

**Supplementary Information Sheet to the Guidelines on  
Election-related Activities in respect of the Legislative Council Election  
Issued by the Electoral Affairs Commission in June 2012**

The 2016 Legislative Council New Territories East Geographical Constituency By-election will be held on 28 February 2016. Candidates/Lists of candidates should comply with the Guidelines on Election-related Activities in respect of the Legislative Council Election issued by the Electoral Affairs Commission in June 2012, and note the following legislative changes, latest advice and arrangements which are applicable to the above By-election:

<b>Legislative changes, latest advice and arrangements</b>
<i>Chapter 4 Nomination of candidates</i>
<ul style="list-style-type: none"> <li>At a Legislative Council by-election, a person is disqualified from being nominated as a candidate, and from being elected as a Member, if he/she has resigned or was taken to have resigned from office as a Member within the 6 months ending on the date of the by-election and no general election was held after the relevant notice of resignation or notice of non-acceptance took effect. (Section 39(2A) of the Legislative Council Ordinance (Cap 542))</li> </ul>
<i>Chapter 5 Polling and counting arrangements</i>
<ul style="list-style-type: none"> <li>The list of polling stations and counting stations will be gazetted at least 10 days before the polling day and the Returning Officer will give notice to candidates about the place(s) and time of the counting of votes at least 10 days before the polling day. (Sections 28(1) and 65(5) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D) (“EAC (EP) (LC) Reg”))</li> </ul>
<i>Chapter 7 Appointment and roles of election agent, election expense agents, polling agents and counting agents</i>
<ul style="list-style-type: none"> <li>The use of electronic mail is allowed as a means of delivery of certain electoral documents, such as notices of appointment and revocation of appointment of election agents, election expense agents, polling agents and counting agents. (Sections 23(16) and (18), 25(10) and (15A), 42(8AA), (14) and (14A), 66(5A) and (10A) of the EAC (EP) (LC) Reg)</li> </ul>

*Chapter 8 Election advertisements*

- A message published through internet platforms (e.g. websites, social media, communication networks, etc.), is also an election advertisement (“EA”), if such message is published for promoting the election of a candidate/list of candidates or prejudicing the election of other candidates/lists of candidates. If web surfers merely share or forward different candidates’ election campaigns through internet platforms for expression of views and do not intend to promote or prejudice the elections of any candidates, such sharing or forwarding will not normally be construed as publishing EAs. However, if the web surfers are instructed by the candidate or candidates on the list or his/her/their election helpers to share or forward the election campaigns through internet platforms with the intention to promote or prejudice the election of a candidate or candidates at the election, such act will be regarded as publication of the candidate’s or candidates’ EAs and any costs incurred will have to be included in the election expenses of the candidate/list of candidates. The candidate(s) should also observe fully the requirements relating to publication of EAs; and
- Regarding messages published by any persons or organisations, including political organisations, professional or trade organisations, or other district organisations, during or before the election period and irrespective of the form of publication, which directly or indirectly appeal to electors to vote or not to vote for some candidates or candidates of some organisations, if the messages do not contain any names of candidates, but reference could still be made from the messages concerned to identify the candidates being promoted or prejudiced by an elector in the constituency concerned, then depending on the entire relevant circumstances of the time, such messages may likely be regarded as EAs. The expenses incurred for the publication of such messages will also be regarded as election expenses incurred by or on the behalf of the candidate(s). If expenses are involved in the publication of the EA and the publisher is neither a candidate nor a candidate's election expense agent, the publisher may commit illegal conduct under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”). If the candidate instructs that person or organisation to publish the EA, the candidate would also violate the same law if such expenses are not accounted for as election expenses.

*Chapter 9 Electioneering at the living or working places of electors, premises of organisations to which electors belong and buildings which electors frequent*

- The Office of the Privacy Commissioner for Personal Data issued the 5<sup>th</sup> Revision edition of the Guidance Note on Electioneering Activities in August 2015. A copy of the Guidance Note and a list of complaint cases are at **Appendix A** for easy reference; and
- Candidates/Lists of Candidates should respect elector’s privacy when using their contact information for canvassing. In particular, they are reminded to use the “**bcc**” function of email for mass distribution of EAs over email so that the email addresses of individual electors would not be inadvertently disclosed to other recipients.

*Chapter 15 Exit Poll*

- The administrative procedures in approving applications for the conduct of exit polls have been updated and some enhanced measures would be adopted to ensure the fairness of election. Please refer to the dedicated website for the By-election at [www.elections.gov.hk](http://www.elections.gov.hk) for details of the application guidelines.

*Chapter 16 Election expenses and election donations*

- If an expense is incurred for more than one purpose, there is a need for **apportionment of expenses** between election-related purposes and any other purposes. The candidate/list of candidates concerned should include relevant particulars in his/her/their return and declaration of election expenses and election donations. As a general principle, time and usage are relevant factors for consideration. The candidate/list of candidates may seek professional advice on apportionment of expenses as necessary. Any fees incurred for such professional advice will not be regarded as his/her/their election expenses; and
- Any person or organisation (including a political party) acting as an agent to solicit, receive or collect election donations for a candidate or some candidates should also comply with all the requirements under the ECICO as if the election donations are received by the candidate(s) direct. To avoid possible confusion to donors/members of the public, the agent is advised to note the points and adopt the good practice as suggested in **Appendix B**.



# Guidance Note

## Guidance on Electioneering Activities

### **Introduction**

This guidance note serves as a general reference on compliance with the requirements under the Personal Data (Privacy) Ordinance (the “**Ordinance**”) in relation to electioneering activities that may involve the collection and use of personal data of individuals. Very often, candidates and/or their election agents make electioneering approaches by telephone to prospective voters/voters. Candidates may also choose to lobby potential voters by other approaches such as fax messages, SMS/MMS or emails. In some cases, the relevant individuals have no previous dealings with the caller and/or the candidate; and they are concerned that the candidate might have obtained their personal data from sources other than the register of electors.

### **Relevant Data Protection Principles**

The act of canvassing for votes is not in contravention of the Ordinance provided that handling of personal data is in compliance with the data protection principles in Schedule 1 to the Ordinance. Of particular relevance are the requirements under data protection principles 1, 2, 3 and 4 (“**DPP1**”, “**DPP2**”, “**DPP3**” and “**DPP4**”) set out in Schedule 1 to the Ordinance:

**DPP1(1)** requires that personal data shall not be collected unless the data is collected for a lawful purpose directly related to a function or activity of the data user; and the data collected is necessary, adequate but not excessive in relation to that purpose;

**DPP1(2)** requires that personal data shall be collected by means that are lawful and fair in the circumstances of the case;

**DPP1(3)** requires that on or before collecting personal data directly from a data subject, the data user shall take all reasonably practicable steps to ensure that the data subject has been informed of whether it is obligatory or voluntary for him to supply the data and the consequences for him if he fails to supply the data. The data subject shall be explicitly informed of the purpose of data collection and the classes of transferees to whom the data may be transferred as well as the name/job title and address of the individual to whom the request of access to and correction of the data subject’s personal data may be made;

**DPP2(2)** requires that all practicable steps must be taken to ensure that personal data is not kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is or is to be used;

**DPP2(3)** requires that if a data user engages a data processor<sup>1</sup> (whether within or outside Hong Kong) to process personal data on its behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data;

**DPP3** provides that personal data shall not, without the prescribed consent of the data subject, be used for a new purpose, i.e. any purpose other than the purpose for which the data was to be used at the time of the collection of the data or a directly related purpose;

<sup>1</sup> “Data processor” means a person who processes personal data on behalf of another person and does not process the data for any of the person’s own purposes.

**DPP4(1)** requires that all reasonably practicable steps shall be taken to ensure that personal data is protected against unauthorised or accidental access, processing, erasure, loss, or use; and

**DPP4(2)** requires that if a data user engages a data processor (whether within or outside Hong Kong) to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.

### **Guidance for Candidates**

1. Candidates who seek to collect and use personal data in electioneering should be mindful of the provisions in DPP1, DPP2, DPP3 and DPP4.
2. Candidates should assume direct responsibility for briefing and supervising members of their campaign staff to ensure their compliance with the requirements of the DPPs.
3. When collecting personal data directly from an individual or indirectly from a third party (e.g. a trade union or professional body) for the purpose of electioneering, only adequate but not excessive personal data necessary for an electioneering purpose shall be collected (e.g. Hong Kong Identity Card number should not be collected).
4. Candidates who solicit personal data directly from an individual for electioneering should ensure that the individual is informed of the purpose of collection of the data.
5. Candidates should not collect personal data for electioneering by deceptive means or by mis-representing the purpose of the collection (e.g. collecting personal data in the pretext of opinion poll or assisting citizens to apply for government welfare).
6. With respect to the use of personal data gathered from the published register of electors, due care should be taken to ensure that it is used only for purposes relating to an election as prescribed by the relevant election legislations.
7. Should candidates want to use personal data from sources other than the register of electors for an electioneering purpose, express consent from the data subject must be obtained beforehand, unless the original purpose of collection of the data is directly related to the electioneering purpose.
8. With respect to the use of personal data gathered by a third party (e.g. a trade union or professional body) as a means of accessing members of those bodies for an electioneering purpose, the proper course of action would be for these bodies to determine whether this is a permitted purpose for which the personal data was collected, and such electioneering communication should preferably be handled by these bodies. As a matter of good practice, prior notification to members of such use of their data is recommended.
9. When candidates or their election agents contact individual voters for an electioneering purpose, they should inform the voters how they obtained the voters' personal data when being asked.
10. As a matter of good practice, when canvassing for votes from individuals directly by the candidates, their agents or indirectly through a third party (e.g. trade union or professional body), the individuals should be provided with an option to decline receipt of any subsequent electioneering communication in relation to the election from the candidates concerned so that they would not receive any unwanted electioneering communication from those candidates.

11. As a matter of good practice, candidates should maintain a list of individuals who, to their knowledge, find electioneering communication such as phone calls, mails, fax messages, emails or visits objectionable and avoid approaching them to canvass for votes.
12. When conducting electioneering activities, candidates and their election agents should safeguard the personal data in the list of voters held by them against accidental or unauthorised access by unrelated parties.
13. Candidates should not retain any personal data collected for an electioneering purpose after completion of all the electioneering activities.
14. When election agents are appointed or engaged by the candidates to process the personal data of voters on their behalf for electioneering purpose, the candidates must use contractual or other means to prevent the personal data transferred to the election agents from: (i) being kept longer than is necessary for the electioneering purpose; and (ii) unauthorised or accidental access, processing, erasure, loss or use. Reference can be made to the Information Leaflet on *Outsourcing the Processing of Personal Data to Data Processors*<sup>2</sup> issued by the Office of the Privacy Commissioner for Personal Data, Hong Kong.

**Office of the Privacy Commissioner for Personal Data,  
Hong Kong**

Enquiry Hotline: (852) 2877 7026  
Fax: (852) 2827 2827  
Address: 12/F, Sunlight Tower,  
248 Queen's Road East, Wanchai,  
Hong Kong  
Website: [www.pcpd.org.hk](http://www.pcpd.org.hk)  
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**Disclaimer**

The information provided in this guidance note is for general reference only. It does not provide an exhaustive guide to the application of the Personal Data (Privacy) Ordinance (the "Ordinance"). For a complete and definitive statement of the law, direct reference should be made to the Ordinance itself. The Privacy Commissioner for Personal Data (the "Commissioner") makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the above information. The above suggestions will not affect the functions and power conferred to the Commissioner under the Ordinance.

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<sup>2</sup> Available at [www.pcpd.org.hk/english/resources\\_centre/publications/information\\_leaflet/files/dataprocessors\\_e.pdf](http://www.pcpd.org.hk/english/resources_centre/publications/information_leaflet/files/dataprocessors_e.pdf)

**Complaint Cases Provided by**  
**Office of the Privacy Commissioner for Personal Data (“OPCPD”)**

In order to facilitate better understanding of the privacy concerns of the electors and compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486), the OPCPD has provided the following 4 complaint cases for illustration purpose:

**Case 1**

This complaint relates to the collection and use of personal data. A complainant provided his name and telephone number to an incumbent member seeking his assistance in relation to disability allowance. Subsequently, the member used the complainant’s personal data without his consent for election publicity purposes. The member claimed that at the time when the complainant’s personal data was collected, the complainant had been verbally informed that his personal data would be used for communication purposes.

*In response to the complaint, the member agreed to provide a written personal information collection statement to individuals stating explicitly that the personal data collected would be used for electioneering purpose.*

**Case 2**

The complaint relates to the use of personal data. A complainant sought assistance from a political party in relation to the management of the building in which he resides and for this purpose supplied his personal data. Subsequently, the political party used the complainant’s personal data in canvassing him to vote for a candidate in an election.

*The OPCPD relayed the complainant’s concern to the political party. The party should obtain an express and voluntary consent from the complainant before using his personal data for electioneering purpose.*

**Case 3**

The complaint relates to the security of personal data. An incumbent member sent an email to a list of recipients canvassing vote for a candidate in an election without hiding the names and email addresses of the recipients (by, for example, use of “bcc”). The complainant, being one of the recipients of that email, complained that his name and email address were disclosed to all other recipients of that email.

*The OPCPD relayed the complainant’s concern to the member, with the advice that he should safeguard the security of the personal data of the electors when transmitting messages via electronic means.*

**Case 4**

The complaint relates to the use of personal data. A complainant enrolled in a course organised by a political party. After the completion of the course, the complainant was asked to fill in a questionnaire and provided her personal data for “communication purpose”. Subsequently, the political party used the complainant’s personal data in canvassing her to vote for a candidate in an election.

*The OPCPD relayed the complainant’s concern to the political party. In response, the party revised the personal information collection statement in the questionnaire by stating explicitly that personal data collected would be used for “electioneering purpose” and deleted the complainant’s personal data. The OPCPD accepted the remedial actions taken but warned the political party that enforcement notice may be issued if similar circumstances occur again.*



## **Collection of Election Donations**

Any person or organisation<sup>1</sup> (including a political party) acting as an agent to solicit, receive or collect election donations for a candidate/list of candidates or some candidates/lists of candidates is advised to:

1. have the prior consent/authorisation of the candidate(s)/list(s) of candidates;
2. set up a dedicated account for receiving and handling the election donations;
3. state the apportionment of the donations between candidates/lists of candidates or other parties if more than one candidate/list of candidates or other parties are involved;
4. comply with all the requirements under the ECICO in respect of election donations as if the donations are received by the candidate(s)/list(s) of candidates direct. For example, if the donation is more than \$1,000, a receipt to the donor by the concerned candidate/list of candidates instead of the agent should be issued to the donor;
5. ensure that clear information is provided to donors so that they are fully aware of the purpose/use of their donations; and
6. apply to the Secretary for Home Affairs for permission if the donations are collected through fund-raising activities in a public place for non-charitable purposes.

On the other hand, while candidates/lists of candidates would not be prohibited to solicit donations on the behalf of political parties or any other organisations, they must make sure that the message is clear enough so that members of the public are adequately advised of the purpose and nature of the donation and would in no circumstances be misled to believe that the donation was solicited and used for the election of the candidates/lists of candidates themselves.

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<sup>1</sup> All costs incurred by the person or organisation during the process of rendering the relevant service to the candidate(s)/list(s) of candidates in this regard should be counted towards election expenses and the relevant requirements governing appointment of election expenses agents as set out in Chapter 7 must be complied with. If the person renders his/her service for the candidate/list of candidates free of charge, voluntarily, personally and in his/her own time, the service is regarded as "voluntary service" according to section 2 of the ECICO. The candidate/list of candidates is, therefore, not required to include such service costs in his/her/its election expenses (this exemption does not apply to the service rendered by an organisation).