

Hong Kong Transparency Report

2014

The Hong Kong Transparency Report (HKTR), a project run by Journalism and Media Studies Centre, the University of Hong Kong, researches and tracks government data and content removal requests towards Internet service providers, Internet platforms and websites.

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Introduction

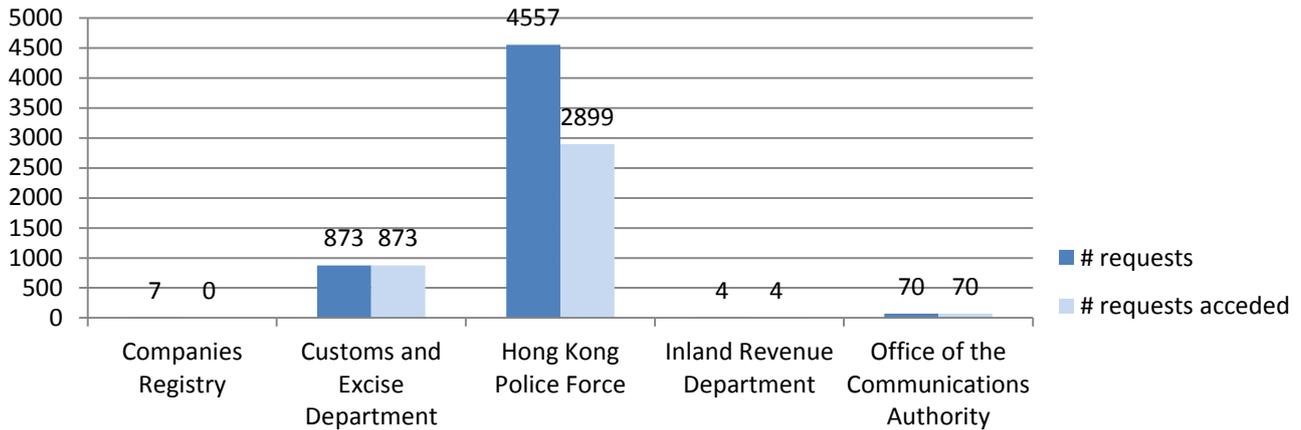
We believe Hong Kong Internet users have the right to know how their data is being accessed and handled by other parties, and the government has the obligation to respect users’ privacy and regularly disclose its data and removal requests made to service providers during criminal investigations and law enforcement activities. Government transparency in this regard is essential to maintain Internet users’ trust and facilitate the free flow of information on line.

Based on this belief, HKTR actively seeks new information from the access to information officers under the Code on Access to Information. The new data HKTR obtained supplements the data already provided by the government upon requests by legislative council member Charles Mok.

During our research and request process, we identified a series of issues that cast shadows over government legitimacy and accountability, such as the lack of judicial review and an independent oversight

body during the government request making process. At the end of this report, we proposed recommendations aiming to improve the current request making mechanism.

Key findings of the 2013 data



Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

User data requests

- In 2013¹, five government departments made a total of 5,511 user information requests (requests for users’ contact information, IP address, etc) to service providers, out of which 3,846 requests (70%) were granted.
- The Police Force accounts for 83% (4,557 cases) of the total user information requests, followed by the Customs and Excise Department with 16% (873 cases).
- Only 64% of the Police Force’s requests were complied with by service providers.
- None of the Companies Registry’s requests (in total 7 cases) was acceded to by service providers.

Reasons for data requests 2013



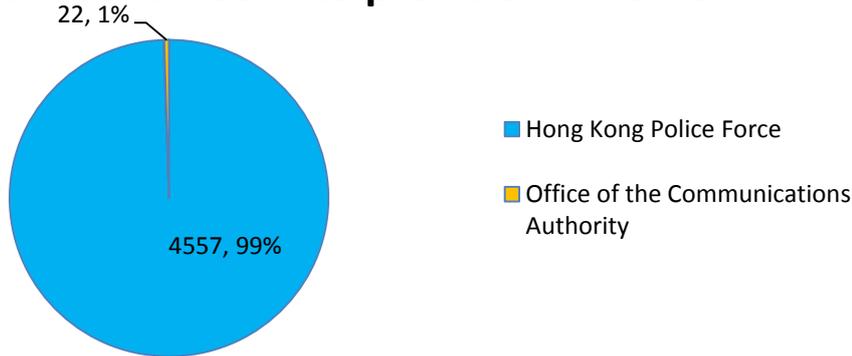
Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

¹ The official reporting period for the 2013 data is from February 2013 to January 2014.

Two major reasons for government data requests:

- Crime prevention and detection: Police (4557 cases) and Customs (873 cases);
- Law enforcement: Office of the Communications Authority (70 cases), Companies Registry (7 cases), and Inland Revenue Department (4 cases).

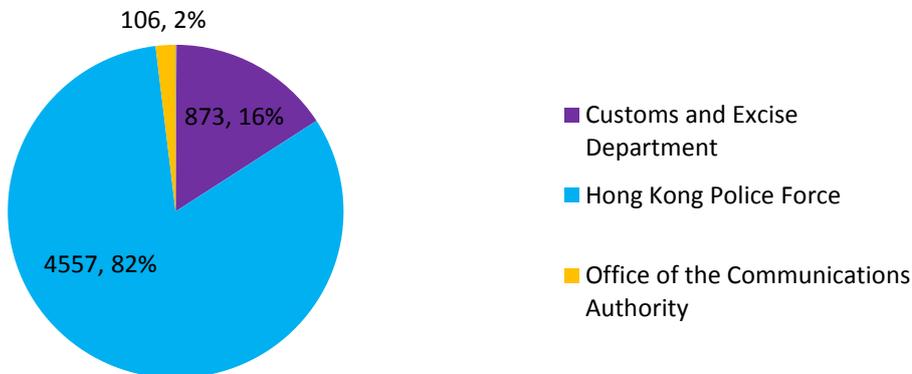
Number of Service providers involved



Data Source: Dataset the government disclosed upon Charles Mok's requests, and new data HKTR obtained

- Police requests involved the biggest number of service providers (4557), followed by OFCA (22), and Inland Revenue (4).
- The Customs and Excise Department said it did not have any statistics of the number of service providers.
- HKTR has sent a separate request to Companies Registry for the number of service providers involved on September 2, 2014. So far the department has not provided the information we requested.

Number of users/accounts affected

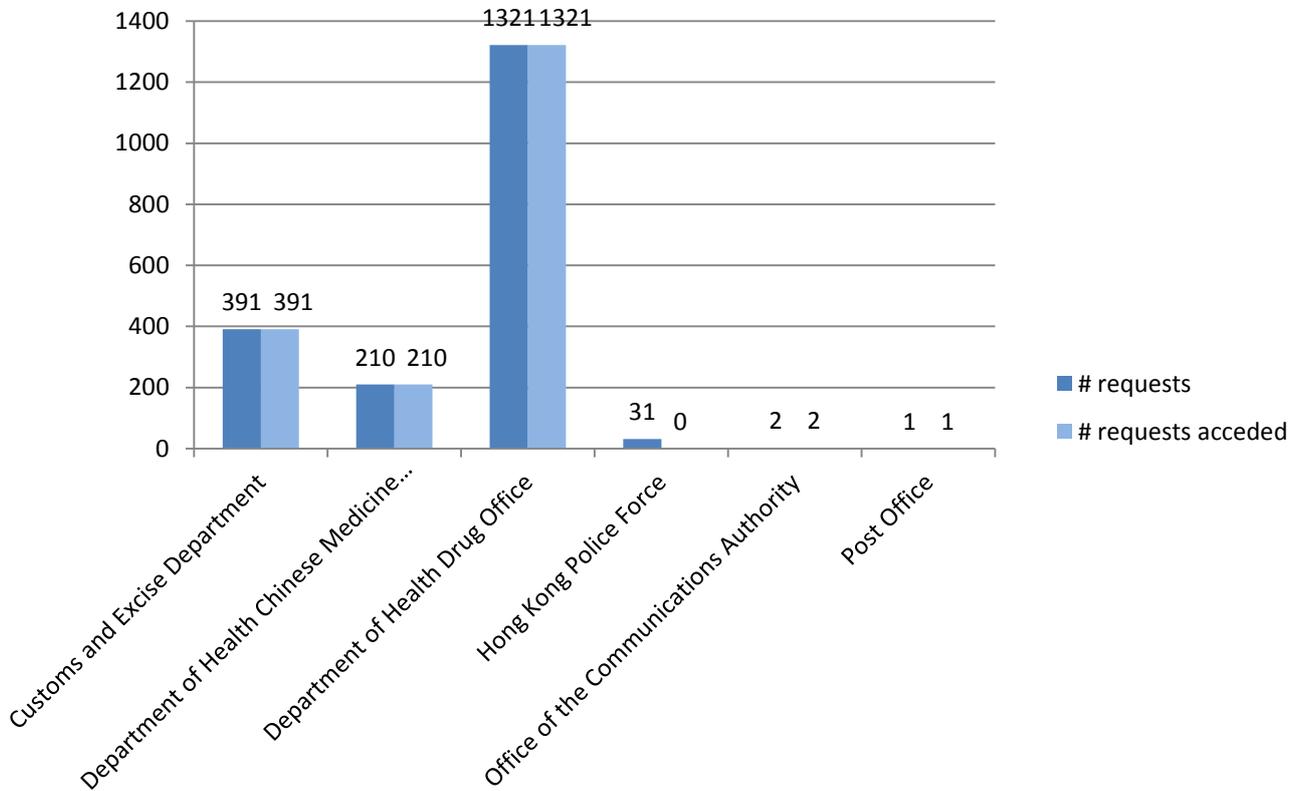


Data Source: Dataset the government disclosed upon Charles Mok's requests, and new data HKTR obtained

- The Police requests affected the largest number of users/accounts (4557), followed by Customs (873), OFCA (106), and Companies Registry (5).

- Inland Revenue told HKTR that such information “cannot be provided due to the secrecy provisions under the Business Registration Ordinance and the Inland Revenue Ordinance”.

Content removal requests

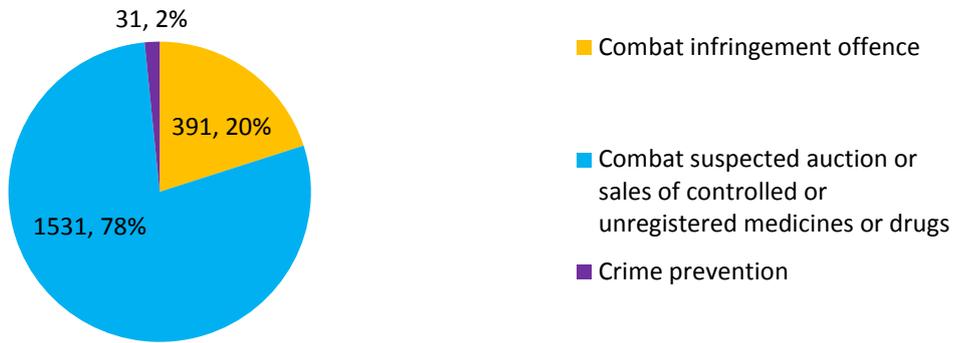


Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

- In 2013², five government departments made a total of 1,956 content removal requests (requests to remove articles, web pages, hyperlinks, etc) to service providers, almost 100% of which were acceded to.
- The Department of Health accounts for 78% (1,531 cases) of the total content removal requests, followed by the Customs and Excise Department with 20% (391 cases).
- The Police did not provide an exact number of its request compliance rate, as some of the service providers did not respond to the police requests.

² The official reporting period for the 2013 data is from February 2013 to January 2014.

Reasons for removal requests 2013

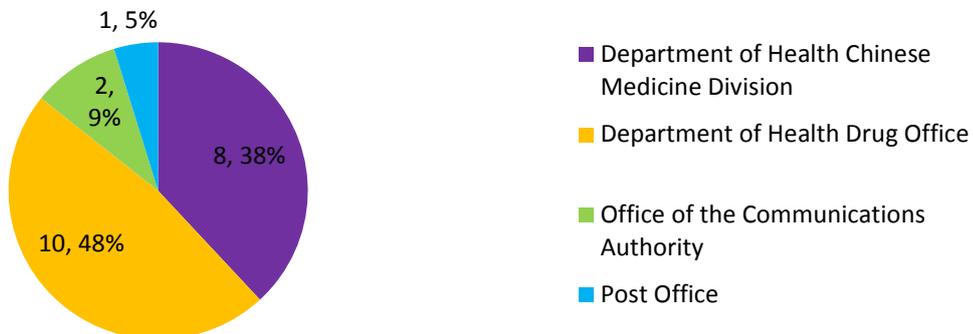


Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

The three major reasons for government content removal requests:

- Suspected auction or sales of unregistered products: Department of Health (1, 531 cases);
- Infringement offences: Customs and Excise Department (391 cases);
- Crime prevention: Police Force (31 cases).

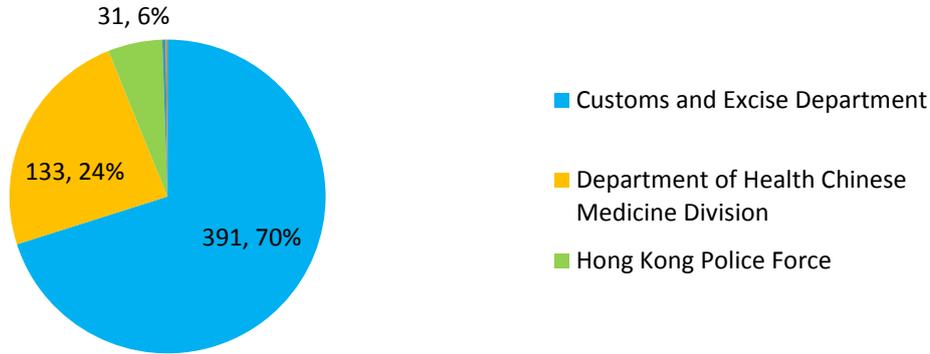
Number of service providers involved



Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

- The Department of Health’s requests involved the biggest number of providers (18 in total), followed by OFCA (2), and Post Office (1). Data from Customs and Police are not available.
- Office of the Communications Authority revealed the name of one of the websites which the authority asked to remove indecent text and photos.
- The other departments did not disclose the names of the service providers due to legal or operational restrictions.

Number of users/accounts affected



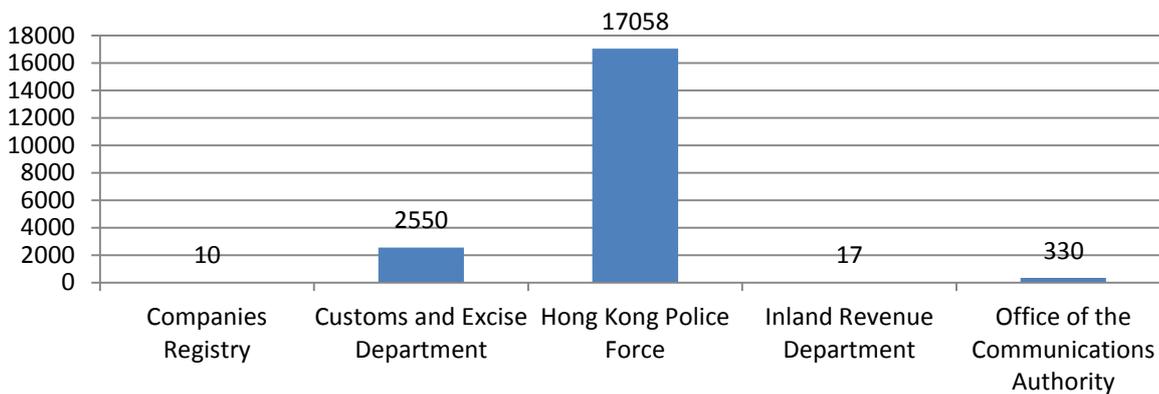
Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

- Customs’ requests affected the largest number of users/accounts (391), followed by the Chinese Medicine Division of the Department of Health (133), Police (31), OFCA (2) and Hongkong Post (1).
- Drug Office told HKTR it does not keep a record of the accounts affected and therefore cannot provide such information.

A general review of the 2010-2013 data

User data requests

Government Data Requests 2010-2013



Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

For the four-year period from 2010 to 2013, six government departments made a total of 19,965 pieces of user information requests, among which the Police Force took up 85%, 17,058 cases, followed by the Customs and Excise Department with 13%, 2550 cases.

Reasons for data requests 2010-2013

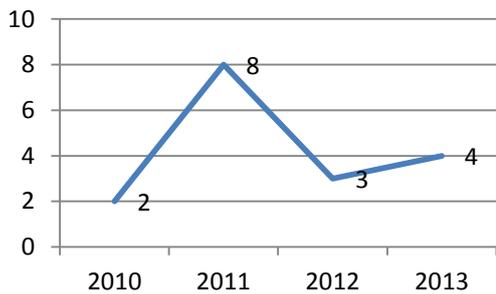


Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

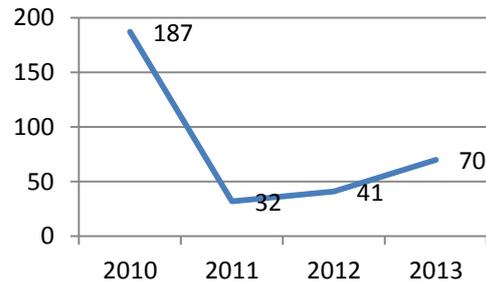
The two major reasons for government data requests are:

- Crime prevention and detection: Police Force (17,058 cases) and Customs (2550 cases) ;
- Law enforcement: Inland Revenue (17 cases), OFCA (330 cases), and Companies Registry (10 cases).

Number of Inland Revenue requests 2010-2013



Number of OFCA data requests 2010-2013

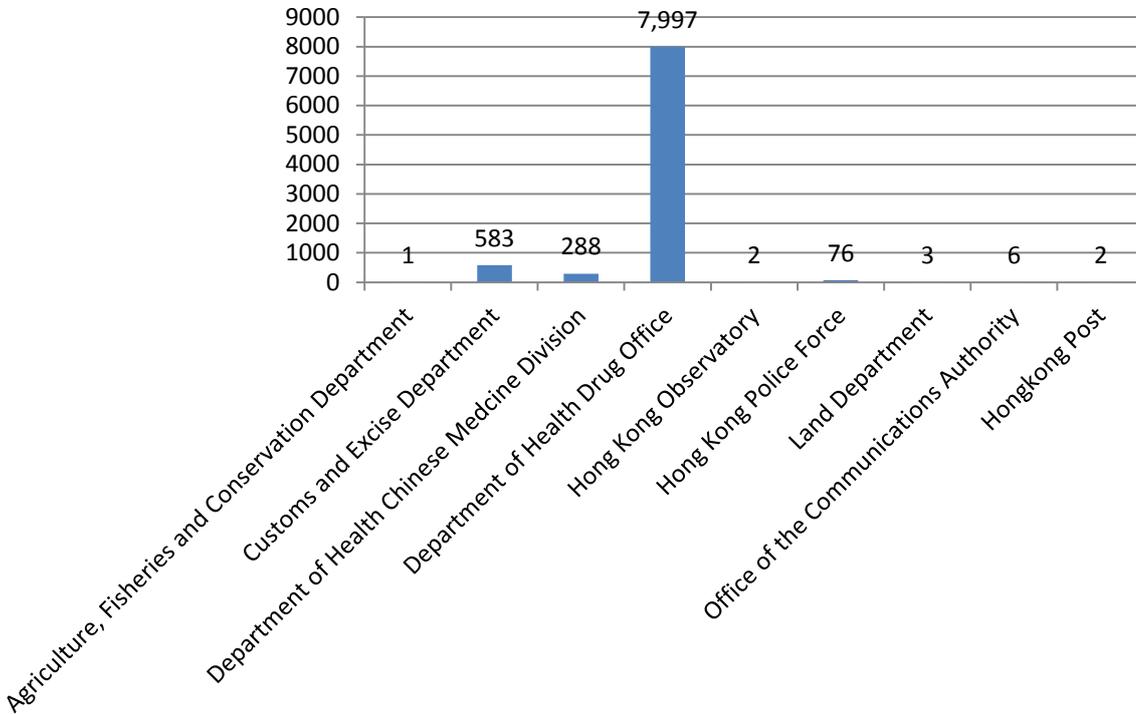


Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

Based on the 2010-2012 lump sum data set released by the government in February 2013, HKTR further requested a yearly breakdown of the three years’ data. As of the day this report was drafted, we have received data breakdown from Companies Registry, Inland Revenue and OFCA. Customs and Excise Department replied that the information we requested is unavailable. The Police Force is currently working on HKTR’s requests.

Content removal requests

Content removal requests 2010-2013



Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

- For the four year period from 2010 to 2014, eight government departments made a total of 8,958 content removal requests to service providers.
- Over 92% of such requests came from Department of Health’s Drug Office and Chinese Medicine Division (8,285 cases). Customs and Excise Department accounted for 7% (583 cases).

Reasons for content removal requests 2010-2013

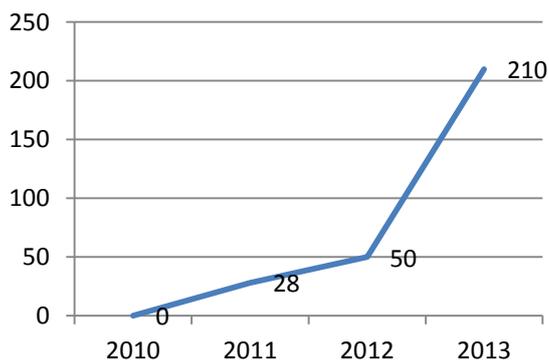


Data Source: Dataset the government disclosed upon Charles Mok’s requests, and new data HKTR obtained

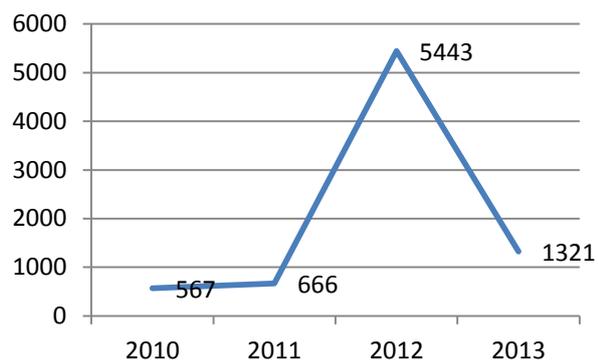
The two major reasons for content removal requests during this four-year period are:

- Suspected auction or sales of unregistered medicine or drugs: Department of Health (8,235 cases);
- Suspected sales of counterfeit or pirated goods: the Customs (583 cases), and crime prevention by Police (76 cases);
- Other reasons include: combat suspected sales of endangered species by AFCD (1 case), combat copyright infringement by Hong Kong Observatory (2 cases) and the Land Department (3 cases), combat indecent content (OFCA) and combat inappropriate content (2 cases).

Chinese Medicine Division removal requests



Drug Office removal requests



Data Source: Dataset the government disclosed upon Charles Mok's requests, and new data HKTR obtained

Based on the 2010-2012 lump sum data set released by the government in February 2013, HKTR further requested a yearly breakdown of the three years' data. As of the day this report was drafted, we have received data breakdown from AFCD, Department of Health, Hong Kong Observatory, Hongkong Post, Lands Department, and OFCA. Customs and Excise Department replied that the information we requested is unavailable. The Police Force is currently working on HKTR's requests.

Recommendations

Make public the current internal guidelines and monitoring mechanism

Legislative council member Charles Mok has asked twice about the details of the government's internal guidelines and monitoring mechanism in 2013 and 2014. But Secretary for Commerce and Economic Development Gregory So, and Acting Secretary for Commerce and Economic Development Godfrey Leung, chose to keep this crucial information shrouded in secrecy.

Leung said in a general reply to Mok in February 2014 that the government departments will ensure they only make requests when necessary for the purpose of performing duties, and since the existing mechanism functions effectively, he did not think it is necessary to review the relevant procedures/guidelines. Leung's self-reassuring answer however is far from informative and convincing from the public standpoint.

Since the government is keeping its request making procedures in the dark, the public has no way to know how the government makes requests to service providers, whether the reasons provided by the government agencies (crime prevention and detection, and law enforcement) can be sufficiently justified

for accessing users' personal information, whether there are alternative investigation methods without breaching users' privacy, and what would happen if the service providers did not respond to or reject government requests. In fact, only 70% (3,846) of the 5,511 user information requests issued by the various government agencies in 2013 were granted by service providers.

The lack of transparency on these critical questions risks eroding public's trust in the government operations. The government should reveal its internal guidelines and monitoring mechanism as soon as possible for public review for greater transparency and accountability in the government request making process.

Set up an independent oversight body

In 2013, almost none of the government's 5,511 user information requests were issued under a court order, which raises the concern whether the government power is left unchecked when it is trying to access or remove users' online data.

An independent body is needed to challenge requests issued by the government and judge if such requests are appropriate and necessary before they are sent to service providers. In other words, a due process should be established to oversee the government request making activities. Correspondingly, there should be an independent agency responsible for examining the requests results in order to detect problems and defects in the current government request making mechanism.

Furthermore, there should be different levels of access to user information that the government can apply for based on different grades of importance and urgency of the government departments' criminal investigation and law enforcement activities. In the US, the Electronic Communications Privacy Act sets out three legal processes that government agencies can use to obtain a certain level of user account information from service providers: , subpoena, court order and search warrant. These three procedures serve as threshold to make sure government agencies perform their duties within the boundaries.

Introduce a standard request logging system

HKTR discovered through our correspondence with government agencies great divergence in government departments' request logging systems, which makes it difficult for meaningful comparison and analysis across the board. And there is no sign that the government is making effort to establish a standard request logging system.

Certain government departments did not keep a record of their individual requests and request results. For example, the Police Force, did not keep the numbers of requests it sent to individual companies, and the compliance rate of each company.

Some government agencies did not keep the number of service providers involved in their requests. For instance, the Customs and Excise Department said it did not have statistics on the number of service providers it made requests to for its 2010 - 2013 user information requests.

Certain departments did not keep the record of the accounts/users affected by their requests. For instance, the Drug Office of the Department of Health did not keep a record of the accounts/users affected for its 2013 data removal requests.

In addition, between 2010 and 2012, some departments did not keep the annual breakdown data. For instance, although the Customs published the lump sum request data from 2010 to 2012 (1,677 data requests, 193 removal requests), it told HKTR that it did not have any statistics on the yearly breakdown of the lump sum data.

The Police, the Customs and the Department of Health are among the largest issuer of user information and content removal requests in the past four years. But none of them have managed to keep a proper record of the requests they issued and the request results.

Proper record management increases government transparency and accountability and is the precondition of open government. It is the obligation of the government to keep a proper record management system for the benefit of the government itself and the public alike. The valuable information held on the request records will not only facilitate government agencies' internal reference, but also give the public an accurate picture of the scale and scope of government's access to their information.

Regular disclosure

At present, the government data and content removal requests were disclosed upon the requests by Legislative Council member Charles Mok. Rather than publishing such information upon requests, the government should consider disclosing it on a regularly basis, just like the way it publishes on a quarterly basis the statistics on the access to information requests. Furthermore, given the nature of this information, it could be disclosed in an open data format, which would enable easier auditing and analysis.

The government has the chance to be transparent and act in a responsible way by taking the initiative of informing its citizens of what it is doing with their private data. Meanwhile, proactive data release can also help improve the government's efficiency and effectiveness, since the public accessibility of the data will reduce the workload of civil servants attending to the public requests, and foster collaboration between the government and social groups to improve the existing mechanism.

User notification

Currently there is no law or regulation that allows or prohibits service providers to notify their users of the government requests. As users have the right to know how their personal information is accessed and handled by the government, a user notification system should be duly introduced to allow service providers to tell their users about the relevant government activities, provided such notification won't impede crime investigation or law enforcement.

Extend the scope of disclosure

The current government disclosure only covers the requests it made to Internet service providers, Internet platforms and websites. But there is a high chance that the government also makes requests to telecom companies. If this is the case, HKTR hopes the government can consider incorporating telecom companies

into its request disclosure mechanism, so as to give the public a more comprehensive picture of the scale and scope of its data and removal requests.

Work with service providers

During HKTR's correspondence with the government officers, we encountered a few cases where the government told us the names of service providers, and on what dates it made individual requests, while in most cases, the government agencies cited business, legal or operational restrictions as reasons for keeping the names, or even the dates in secret.

But there are also cases where the government has to wait for the consent of service providers before revealing their names to HKTR, the process of which HKTR believes can be improved.

For instance, after HKTR asked Hongkong Post on 22 May 2014 about the name of the website that it made content removal request to, in the following three months, Hongkong Post's access to information officer sent a number of emails to the website in question seeking consent for the disclosure. However, HKTR learnt on 11 August that the service providers never responded to the government request. As a result, Hongkong Post was unable to release the name of the website.

In another case, both the Companies Registry and the Customs and Excise Department told HKTR that since the question involves the commercial information of a large number of service providers, it is rather impossible for the government to obtain consent from all relevant organisations. Hence, the names of individual service providers were not made public.

In light of the time and effort that government officers need to spend in seeking service providers' consent to reveal their names, it is recommended the government could work with service providers at the early stage, for instance, when it issues requests to service providers, to come up with a list of what can be and cannot be disclosed.

Annex I: Exemptions

Personal Data (Privacy) Ordinance

Hong Kong Data Protection Principle 3 (DPP3) stipulates “unless the data subject has given prior consent, personal data shall be used for the purpose for which they were originally collected or a directly related purpose.”

Pursuant to the Personal Data (Privacy) Ordinance (hereinafter referred to as “the Ordinance”), a data user who contravenes the data protection principles may face level 5 (HKD50,000) or level 6 (HKD100,000) fine and imprisonment for 2 years.

However, there are exemptions according to the Ordinance. Section 58 (1) & (2) of the Ordinance promulgates that personal data is exempt from the provisions of DPP3 if personal data held is for the purpose of

(a) the prevention or detection of crime;

(d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;

That said, the Ordinance and the privacy commissioner’s website make it clear that the data requests issued by law enforcement (such as the police and the customs) are not legally binding, and it is up to the data user (in this case the Internet/online service providers) to decide whether the data requested by law enforcement agencies is directly related to the agencies’ criminal investigation purposes. If the relevancy is not clear, the data user has the right to decline law enforcement’s data requests.

As Section 51 of the Ordinance stipulates:

“Where any personal data is exempt from any provision of this Ordinance by virtue of this Part, then, in respect of that data and to the extent of that exemption, that provision neither confers any right nor imposes any requirement on any person, and the other provisions of this Ordinance which relate (whether directly or indirectly) to that provision shall be construed accordingly.”

Case study

The case study below was an excerpt from the Office of the Privacy Commissioner for Personal Data, Hong Kong. For more information on this case please refer to the privacy commissioner’s website.

“A bank disclosed a data subject’s bank account information to the Police without the data subject’s prescribed consent and without carefully considering whether the exemptions of sections 58(1)(d) and (2) were applicable.

...

The privacy commissioner was of the view that the Bank could not believe that provision of the Data to the Police complied with section 58(1)(d) by simply relying on the letter of the Police, and could not reasonably believe that it would be likely to prejudice the purpose referred by the Police if DPP3 was applicable so that the exemption of section 58(2) of the Ordinance could be relied on. Hence, the Commissioner opined that the Bank’s act of providing the Data to the Police had contravened DPP3.

The Bank subsequently accepted the PCPD’s advice and formulated policies requiring the staff of the bank, when encountering similar requests from the Police, to make enquiries with the Police to learn more about the details of the case before deciding whether to provide the data to the Police or not.”

Annex II: data source

Government release

The data below was released by the government upon requests by Legislative Councillor Charles Mok

[2013 data requests](#)

[2013 content removal requests](#)

[2010-2012 data requests](#)

[2010-2012 content removal requests](#)

New data HKTR obtained

The number of acceded data requests from Inland Revenue in 2013: 4

The number of acceded data requests from Police Force in 2013: 2899

The number of service providers involved data requests from Office of the Communications Authority in 2013: 22

The number of service providers involved data requests from Inland Revenue in 2010-2012: 6

The number of requests made by Inland Revenue in 2010-2012: 13

The number of acceded data requests from Inland Revenue in 2010-2012: 13

The annual breakdown of 2010-2012 data requests from Companies Registry, Inland Revenue, and Office of the Communications Authority

The annual breakdown of 2010-2012 content removal requests from Agriculture, Fisheries and Conservation Department, Department of Health, Hong Kong Observatory, Hongkong Post, Lands Department, Office of the Communications Authority

The service providers breakdown of 2010-2013 data requests from Drug Office

The service providers breakdown of 2010-2013 data requests from Chinese Medicine Division

Names of service providers involved in 2011-2013 content removal requests from Office of the Communications Authority

Names of service providers involved in 2012 content removal requests from Agriculture, Fisheries and Conservation Department

Names of service providers involved in 2011-2012 content removal requests from Companies Registry

Names of service providers involved in 2011-2012 content removal requests from Hong Kong Observatory

Names of service providers involved in 2011-2012 content removal requests from Lands Department

Names of service providers involved in 2011-2012 content removal requests from Lands Department

Names of service providers involved in 2011-2012 content removal requests from Hongkong Post

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Note:

Hong Kong Transparency Report would not exist if the government were more transparent and voluntarily disclosed information about these requests. To find out more about our project, please check out our website: <http://transparency.jmsc.hku.hk/>

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