

# **Response to the Report on Public Consultation Review of the Personal Data (Privacy) Ordinance**

**Submitted by the Division of Clinical Psychology  
Hong Kong Psychological Society  
22 December 2010**

The Division of Clinical Psychology of the Hong Kong Psychological Society (DCP) was founded in 1982. It is a professional body representing the specialty of Clinical Psychology in Hong Kong. All DCP members have completed either a master or doctorate training programme in clinical psychology and are qualified Clinical Psychologists (CPs). CPs apply their professional knowledge and skills in the study, diagnosis, treatment and prevention of psychological problems. They provide direct services, including psychological assessment and treatment to individuals and families. To achieve so, the dialogues between CPs and their clients often contain very private thoughts and feelings of the clients, and at times also their perception and judgment of their significant others. Protecting the privacy of clients and ensuring the confidentiality of the dialogues between CPs and their clients are thus of utmost importance to carrying out our professional duties. Without so, clients would not be as ready to disclose and this would render treatment of their problems and timely assistance impossible.

In response to the Report on Public Consultation Review of the Personal Data (Privacy) Ordinance consultation paper, DCP would like to present our views as follows:

1. **We welcome most of the proposals in the Report** and agree that they will lead to advancement in the protection of individuals' personal data and privacy.
  
2. However, **regarding "Proposal (43): Parents' Right to Access Personal Data of Minors"**, we are very disappointed by the suggestion not to pursue the proposal to permit a data user to refuse a data access request made by a "relevant person" on behalf of a minor in order to protect the interests of the minors.
  - 2.1 While we respect the rights and responsibility of parents and believe that most parents have the good will to look after the interests of their children, we strongly opine that children's right to privacy should not be compromised. We emphasize that the wish of a minor should be duly respected when handling the parent's data access request, particularly when disclosure of data may jeopardize the minor's well being.

2.2 Child and adolescents are often reluctant and hesitant to come for services, and see authority figures as prying into their business or interfering. This is a characteristic in this phase of development. CPs do important work with this age group, be it regarding their behaviour, emotional problem, or family relationship. We abide by our Code of Professional Conduct to take all reasonable steps to preserve the confidentiality of information acquired from clients and protect their rights and privacy unless there is sufficient evidence to raise concern about the safety of clients or other people being affected by the act of the client. Within the therapeutic relationship, special efforts are made in order that the child and adolescent clients would feel safe enough to disclose pertinent information, without having to worry that this would be let known to the parents as a rule. If parents have a right to access personal data of minors, this would create immense difficulty for CPs to be able to engage these clients. For instance, a teenager would anticipate enormous pressure and strained relationship with parents if his/her homosexual orientation is made known to his/her parents who may be conservative or dominating. We cannot see why his/her right to privacy in this situation should not be respected.

2.3. Hence, we support the original proposal to make provisions to permit a data user to refuse a data access request by a “relevant person” on behalf of a minor if there is reasonable ground to believe that compliance with the request would not be in the best interests of the minor concerned. We agree that the assessment of and decision to refuse a parent’s data access request should be regarded as “an exercisable right” rather than “an obligation” of the data user, and that the PCPD should formulate guidelines to assist data users in this respect.

3. We would also like to raise our concerns regarding some confusion arising from the **definitions of “personal data” and “data subject”** in the implementation of PDPO.

3.1 One of our members has come across a situation in which the member was requested to release the information disclosed by a client in therapy to the spouse of the client. The argument was that the comments and feelings towards the spouse disclosed by a client in therapy should be treated as the personal data of the spouse rather than the personal data of the client. The CP refused the request on the ground that the client rather than the client’s spouse should be the data subject. But informal legal advice was in support of such request because such information should be regarded as the personal data of the spouse according to the current definition in the PDPO.

3.2 We are not in a position to comment on the accurate interpretation of the provisions in the ordinance. But we have great concern that if such an interpretation of personal data is adopted, it would have grave impact on our

professional work. As mentioned earlier, the dialogues between CPs and their clients often contain very private thoughts and feelings of the clients. Clients inevitably revealed objective facts or subjective thoughts and feelings about their significant others in these exchanges during psychotherapy. While the client is ready to let the CP know about his/her view and reactions of the other person, he/she may not want this other person to learn of his/her sharing with the CP. If people being mentioned could have legitimate access to a client's "private conversations" with CPs, this might cause undue distress to the client and even irreparable damage to the relationship between the client and the other person. Our pledge to confidentiality of clients' information would also be at stake. Trust, which is fundamental in our professional work, will be jeopardized with the client ends up feeling that professional help is unavailable.

3.3 We therefore request that some provisions in the ordinance or assistance by the PCPD (e.g. formulating guidelines) in the interpretation of "personal data" and "data subject" could be made available to clear such confusion.

~ End of Response ~

Prepared by:

Ms Esther Ng, FHKPS, Member of DCP (HKPS)

Ms Linda Chew, AFHKPS, Member of DCP (HKPS)

Dr. Michael Tsang, AFHKPS, Member of DCP (HKPS)

Dr. Chan Siu Ching, Member of DCP (HKPS)

Ms Francis Ip, Member of DCP (HKPS)

Ms Ingrid Mak, Member of DCP (HKPS)

Endorsed by:

The Division Committee of the Division of Clinical Psychology, Hong Kong Psychological Society