

LCQ 11: Collecting personal information of employees and job applicants

Following is a question by the Hon Albert Chan and a written reply by the Secretary for Home Affairs, Dr Patrick Ho, in the Legislative Council today (May 11):

Question:

Recently I have received complaints from many members of the public that many companies (such as telecommunications companies and small and medium-sized enterprises) not only require their employees and job applicants to declare whether they have criminal or bankruptcy records, but also require job applicants to disclose information about their debts. In this connection, will the Government inform this Council:

- (a) whether the above companies have acted in breach of the law or Government guidelines;
- (b) of the measures to stop employers from requiring their employees and job applicants to provide the above information; and
- (c) whether it will discuss with the employers concerned and request them to stop requiring their employees and job applicants to provide the relevant information (including bankruptcy records and particulars of their debts); if so, of the details; if not, the reasons for that?

Reply:

Madam President,

My reply to Hon Albert Chan's question is as follows:

- (a) Solicitation of personal data from job applicants in recorded form must comply with the requirements of the Personal Data (Privacy) Ordinance (Cap 486). The data protection principle 1(1) of the Ordinance stipulates that personal data shall not be collected unless:
 - (i) the collection is for a lawful purpose directly related to a function or activity of the data user;
 - (ii) collection of the data is necessary for or directly related to that purpose; and
 - (iii) the data are adequate but not excessive in relation to that purpose.

As a data user, a prospective employer is required by the data protection principle 1(3) to notify a job applicant of the purpose of collecting the relevant personal data, and to advise the applicant whether provision of the requested data is obligatory or voluntary, and the consequences for the applicant if he/she fails to provide the data that are obligatory.

If a prospective employer is unable to justify the collection of personal data or has failed to give the aforementioned notification, he/she has contravened data protection principle 1.

(b) The Privacy Commissioner for Personal Data has been taking both corrective and preventive measures to address malpractices in the handling of personal data. Where appropriate, the Commissioner will take enforcement action against a data user who has contravened any requirement of the Ordinance. Enforcement actions include warning and serving of enforcement notices. Contravention of an enforcement notice is a criminal offence. On the preventive side, the Commissioner has been publishing guidance materials and organising publicity activities to strengthen the community's understanding of the Ordinance. The Code of Practice on Human Resource Management issued in September 2000 is an example of the Commissioner's efforts in giving practicable guidance specifically on the handling of personal data in employment context.

(c) Whether or not the personal data about a job applicant requested by a prospective employer are excessive may only be judged with reference to the need for the data in the employer's selection process. Such need varies in the light of the job nature and responsibilities of the specific position to be filled. It is not appropriate to request prospective employers to stop collecting any particular category of personal data irrespective of the actual circumstances. That said, the Commissioner will keep in view the situation and take appropriate measures whenever necessary.

Ends/Wednesday, May 11, 2005

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