

**Immigration Department’s handling of application for search of
marriage records in Hong Kong and birth registration records
by a newspaper journalist
Investigation Report**

The Complaint

On 1 November 2019, the complainant complained to this Office against the Immigration Department (“ImmD”).

2. On 25 October 2019, the complainant, a newspaper journalist, applied for a search of marriage records in Hong Kong at ImmD’s Marriage Registration and Records Office in Admiralty. However, a staff member informed him that ImmD had changed the practice for record search since 16 October 2019. In particular, applicants applying for a search of another person’s marriage records in Hong Kong and birth registration records are required to obtain consent from the registered subject. Any applicant who cannot produce a written authorisation of the registered subject is required to provide ImmD with reasonable justification for vetting. On the same day, the complainant enquired about the practice with ImmD and the Office of the Privacy Commissioner for Personal Data (“PCPD”) respectively.

3. Subsequently, ImmD and PCPD gave the complainant a written reply respectively. The complainant criticised ImmD for failing to respond in its reply why it had changed the practice concerning record search applications, and whether its former practice of not requiring authorisation from the registered subject was in contravention of the Personal Data (Privacy) Ordinance (“PDPO”). Moreover, according to the reply of PCPD, personal data in the two public registers (namely marriage records in Hong Kong and birth registration records) is subject to protection by Data Protection Principle 3 (“DPP3”) under the PDPO. Unless the explicit and voluntary consent of the data subject is obtained, the personal data concerned should only be used for the purposes specified at the time of establishing the public registers or a directly related purpose. Nevertheless, the complainant pointed out that the purposes of establishing the two public registers were not available from either ImmD’s website or its office, as such applicants had no way to know whether their record search applications were in line with the purposes of establishing the public registers. The complainant also asserted that if journalists were required to provide ImmD with reasons for conducting a search, the subject of investigation and ImmD would probably become aware of the investigation, which would seriously undermine press freedom. The

complainant further contended that pursuant to existing legislation, marriage records in Hong Kong and birth registration records were essentially public registers available for public inspection, so ImmD's current practice also seriously undermined the right to know of the public.

Process of Investigation

4. On 14 November 2019, this Office initiated an inquiry against ImmD regarding this case and received its reply on 7 February 2020. We requested supplementary information from ImmD on 4 March, and received its reply on 15 April.

5. Upon examining the information received, we decided to launch a full investigation against ImmD under The Ombudsman Ordinance on 29 April 2020. A draft investigation report was issued to ImmD on 1 June for comments. After receiving its reply on 22 June, we completed the investigation of this case on 29 June.

Our Findings

Personal Data (Privacy) Ordinance

6. The Government maintains a number of different public registers containing personal data that are available for public inspection. Such personal data is subject to protection under the PDPO (Cap. 486), particularly DPP3 of the PDPO. Personal data collected in establishing the public registers should only be used for the purposes specified at the time of establishing the public registers or directly related purpose(s), unless the explicit and voluntary consent of the data subject is obtained.

Purposes of Establishing Birth Registration Records and Marriage Records in Hong Kong

7. The legislation pertaining to births and deaths registration and marriage registration can be traced back to 1934 and 1876 respectively.

8. Pursuant to section 22 of the Births and Deaths Registration Ordinance, any person shall be entitled, on payment of the prescribed fee, to require the Registrar of Births and Deaths to cause a search to be made for an entry in the births register, and to require a certified copy of the entry concerned.

9. Pursuant to section 26(1) of the Marriage Ordinance, the Registrar of Marriages may allow searches to be made amongst all certificates, licences, registers, and indexes in his possession and give a certified copy of any entry therein.

10. After taking reference from the legislation pertaining to births and marriages of a few jurisdictions, ImmD has affirmed that the purposes of establishing birth registration records and marriage records in Hong Kong are:

- (1) to enable the Registrars to keep all birth registration and marriage records in Hong Kong in order to fulfil their statutory obligations under the Births and Deaths Registration Ordinance, the Marriage Ordinance and related subsidiary legislation; and
- (2) to verify the identity, age, family relationship, marital status, etc. of the person concerned in legitimate situations, or for other lawful purposes prescribed, authorised or permitted by law.

Former Arrangement for Processing Searches of Birth Registration Records and Marriage Records in Hong Kong

11. Before 16 October 2019, applications for searching the birth registration records or marriage records in Hong Kong, or obtaining a certified copy of the entry concerned, could be made in person, by post or online. Applicants should complete the application form with their personal particulars and details of the intended search (such as the registered subject's name, date of birth, identity card number, place of birth/marriage, birth/marriage registration number, etc.) and pay the prescribed fee. ImmD would make a search of the relevant register based on the information provided, and inform the applicant of the search result. If a match was found, the applicant could request a certified copy of the entry concerned by paying the prescribed fee. For applicants who were not the registered subjects, they were required to sign a notice upon receipt of the search result to acknowledge that they understood the specific purposes of the registration records, restricted use and legal liability of misusing the information obtained.

New Arrangement for Processing Searches of Birth Registration Records and Marriage Records in Hong Kong

12. ImmD introduced the new arrangement on 16 October 2019. For applicants

who are not the registered subject, relevant person (i.e. parent/legal guardian of the registered subject under the age of 18) or person with written consent from the registered subject/relevant person, they are required to provide supplementary information together with the application, including their relationship with the registered subject, purpose(s) and intended use of the search result and/or requested record(s), and all supporting documents, if any, to support the request.

13. ImmD would consider each application on the merits of the reasons and information provided by the applicant. If satisfied that the applicant's request is in line with the purposes of establishing the records, and that releasing the records is not in contravention of the provisions under the PDPO, the applicant would receive a notification on collection of the search result and/or certified copy.

14. In examining the reasons for an application for a search of birth registration/marriage records provided by an applicant who is not the data subject, ImmD would take into account the following basic principles:

- the purpose for which the record is to be used;
- the reason(s) why the data requested is considered relevant to or necessary or important for that purpose;
- the reason(s) why the data subject's consent is not obtained;
- whether the record data or record can be obtained from another source;
- whether obtaining consent from the data subject will likely prejudice the intended purpose; and
- how the failure to disclose such record would likely to thwart/prejudice the intended purpose.

15. If ImmD considers the applicant's purpose(s) of application likely to contravene the PDPO, it will refuse disclosure of the record to the applicant on such ground. Where necessary, ImmD will seek legal advice from the Department of Justice ("DoJ") on a case-by-case basis.

16. On 7 February 2020, ImmD published details of the new arrangement on its

website and application forms to better inform the public of the purposes of establishing and making available the relevant registers to the public for searching and obtaining certified copies, as well as ImmD's new arrangement for processing applications from applicants who are not the data subjects.

Sequence of Events

17. According to ImmD's records, the complainant did not make any application for searching the birth registration or marriage records, or obtaining a certified copy, at any offices under ImmD on 25 October 2019. Moreover, according to records, from 25 October 2019 to date, ImmD did not receive from the complainant any written enquiry about the new arrangement, or verbal enquiry with a request for written reply from ImmD. Consequently, ImmD has not issued any written reply to the complainant regarding the new arrangement.

18. Nevertheless, on 25 October 2019, ImmD received an email from another person in the capacity of journalist of the same newspaper, making enquiry about the requirement for data subject's authorisation for record searches. On 29 October, ImmD replied to that person's enquiry by email, explaining that applicants who intend to use the personal data obtained under the Births and Deaths Registration Ordinance and the Marriage Ordinance are required to comply with the provisions under the PDPO. Any unauthorised use of such personal data for purposes other than the lawful purposes under the above ordinances might be in contravention of DPP3 of the PDPO. Therefore, in the case that the applicant who is not the data subject cannot produce the data subject's written consent, it is imperative for ImmD to reasonably examine the relevant factors, such as the relationship between the applicant and data subject, the purposes and intended use of the search result and certified copy, thereby considering whether to release the search result and/or certified copy.

Response from ImmD

19. ImmD indicated that it has all along attached great importance to protection of personal privacy, and has reviewed from time to time the application procedures for searching the birth registration records and marriage records in Hong Kong and obtaining certified copies for such records. PCPD, in its report titled Survey of Public Registers Maintained by Government and Public Bodies issued in July 2015, pointed out that while public registers contain personal data available for public inspection, such data is subject to protection under the PDPO. As such, PCPD considered the

Government to have the responsibility to adopt measures to safeguard the personal data in public registers from indiscriminate misuse, thereby protecting the privacy of data subjects.

20. The Births and Deaths Registration Ordinance and the Marriage Ordinance, which provide for searching the birth registration or marriage records in Hong Kong and obtaining relevant certified copies, are originally intended for allowing applicants to trace information about lost family members or to research their genealogies through the birth registration or marriage records, or for preventing bigamy through the marriage records in Hong Kong. As such, the legislation allows persons other than the data subjects to apply for searching the records and obtaining relevant certified copies. Nevertheless, the ordinances concerned are not enacted for disclosure of such personal data or unrestrained access to personal data of others by the applicants.

21. ImmD noticed that certain media organisations had searched for the birth registration/marriage records of public figures, artists or their family members, and then publicised the particulars and personal data obtained. This amounted to a serious infringement of privacy of the persons concerned and the situation was highly unsatisfactory. In recent months, a number of public officers and members of the public have had their personal data obtained by others through searching various public registers. They and their family members fell victim to malicious harassment and threats after their personal data had been disclosed. Given the growing abuse of public registers, ImmD considers it essential to introduce measures immediately to step up the protection of personal data, so as to prevent abusive or even malicious use of personal data in the birth registration records and marriage records in Hong Kong.

22. In the light of the above, ImmD consulted DoJ on the statutory provisions concerning searches of birth registration and marriage records, and requests for certified copies, as well as the arrangement for stepping up the protection of personal data. In DoJ's opinion, while members of the public are permitted under the ordinances to apply to the registrars for searches of birth registration records and marriage records in Hong Kong, personal data in the relevant registers is subject to protection under DPP3 of the PDPO. This principle stipulates that personal data shall not, without the prescribed consent of the data subject, be used for any purposes other than the original purposes of collecting the data or a directly related purpose. Moreover, public disclosure is not a purpose of establishing the public registers. Personal data obtained from the registers shall only be used for lawful purposes. Although it is mentioned under the Purpose of Collection in the birth/marriage registration form that personal data provided by data

subjects will be made available for public searches and issue of certified copies, it does not follow that data subjects have given consent to their personal data in the registers to be used for any purposes and for public disclosure.

23. Based on DoJ's interpretation of the relevant statutory provisions, if the release of personal data following searches of the birth registration and marriage records or requests for a certified copy might be in contravention of the PDPO, or ImmD has reasons to believe that such data may be used improperly or unlawfully, ImmD is empowered by the provisions to refuse at its discretion those search applications or disclosure of relevant records. After receiving the legal advice from DoJ regarding details of application processing, ImmD published details of the new arrangement on its website and application forms on 7 February 2020. ImmD admitted that there was room for improvement in that the public could not find details of the new arrangement on its website and application forms before 7 February 2020.

24. In December 2019, ImmD met with representatives of PCPD to seek their views on the new arrangement for processing searches of birth registration records and marriage records in Hong Kong. PCPD remarked that since neither the Births and Deaths Registration Ordinance nor the Marriage Ordinance has specified the purposes of establishing and making available the registers/registration records for public searches and issue of certified copies, ImmD should affirm the purposes of the registers/registration records according to relevant legislation and current situation, and inform the public. Given that the legislation allows persons who are not the data subjects to apply for searching the records and obtaining certified copies of the records concerned, but the ordinances are not enacted for public disclosure of such personal data or unrestrained access to information of others by the applicants, PCPD agreed that ImmD's new arrangement is proper and could enhance protection of personal data in the birth registration records and marriage records in Hong Kong against misuse.

25. ImmD considered the new arrangement to be effective in preventing abusive or unlawful use of the public's personal data. With due regard to press freedom, ImmD also attaches importance to protection of personal privacy. As a responsible data user, ImmD must ensure that personal data in the registers will not be misused and cause any harm to the data subjects. ImmD indicated that media organisations that consider it in public interest to search for and obtain the birth registration or marriage records of a third party can apply to ImmD with relevant justification for perusal and consideration. Based on the principles aforesaid, ImmD will examine whether exemption from the data protection principle under the PDPO is warranted by the justification, thereby deciding

whether to release the records.

26. When amendments to the Births and Deaths Registration Ordinance and the Marriage Ordinance are required in future, ImmD will judiciously consider incorporation of the purposes of establishing the registers as specified in **paragraph 10** into the statutory provisions. Moreover, in processing the public's record search applications, ImmD will continue to strike a balance between the right to know of the public and the protection of personal privacy in an adequate and reasonable manner. Meanwhile, ImmD will continue to adapt to changing circumstances, take reference from overseas experience with an open mindset, and comprehensively consider the local situation for further enhancement of the policies and measures for processing the public's record search applications.

Our Comments

27. While press freedom and the right to know of the public are certainly important, it is also crucial to ensure protection of personal privacy. As ImmD is in possession of personal data concerning the births, deaths and marriages of all residents, it has a paramount duty to safeguard such data against abusive or unlawful use.

28. ImmD, noting the growing misuse of public registers and after consulting DoJ, found it necessary to step up protecting personal data of data subjects with respect to applications for record search or obtaining certified copies, and then decided that such applications should be subject to vetting and approval. PCPD also concurred (see **para. 24**). We consider ImmD's course of action justified. In case of any doubts about the legal points, the complainant may consider seeking professional legal advice.

29. Meanwhile, the complainant criticised that ImmD, without specifying the purposes of establishing the two public registers, required in its reply dated 29 October 2019 that applicants should comply with the PDPO, i.e. not to use without authorisation such personal data for any purposes other than the purposes specified at the time of establishing the registers or a directly related purpose. We consider ImmD's action to have indeed caused confusion to applicants, as they hardly knew how to comply with ImmD's requirement. In our view, it would have been more desirable to concurrently announce the new application procedures and requirements, and spell out the purposes of establishing the registers, upon introduction of the new arrangement on 16 October 2019.

30. After consulting PCPD (see **para. 24**), ImmD took reference from the relevant legislation of other jurisdictions and affirmed the purposes of the registers/registration records. Eventually, it announced on 7 February 2020 the purposes of establishing the registers/registration records.

31. From an administrative perspective, we consider that even though the original intent of introducing the new arrangement on 16 October 2019 was for protecting personal privacy as soon as possible, a sudden change to the long-established practice would have caused confusion and inconvenience to applicants in the interim. It was especially so as the official announcement regarding reasons of change, details of new arrangement (such as application purposes, criteria, documents required), purposes of establishing the registers/registration records, etc. came only on 7 February 2020. We accept that ImmD needed time to consult DoJ and PCPD on details of the new arrangement. Nevertheless, it was unsatisfactory to introduce the new arrangement hastily when the relevant details and statements had not been confirmed and could not be announced. We consider that ImmD should have at least announced the major specific requirements under the new arrangement, i.e. applicants who apply for a search of another person's birth registration and/or marriage records are required to produce written consent from the data subject, or explain the purposes and intended use of the application. In any event, ImmD, after review, admitted that there was room for improvement and enhanced the relevant arrangement (see **para. 23**).

32. To step up protection of personal privacy, we recommend that ImmD, in addition to notifying applicants who are not the data subjects of the legal liability for misusing the data obtained (see **para. 11**), consider implementing further administrative measures. The Department should make clear to the applicant who is not the data subject that the data subject may be notified of the record search application, including the applicant's personal data and his/her purposes and intended use of the search result.

33. Furthermore, the legislation pertaining to births and deaths registration and marriage registration dates back to 1934 and 1876 respectively. Back then, the society's awareness and concerns about protection of personal privacy were radically different from those nowadays. We urge ImmD to consider reviewing the legislation to keep abreast of the current social situation.

Conclusion

34. Overall, from an administrative perspective, we consider it not improper for

ImmD to decide, after consulting DoJ, that applications for record search and/or obtaining certified copies are subject to vetting and approval before release of such records. However, it fell short of good administrative practice on the part of ImmD in failing to announce the purposes of establishing the registers/registration records, rationale behind the new arrangement and its details, approving criteria/procedures, etc., before introducing the new arrangement. The Ombudsman, therefore, considers this complaint **partially substantiated**.

Recommendations

35. The Ombudsman recommends that ImmD:

- (1) take reference from this incident, and ensure in future prompt announcement of details and rationale before introducing any new arrangements that will affect the public (see **para. 31**);
- (2) consider implementing further administrative arrangement, under which ImmD should make clear to the applicant who is not the data subject that the data subject may be notified of the record search application, including the applicant's personal data and his/her purposes and intended use of the search result (see **para. 32**); and
- (3) consider reviewing the Births and Deaths Registration Ordinance and the Marriage Ordinance to keep abreast of the current social situation (see **para. 33**).

Feedback from ImmD

36. ImmD has raised no objections to the content and comments of this investigation report.

37. Regarding the recommendation in **paragraph 35(1)**, ImmD has reviewed the introduction of new arrangement this time and agreed that there is room for improvement. Before introducing any new arrangement in future, it will publish the details via different channels to inform the public of the new arrangement in a timely manner.

38. Regarding the recommendation in **paragraph 35(2)**, ImmD indicated that it

will thoroughly study this recommendation. Since the recommendation involves disclosure of personal data of the search applicants to the data subjects, and personal data of the search applicants is also subject to regulation under the PDPO, ImmD will consult DoJ and PCPD as needed.

39. Regarding the recommendation in **paragraph 35(3)**, ImmD indicated that it will review from time to time the implementation of the Births and Deaths Registration Ordinance and the Marriage Ordinance in response to the current social situation, and will amend relevant provisions of the ordinances as needed.

Final Remarks

40. We are pleased to learn that ImmD has accepted our investigation report and admitted that there is room for improvement. ImmD has also conducted a proactive review, and will continue to study and scrutinise from time to time the implementation of relevant legislation, as well as review the existing arrangements where necessary.

Office of The Ombudsman
June 2020