

# *Hong Kong Commissioner advocates education and mediation*

By Alan Pedersen

**R**AYMOND TANG, COMMISSIONER at the Hong Kong Office for Privacy in Personal Data, believes that education, rather than over zealous punitive action, is the best method for getting business to comply with data protection legislation.

Considering the complexity of data protection principles and the enormous tasks involved in restructuring systems for compliance, Raymond Tang believes that the Hong Kong business community has “adapted very well” to the Personal Data (Privacy) Ordinance, which came into force just over five years ago. “Our experience,” he says, “indicates that both the public and private sectors have been very receptive to the idea of data protection”. Nonetheless, complaints to the Commissioner’s Office are on the rise. Citizens filed 798 complaints, up 39 per cent from 568 during the previous year, according to the Commissioner’s 2000-01 Annual Report. And of those complaints, 68 per cent were made against the private sector.

## **LACK OF AWARENESS**

Tang suggests these figures are a little misleading, and not a fair indication of how the business community regards its obligation to respect its customers’ privacy. He suggests that the results are, for the most part, down to the fact that consumers and the public in general are much more privacy-savvy these days. He explains that the rise in complaints “is more a reflection of understanding and awareness than any deliberate attempt by business to circumvent the principles or violate the rules.”

Because data protection in Hong Kong is still a relatively new concept, Tang accepts that there will inevitably be confusion and misunderstanding among the public and the business

community. This is underlined in the annual report, which reveals that over 20,000 enquiries were made during 2000-01. That averages out at around 80 calls a day to the Commissioner’s office. “In a lot of investigations,” says Tang, “we have found a lack of understanding of how the data protection principles work.” This lack of understanding, he says, is generally over what exactly is meant by “data” privacy protection as opposed to general privacy rights. “The law only provides for personal data protection,” he explains, “and not the wider privacy protection which is something quite different.”

---

“We use the educational approach, which we find much more effective than strict enforcement”

---

This view is backed up by figures from the last annual report, showing that out of 789 complaints, only 52 cases led to formal investigations, half of which found no breach of the law. In terms of deliberate violations and intentional flouting of the law, Tang says that “that there have been very very few.” In fact to date, there has

only been one prosecution under the Personal Data (Privacy) Ordinance.

## **PERSUADING BUSINESS TO COMPLY**

“We use the educational approach, which we find much more effective than strict enforcement,” says Tang. Whilst the Commissioner’s Office does have the power to launch investigations and audit organisations’ compliance with the law, Tang argues that this method is “very labour and resource intensive.” He prefers instead to adopt a more positive approach in persuading organisations to comply. It is this philosophy of education that underpins the Commissioner’s main approach to tackling data protection issues.

“Privacy protection as a concept is new, and privacy law as a legal subject is even newer.” He suggests that the business community will gradually have to come to grips with the necessary principles and that it is just a question of changing the culture of treating personal data. “There has to be an understanding of the principles first,” he says, “before you can expect people to change their attitude and behaviour towards handling other people’s personal data.”

“We try to mediate and use a conciliatory approach,” he says, explaining that most cases are dealt with through settlement or mediation. It is only in situations where there is “unwillingness” to adopt the privacy principles, that stricter measures are used. In such situations, the Commissioner’s office will issue an

enforcement notice requiring an organisation to change its procedures in order to comply with the data protection principles. "If they fail to do that, then it becomes a criminal offence," he says. However, "by and large, they usually comply." He argues that this is simply because it is not in their interests to knowingly flout the law.

#### EDUCATIONAL PROGRAMME

The Commissioner's Office has worked to raise the profile of data protection and privacy on different fronts. In March 2001, it launched "Privacy Week", a programme aimed at enhancing awareness of consumer rights. The programme included docu-dramas, an e-privacy conference, and a television programme that attracted over one million viewers. To educate the business community, the Commissioner's Office holds seminars and consultations. It also created the Data Protection Officer's Club, which currently has a membership of over 200 data protection officers from the major Hong Kong corporations.

#### E-PRIVACY

Tang sees e-privacy as an important issue. "A lot of online consumers," he says, "regard the lack of privacy pro-

tection as the primary reason for not undertaking more online transactions." However, he opposes the idea of introducing new regulations to deal with e-commerce privacy issues. He believes the same principles that relate to standard offline business transactions should also apply to online dealings. "Our office takes the view that there should be no distinction as to the medium of carriage of data... the law should apply, whether offline or online."

Because Internet technology and the growth of e-commerce is changing at such a fast pace, he believes that it is very difficult to bring in technology-specific regulation. Instead, the Commissioner's Office has published a guidebook on how organisations can implement data protection principles into their online business. He also welcomes any efforts by industry to self-regulate, saying that it makes more sense to have those at the forefront of technology giving advice on how to comply.

#### TASKS AHEAD

Not content with just enforcing data protection, Tang has set himself a bold challenge for the next five years. "In the past, the approach has been

that one is entitled to protect one's own information." He regards this view as a somewhat "negative" attitude to privacy and wants to change people's way of thinking. "I'm trying to develop a culture of respect for someone else's personal data... In the longer term, I think this will be a much more successful way of promoting respect for privacy protection in the community."



*Raymond Tang was appointed as the Privacy Commissioner for Personal Data for Hong Kong in September 2001. He assumed his post on November 1st 2001 with the responsibility to promote and enforce compliance with the Personal Data (Privacy) Ordinance. He has 35 years of professional experience in the practice of law, initially as both a solicitor and barrister-at-law. He gained regulatory experience at a senior level when, in 1996, he was appointed by the Securities and Future Commission of Hong Kong as Chief Counsel, heading up its Legal Division.*

*continued from page 13*

ture with cryptography. Expensive measures against cyber attacks must be taken and continuously reviewed, like the daily routines with regard to virus scans and their updates.

Professor Bullesbach was clear on the dangers. "On the other hand, every single worker might be affected by surveillance, both as a part of the corporation, and as a free citizen." Privacy rights, he said, should be pre-conditions of innovations in global business worldwide. "If we have come to see that far, we will understand: liberty and privacy are not conflicting aims but parallel goals both worth fighting for."

Dr Ann Cavoukian, Ontario's Information Commissioner, expanded on this theme. She said that the balance

between security and power has never been static, shifting in favour of security when faced with significant threats to public safety. Perhaps the price of restrictions on our privacy is legitimate if it achieves a goal of enhanced security. However, there must be some ability to demonstrate the effectiveness of a particular measure. Otherwise, the price to be paid will have been too high. She called for "an informed public debate to determine the extent to which individuals will accept covert and privacy invasive measures such as the routine interception of emails, telephone calls and other correspondence." She added one note of caution to business. "Society's willingness to accept diminished privacy for public safety purposes should not be interpreted as public acceptance of business practices that misuse personal

information. Surveys have consistently shown high levels of consumer concern about privacy issues, which have thus far impeded the growth of electronic commerce. The need for business to respect customer privacy will not be diminished by this tragedy. Do not confuse one with the other."



*Further details on the Scientific American Conference can be found on the website: [www.globalprivacysummit.net](http://www.globalprivacysummit.net)*

*For the full text of Ann Cavoukian's paper, please contact Privacy Laws & Business*