institutions and individuals other than publishing institutions. In general, those data controllers do not meet the criteria of legitimacy for processing personal data as provided by the Publication Law. However, they do have the safeguards for freedom of speech and freedom of artistic and literary expression, as provided by Article 27 and Article 37 of the Basic Law of the Macao SAR.

Online publication of personal data for “artistic or literary expression” purposes is likewise entitled to the safeguard provided for in the Personal Data Protection Act by limiting the data subjects' right to information, right of access and right to rectify.

Ordinary private or public institutions that publish personal data online are



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generally not entitled to the above-mentioned safeguards, because their personal data processing is not solely for journalistic, artistic or literary purposes.

Individuals who post other people’s personal data online tend to do so for airing their personal opinions, ideals, etc., and the data they post are generally in the forms of text, image or video-audio clips. Therefore, in certain cases where online publication of personal data is meant for “artistic or literary” purposes, the people who post the data are likewise entitled to the above-mentioned safeguard. For their data processing to be legitimate, they would have to invoke Article 6, Subparagraph (5) of the Act, if they do not have consent of the data subjects, and prove that their posting is done in pursuit of their legitimate interests or that of “*the third party to whom the data are disclosed, provided such interests are not overridden by that of the data subjects, or by their fundamental rights, freedom and safeguards.*” As far as sensitive data are concerned, however, it is generally illegitimate for individuals to publish such data unless with explicit consent of the data subjects, or the data concerned is already made public by the data subjects. As for processing of “personal data relating to persons suspected of illegal activities, criminal and administrative offences and decisions applying penalties, security measures, fines and additional penalties”, individuals in general do not have the required legitimacy for publishing them.

However, it must be emphasised that, regardless of such safeguards, institutions or individuals that publish personal data online still must abide by the provisions of the Personal Data Protection Act, including the principle of proportionality, and respecting the data subjects’ right to object, etc., without prejudicing the provisions of other current laws.

Example 6: Online display of photos concerning a public event

A photographer posted on his personal website some of his photography works depicting a public event. The works contain clear images of certain identifiable people. Given that the works were posted for artistic purposes without involving sensitive data that require meeting special legal conditions, the author can do so without the data subjects’ consent, without providing them with information as required in the provisions of right to information. In this regard, the data subjects’ right to access is also restricted to some extent, the exercise of which should be done through this Office. It is often the case that where such works concern certain public figures, the photographer tends to add notes of person’s name and title, which practice may generally still be of artistic nature, being proportionate. However, if the notes also include the subject’s contact number or even identification document



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number, it would be more than what “artistic expression” does, and the publication of these photos would no longer be exempt from the data subject’s claim for their right to information. In addition, it might also constitute a law breach for violating the principle of proportionality.

3. Citation

Some institutions and individuals tend to include in their online publication citations of content from other sources, in particular news excerpts (texts, videos, sound tracks, etc.)

From the perspective of personal data protection, as far as a citation involves personal data, the publication is subject to the provisions of the Personal Data Protection Act. As the citation is posted somewhere other than the original data controller’s sphere of control, by the logic of the previous analysis, the relevant data controller is no longer the original source entity, but rather the current entity or individual which publishes the cited content, sometimes including the webmaster of the online forum, among others. If the citation has been edited, then the data controller is even more obvious. In another aspect, even if the source of the citation is a publishing institution, the citing parties is not, thus the citations are most likely not solely for journalistic purposes. Whether a citation is for artistic or literary expression purposes is also a question to which the answer depends on specific circumstances.

Example 7: Snap shots illegally taken in a hospital ward

Magazine A displays a photo with a caption of an entertainer receiving medical care in a hospital ward. It was later found out that the photo had been secretly taken by an employee of A who had slipped into the hospital ward and taken the pictures as instructed by A. The victim later brought law suit against A, which would face its responsibilities. Later, a person B duplicated on an online forum the photo and its accompanying caption, and added his own note against the victim to it. As a result, apart from the law suit B would have to face should the victim choose to make it, B is also likely to be held responsible for violating the Personal Data Protection Act, because B does not have the legitimacy to process the victim’s sensitive data.



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Example 8: indecent photos

Website B published some indecent photos related to someone's private life, which were soon widely spread on the Internet.

Y cited these indecent photos on an online forum, by directly posting photos downloaded from website B. Later on, the victim charged Y for his violation of the Personal Data Protection Act and some other laws. Y argued that those photos were widely spread on the Internet and it was legal for him to download them. B claimed that his freedom of expression to publicize personal opinion should not be restricted because he collected the photos legally, and the one responsible for illegal conduct is website B who is the source of those photos. In addition, Y argued that it was the responsibility of the master of the online forum to manage it and ensure the legality of photos uploaded and shown on the forum, he as an individual user should not be responsible for posting those cited indecent photos on the forum.

Obviously, Y's argument to shirk his legal responsibility is incorrect. As a legal purchase of kitchen knife does not sufficiently mean that any usage of it will be then legal, a legal collection of personal data does not sufficiently means that any processing thereafter will be legal. In this case, although Y collected the victim's sensitive data without violating any legal provisions, his publication of the cited data thereafter was abided by the provision of the Personal Data Protection Act. It was a violation of the Personal Data Protection Act because he had no legitimacy to publish the victim's sensitive data.

However, Y's argument that the master of the online forum should be responsible is correct. As we discussed previously, master of the online forum is another data controller, and should be responsible for its data processing. When the master discovers the infringement, it should take measures as soon as possible to delete or block the data. This is not an infringement to the freedom of speech of Y, but a legal protection of the victim's personal data.

This Office advises that, where individuals need to cite any content containing personal data disclosed by other institutions or individuals, including media content, apart from avoiding violating the copy right of the source institution, they should also be very clear about the purposes for which they are processing the data, meet the criteria of legitimacy and the principle of proportionality, etc., make sure to abide by the Personal Data Protection Act and other relevant laws and regulations, and duly respect the data subjects' rights. If, indeed, they do need to cite anything, they should better do so by providing the source URL, or by proper indication of the source of information.



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VIII. Transfer of data outside Macao

According to Articles 19 and 20 of the Personal Data Protection Act, transfer of personal data outside Macao SAR should be subject to restrictions by law.

If a data controller is situated in Macao and processes personal data in Macao, but the website on which it publishes personal data is located outside Macao, or the entity maintaining the website (including the ISP) is situated outside Macao, the data controller should be regarded as having transferred the personal data outside Macao.

If a data controller is situated in Macao and processes personal data in Macao, and the website on which it publishes personal data is also in Macao and under its control, but the data controller uses IT equipment (such as a computer server) situated outside Macao to process the data, it should also be regarded as having transferred the data outside Macao.

If a data controller is situated in Macao and processes personal data in Macao, and the website on which it publishes personal data is also in Macao and is maintained and controlled by an entity that is situated in Macao, technically speaking, institutions and individuals stationed outside Macao may still access the data by visiting the website. With reference to case precedence and related opinions of the EU, this Office holds the opinion that, in general, if the data controller intends to provide the personal data to specific institutions or people outside Macao, then it should be viewed as transfer of personal data outside Macao; however, if the data controller does not intend to provide the personal data to specific institutions or people outside Macao, it may not be viewed as transfer of personal data outside Macao.

Example 9: Transfer of personal data through the website

Association A holds different conference frequently, and has its own website. A has elaborated its privacy policy for its personal data processing for organization of activities, in which it is said that personal data can be transferred outside Macao with data subject's consent. A has notified this Office.

Recently, A held a Conference on legal reform, and invited some scholars outside Macao to come and give speeches, including a professor X of University B in Portugal.



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After the conference, A published some photos of this event. A's objective was to introduce and promote its activities, but not to provide these photos to specific institutions. Therefore, this processing was not transfer of personal data, hence not transfer of personal data outside Macao, although people far away in Portugal could browse these photos.

Later on, University B in Portugal contacted A. B claimed that it wanted to use some photos of X delivering speech in this event, but the size of photos on A's website was too small to fit its purpose, and B requested A to provide the original files of the photos. After getting X's consent, A decided to provide B these photo files. However, it was not easy to send them to B because of the number and size of photo files. A then uploaded the files in a certain position on its website, and provided the link to B for download. After B's download, A deleted these files immediately. Without password protection, theoretically anyone who knew the link could download these photos in this interval, and then A believed that it was publishing the data rather than transferring them to University B, therefore not a transfer of data outside Macao. However, from the general picture in this case, obviously A's operation is to provide University B in Portugal the photo files through its website. It was a transfer of data, and a transfer of data outside Macao.

In this case, A had X's consent, had a related privacy policy and had notified this Office, and then the transfer was in compliance with the Personal Data Protection Act. However, this Office holds the opinion that, such operation of data transfer is somehow risky in terms of data security. If the data are not simple photos in a public event, but sensitive data or data that may bring negative effect on the data subject, a better way is to protect the data with proper informatics technologies, like password protection, to prevent people other than University B from obtaining them easily.

If the data controller is situated outside Macao but part of the data processing is in Macao, circumstances may be complicated and the judgment on whether it is a transfer of data outside Macao must be based on specific circumstances of the case.

The essence of the Act is to safeguard Macao residents' personal data, by preventing them from being inappropriately transferred to a place without adequate personal data protection, to avoid the rights and interests of the data subjects being infringed upon. Unless it is necessary, any institution or individual should not transfer personal data outside Macao. If indeed any person chooses to transfer personal data outside Macao, they must abide by the provisions of Articles 19 and 20 of the Personal Data Protection Act.



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IX. The obligation of notification and application for authorization

The Personal Data Protection Act lists quite a few circumstances under which data controllers must notify this Office or apply for authorization of this Office. With the consideration that this Office is gradually implementing the regime of notification under the provision of Articles 21 to 25 of the Personal Data Protection Act, this Office will not discuss further about the practical procedures or issues in this regime, which will be regulated by related legal provisions in the future.

X. Penalty

The administrative and legal supervision of personal data protection is provided for in Chapter VIII of the Personal Data Protection Act. Many behaviors violating the Personal Data Protection Act may constitute administrative offences or crime. All institutions and individuals should pay attention to the provisions of the Personal Data Protection Act, avoid being punished for their non-compliance.

XI. Conclusion

As Internet becomes popular, personal data disclosure and transmission online becomes more and more common. It brings the discussion on how to process such data in compliance with the Personal Data Protection Act, and how to strike a balance between two fundamental rights - right of personal data privacy and freedom of speech. Regarding how institutions and individuals can publishes personal data online in compliance with the Personal Data Protection Act, this Office has prepared these guidelines for reference with some brief legal analysis. This Office hopes that all of us can utilize the information technology properly, respect the data subjects, process and protect personal data legally when using new technologies and new means of data processing.

The Office for Personal Data Protection

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