

**Monitoring Committee on the Implementation of the
SARS Expert Committee Report's Recommendations**

Policy of Privacy of Information

Purpose

This paper proposes an algorithm to facilitate decision-making in the release of privacy data for combating communicable diseases (CDs).

Background

2. The SARS Expert Committee recommended that the Department of Health should formulate and promulgate a clear policy of privacy of information that balances public and private interests, in order to instill a sense of personal responsibility and foster community confidence in the implementation of public health measures against CDs. (See paragraph 10.13 of the Expert Committee's Report for details.)

3. We agree with the Expert Committee that there must always be an appropriate balance between public and private interest in the public health authority's collation and dissemination of privacy information for control of CDs. Real-life situations that call for information-release decisions may pertain to individuals (for example, contacts of a patient with infectious disease) or entities (for example, schools with infectious disease outbreaks among the student population).

4. Control measures to arrest CD outbreaks of any nature or scale necessarily involve data collection, use, storage and transfer. Judicious and timely information flow regarding cases, contacts and carriers is essential for effective outbreak control. Name reporting is crucial in facilitating public health interventions such as contact tracing, isolation or quarantine, thus placing the common good above personal interests. In the context of a CD such as SARS, which has a high case fatality rate, it is important to know who is infected and who was exposed to target interventions. Reporting SARS cases with names is therefore generally accepted as a necessary and reasonable privacy intrusion.

5. On the other hand, there should be checks and balances to avoid

over-intrusion into privacy interests. Apart from acting within the parameters of the legislative framework in place, public health authorities must demonstrate an important need to know and intervene before compromising the protection of privacy. Decisions must be made openly and there should be adequate consultations with the relevant communities. Data collected must only be used for legitimate public health purposes.

Legal Parameters

6. We consider that any public health intrusions into privacy should first and foremost be consistent with the statutory requirements. In this connection, we have conducted a stock-taking of the relevant legal provisions that confer powers or place limits on health officers to collect and use personal data for the purpose of disease prevention and control. These provisions are summarized and analyzed in paragraphs 6 to 13.

Prevention of the Spread of Infectious Diseases Regulations [PSIDR], Quarantine and Prevention of Disease Ordinance (Cap 141)

7. The PSIDR provides the legal basis for notification of information pertaining to persons suffering from infectious diseases to the public health authority and other relevant agencies for outbreak control purpose. Regulation 4 of the PSIDR requires medical practitioners to report suspected/confirmed cases of infectious diseases to the Director of Health using specified forms. Regulation 5 provides that where any person not under the care of a medical practitioner is known to be suffering from or to have died from any infectious disease, a report shall be made to a health officer by the following persons:-

- (a) in the case of an inmate of any premises,
 - (i) the occupier or keeper of such premises; or
 - (ii) the nearest adult relative living on such premises; or
 - (iii) any person in charge of or in attendance on the sick person or dead body; or
- (b) any person having knowledge of the case of an infectious disease.

Any person who neglects without reasonable excuse to make such report with the least practicable delay is liable to a fine of \$2,500.

8. Regulation 3 of PSIDR further provides that any person acting under the direction of a health officer may exercise the powers of the latter to do any act or thing under the Regulations to control an outbreak.

9. The powers conferred on health officers under Part III of PSIDR are applicable to sick persons as well as contacts and carriers. For instance, the health officer or any person authorized by the health officer may break into any premises for the purpose of ascertaining whether there is any sick person or contact or carrier (Reg 8); carry out a medical examination on any person whom he/she has reason to believe is a sick person, contact or carrier (Reg 9); remove any sick person, contact or carrier to an infectious diseases hospital or such other place as he/she may appoint (Reg 10); and permit in writing and endorse on the permit conditions for a sick person, contact or carrier to be treated elsewhere than in an infectious diseases hospital (Reg 11). These statutory powers are seldom exercised in practice since there is high readiness among targeted contacts or carriers to cooperate with the public health authority. Information pertaining to the individuals is usually provided on a voluntary basis, albeit the accuracy and completeness of the data provided have been a problem in certain cases.

Personal Data Privacy Ordinance [PDPO] (Cap 486)

10. The PDPO stipulates six data protection principles that govern collection, retention, use, security of and access to personal data. The Ordinance is binding on the Government. Of particular relevance to communicable disease control are data protection principles (DPP) 1 and 3. DPP1 requires that a data subject be explicitly informed, on or before data collection, of the classes of persons to whom the data may be transferred. DPP3 states that personal data shall not, without prescribed consent of a data subject, be used for any purpose other than the purpose for which the data were to be used at the time of collection, or a directly related purpose.

11. The application of DPP3 is subject to certain exemptions. Section 59 of PDPO stipulates that personal data relating to the physical or mental health of the data subject are exempt from the provisions of DPP3 in any case in which the application of the provisions to the data would be likely to cause serious harm to the physical or mental health of the data subject or any other individual. In other words, Section 59 could be construed as an enabling provision for data users who have collected personal data primarily for purposes other than health and disease control to transfer such data as requested by the public health authority, notwithstanding that the transfer is discretionary rather than mandatory.

Disability Discrimination Ordinance [DDO] (Cap 487)

12. Section 61 of the DDO provides that nothing in the Ordinance shall apply to a person who discriminates against another person with a disability if (a) that person's disability is an infectious disease; and (b) the discriminatory act is reasonably necessary to protect public health. Hence, if the disclosure of personal data is essential for the enforcement of public health control measures, the release should not be construed as discriminatory.

Child Care Services Regulations Cap 243A

Education Regulations Cap 279A

Residential Care Homes (Elderly Persons) Regulation Cap 459A

13. Relevant sections of these Regulations require child care centre supervisors (Reg 41 of Cap 243A), school principals (Reg 53 of Cap 279A), or residential care home managers (Reg 18 of Cap 459A) to make a report immediately to the public health authority/Director of Social Welfare if they suspect or know of (i) a case of infectious disease amongst the children, pupils/teachers, residents, staff or employees concerned or (ii) any such person who has been in contact with a case of infectious disease. Breach of the relevant requirements is an offence.

Other Considerations Governing Release of Privacy Information

14. Aside from the legality dimension, there are several other considerations which we think should be factored into a decision on whether to release private information in relation to a CD outbreak. First, is the mode of transmission of the CD such that release of private data is crucial for effective outbreak control? Diseases with high morbidity or fatality rates should necessitate more the subordination of privacy interests to the public good. An outbreak that has potential to develop into a high-stress, high-impact contingency would warrant information release more than one that doesn't.

15. Second, is there a less intrusive measure to achieve the same result? The availability of a less intrusive alternative that can effectively achieve the same public health results would argue against the release of private data. This test does not require public health authorities to adopt measures that are less effective but does require the least invasive intervention that will achieve the objective.

16. Finally, could data release be done fairly without compromising

the interest of vulnerable groups? Justice requires that the costs and benefits of public health actions be fairly distributed, thus precluding the unjustified targeting of socially vulnerable populations. The implications of a privacy intrusion for parties affected, in particular vulnerable groups, should be carefully assessed before such a public health intervention is prescribed.

17. In sum, we consider that as a rule of thumb, release of private information should be considered if and only if (i) this lawfully serves the purpose of disease prevention and control; (ii) no other means exist to achieve the same or better result; (iii) the scenario to be tackled is of much public health significance; and (iv) the interests of vulnerable groups will not be compromised. At Annex is an algorithm to guide decision-making by public health staff when confronted with the question of whether private data should be released to facilitate CD control.

Next Steps

18. The optimal choice of public health interventions often requires balancing personal and public interests in the light of uncertain scientific knowledge. It is prudent for public health authorities and practitioners to establish policies and plan actions in an open, transparent and accountable manner, involving civic deliberation and public participation. In this spirit of transparency and accountability, we plan to engage stakeholders including healthcare providers, media, patient groups, community leaders and the general public in fine-tuning the proposed decision-making algorithm in respect of release of private data in times of CD outbreaks. Once a consensus is reached, we will prepare a formal policy statement on privacy of information and promulgate it through the web, mass media and well-established networks such as district offices, schools, workplaces and housing estates.

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Algorithm for decision-making on release of personal data

