

2016

HKTRANSPARENCY Report

a living report of the Government user data and content removal requests



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Journalism and Media Studies Centre
The University of Hong Kong
香港大學新聞及傳媒研究中心
<http://jmsc.hku.hk/>

About Hong Kong Transparency Report

Hong Kong Transparency Report (HKTR) is a research and advocacy project hosted by the Journalism and Media Studies Centre of The University of Hong Kong. The project was launched in August 2013 to document and monitor the Hong Kong SAR government's practice of requesting user data and content removal from local and international information and communication technology (ICT) companies. Through evidence-based reporting and research, HKTR seeks to promote government transparency and to advance citizens' rights to privacy and freedom of expression in cyberspace.

Project Director

Professor Ying Chan

Legal Editor and Advisor

Doreen Weisenhaus

Project Manager

Benjamin Zhou

Editor

James Hill



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<http://transparency.jmsc.hku.hk/>

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Executive summary

Key findings

- **The HK government sent fewer user data and content removal requests to companies in the information and communication technology (ICT) sector**
 - The data from both the HK government and ICT companies¹ show the number of user data and content removal requests have been decreasing, from 6,008 (2013) to 4,637 (2015). *p.10*
 - The government faced resistance from seven overseas ICT companies (Google, Microsoft, Twitter, Yahoo, Apple, Facebook and Verizon), whose transparency reports revealed that they rejected 40% of the user data requests from the HK government. The seven companies accounted for 44% of user data requests from the Hong Kong government. *p.11*
- **The HK government sent more requests to social media, with some arrests for online speech**
 - An increasing number of requests have gone to the social media platform Facebook, in particular after the 2014 Occupy movement (increased by 212% in 2015). *p.12*
 - Data collected by HKTR (see transparency.jmcs.hku.hk/arrests-for-online-speech/) shows that at least 19 people were arrested for comments made online from June 2014 to November 2016. 10 of the instances involved Facebook, another seven were made on HKGolden, a Chinese language forum, and two on other websites. All of the 19 people arrested were charged under Section 161 of the Crimes Ordinance: "access to computer with criminal or dishonest intent", and four of the people arrested have been found guilty. *p.13*
- **Improvements in government transparency**
 - The HK government has provided more information about its requests, with the number of items in its releases increasing from seven to 13. Biannual statistics first released in 2016 conform to international transparency reporting standards. *p.13*
- **Failure to report on compliance rate and court orders**
 - Hong Kong Police Force, whose requests accounted for 82% of the requests from the HK government to ICT companies, has not revealed how many of them were complied with by the companies, and has not explained a reason for this; government departments other than the Police said a total of 14 requests were rejected in 2015², whereas Google said it rejected 239 requests solely in 2015; the

¹ The HK government refers to ICT companies as service providers (SPs).

² The HK government data for 2015 is inclusive of February to December 2015 only.

majority of rejected requests might therefore come from the Police.

p.14

- The Police Force and Inland Revenue Department failed to reveal how many requests were sent with court orders; no other department obtained a court order for requests in 2015; the Companies Registry revealed that an overseas company rejected a request in 2015 due to a lack of court order.

p.15

Recommendations

- The HK government should set up an independent review of government request practices. *p.16*
- The HK government should establish internal request and transparency guidelines and make them public. *p.17*
- The HK government should routinely release information about government requests on a biannual basis. *p.18*
- Hong Kong ICT companies should publish transparency reports. *p.19*

Figures

- Between 2011 and 2015, the Hong Kong government sent an average of 5,028 user data and content removal requests each year to ICT companies. 4,845 (92%) of them were user data requests and 389 (8%) were content removal requests. *p.24, p.35*
- Crime prevention and detection (98%, 2015) was the major reason for user data requests; Hong Kong Police Force (87%), the Customs and Excise Department (11%) and Office of the Communications Authority (1%) were the three major requesters. *pp.25–26*
- Suspected illegal sale of medicine (59%, 2015), crime prevention (28%, 2015) and infringing activities (12%, 2015) were the three major reasons for content removal requests; the Department of Health (51%), Customs and Excise Department (33%) and Hong Kong Police Force (15%) were the three major requesters. *pp.36–38*

1. Introduction

The subject

The internet and other information technologies are increasingly becoming necessities to daily life. Technology brings both convenience and risk: our personal information is vulnerable on the internet, and people can be prosecuted for what they say there. Hong Kong Transparency Report (HKTR) is concerned with how the Government of the Hong Kong Special Administrative Region obtains citizens' personal information in the digital sphere (including on the internet and electronic communication devices) and takes down online content.

As with governments of other jurisdictions, the Hong Kong government sends requests 1) for user data³ and 2) to remove content⁴ from the services of internet, communications and technology companies, which are collectively referred to as information and communication technology (ICT) companies in this report. The reasons for the requests include crime prevention, law enforcement and copyright infringement. Some companies have published their own transparency reports and may include other types of government requests, or requests from courts or individuals. For instance, Apple also reports "device requests" relating to information about lost or stolen devices. To ensure a fair comparison, **this report only analyses user data and content removal requests**, and only focuses on requests from the government.

The sources

The Hong Kong government does not routinely disclose its requests for user data and content removal. HKTR obtained the data from two sources: 1) responses from the government to questions on the issue by Legislative Council members; 2) replies from access to information officers of government departments to HKTR's enquiries on the issue according to the Code on Access to Information, an administrative code stipulating the scope of government information that will be provided and how the information will be made available either routinely or by means of response to requests.

Since February 2013, legislators including Charles Mok and James To have submitted questions in the Legislative Council on government requests a total of five times. HKTR worked with them in order to raise clearly defined questions and to ensure that the

³ "User data" in this report refers to users' contact information, IP address, time and date of communications, locations, etc.

⁴ "Content removal" in this report refers to requests to remove articles, web pages, hyperlinks, etc. published on the internet and other information held by service providers.

government would extend the scope of information it provides in its replies. After three years, the quality of both legislative questions and government responses has significantly improved. The 2016 government response for the first time included biannual statistics of government requests over the past five years, which is in accordance with international transparency standards.

Table 1.1 Questions raised by Legislative Council members on user data and content removal requests

Date	Question raised by (legislator)	Reply by (government official)	Reporting period	URL
6 February 2013	Charles Mok	Gregory So (Secretary for Commerce and Economic Development)	2010 – 2012 (aggregated numbers)	http://www.info.gov.hk/gia/general/201302/06/P201302060424.htm
19 February 2014	Charles Mok	Godfrey Leung (Acting Secretary for CED)	February 2013 – January 2014	http://www.info.gov.hk/gia/general/201402/19/P201402190281.htm
15 October 2014	James To	Gregory So (Secretary for CED)	February – October 2014	http://www.info.gov.hk/gia/general/201410/15/P201410150422.htm
11 February 2015	Charles Mok	Gregory So (Secretary for CED)	2011 – 2014 (annual)	http://www.info.gov.hk/gia/general/201502/11/P201502110755.htm
27 January 2016	Charles Mok	Nicholas W Yang (Secretary for Innovation and Technology)	2011 – 2015 (biannual)	http://www.info.gov.hk/gia/general/201601/27/P201601270385.htm

Up until now, information released by the government shows the user data requests of seven departments and content removal requests of 13 departments.

Government departments that have revealed user data requests:

Agriculture, Fisheries and Conservation Department
Companies Registry
Customs and Excise Department
Hong Kong Police Force
Inland Revenue Department
Office of the Communications Authority
Home Affairs Department

Government departments that have revealed content removal requests:

Agriculture, Fisheries and Conservation Department
Customs and Excise Department
Hong Kong Police Force
Office of the Communications Authority
Department of Health – Chinese Medicine Division
Department of Health – Drug Office
Department of Health – Family Health Service
Hong Kong Observatory
Hongkong Post
Lands Department
Leisure and Cultural Services Department
Transport Department
Civil Aid Service

61 companies across the globe released transparency reports till the end of 2015⁵, seven of which have revealed that they received requests from the Hong Kong government. This report also includes additional information from these seven ICT companies.

The first transparency report was published by Google in 2010, revealing the number of requests for information about its users and requests to remove content. After the Edward Snowden leaks in 2013, a growing number of internet and telecommunication companies published their transparency reports amid increasing concern over privacy by the public, and this has become an ever more common practice in the ICT industry. However, no Hong Kong tech firm has pursued such a practice to date.

Table 1.2 ICT companies that release information about Hong Kong in their transparency reports

Company	Year of first release of transparency report	Year of first release of HK requests	Country where headquarters is located	Average annual number of requests	URL
Google	2010	2010	US	490	https://www.google.com/transparencyreport/userdataarequests/HK/
Microsoft	2012	2012	US	662	https://www.microsoft.com/about/corporatecitizenship/en-us/transparencyhub/lerr/
Twitter	2012	2013	US	1	https://transparency.twitter.com/country/hk
Yahoo	2013	2013	US	960	https://transparency.yahoo.com/government-data-requests/index.htm

⁵ Access Now. Transparency reporting index. <https://www.accessnow.org/transparency-reporting-index/>

Apple ⁶	2013	2013	US	820	http://www.apple.com/hk/en/privacy/transparency-reports/
Facebook	2013	2013	US	62	https://govtrequests.facebook.com/country/HongKong/2015-H1/
Verizon	2013	2014	US	1	http://transparency.verizon.com/international-report

⁶ The numbers from Apple include device requests and total an average of 781 a year from 2013. The vast majority of the requests Apple receive from law enforcement relate to information about lost or stolen devices. Device requests may also include requests for customer contact information provided to register a device with Apple or the date(s) the device used Apple services.

2. Key findings

a. Fewer requests in general

The data released by the Hong Kong government shows that it has sent fewer user data and content removal requests since 2013, from 6,008 cases to 4,637 in 2015.

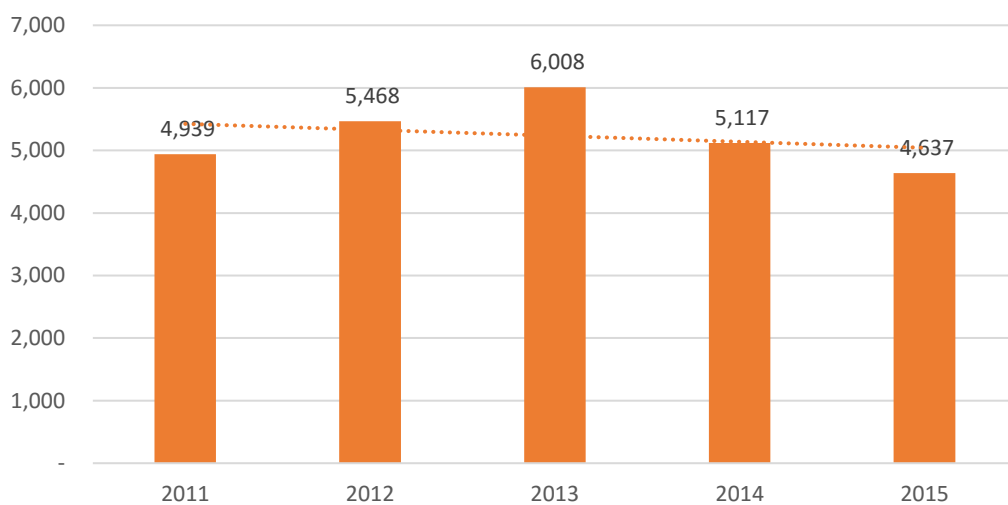


Chart 1 User data and content removal requests by the Hong Kong government 2011 – 2015

At the same time, the number revealed by the seven major ICT companies (Google, Microsoft, Twitter, Yahoo, Apple, Facebook and Verizon) backed up the government's data. The amount of user data requests went down from 2,988 cases in 2013 to 1426 in 2015. The seven companies accounted for 44% of all user data requests from the Hong Kong government. Their 52% request drop is more severe than the 23% of decline in the government requests (see Appendix A). Since the user data requests accounted for 92% of all requests, these numbers are sufficient to reflect the overall trend.

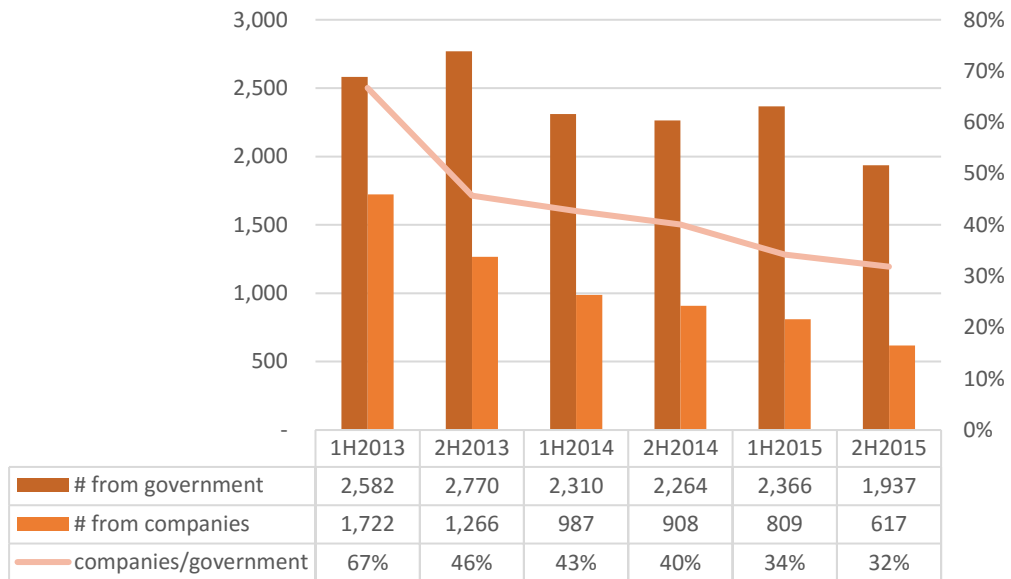


Chart 2 Comparison of user data request numbers released by the government and companies

HKTR has yet to obtain any explanation for the decline in requests from the Hong Kong government, but the challenges from the overseas ICT companies might be a driving force for the government to be more cautious. According to the statistics revealed by the seven companies, they rejected an average of 40% of user data requests from the Hong Kong government.

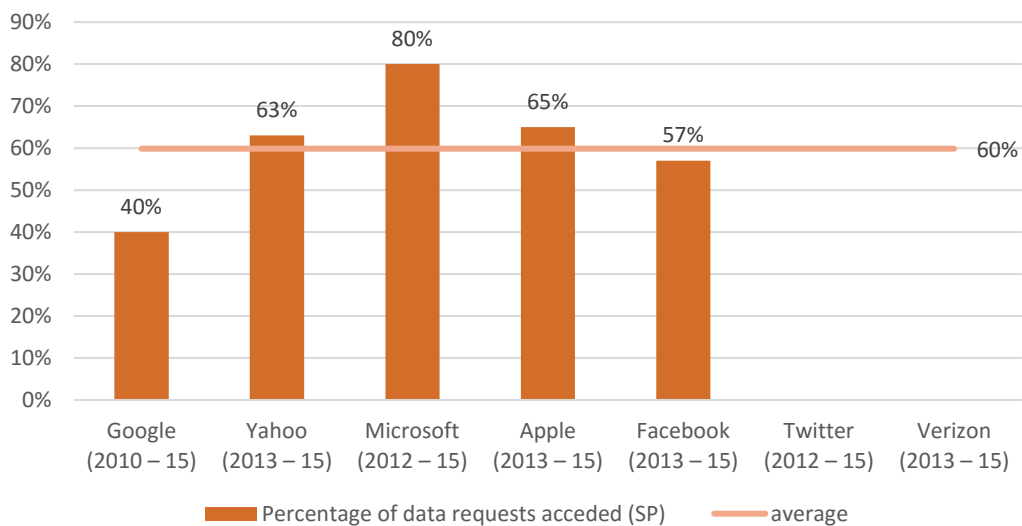


Chart 3 Comparison of percentage of user data requests acceded (released by companies)

In addition to the falling numbers, a case in 2012 revealed by Google exemplified the resistance from the tech firms: the Customs and Excise Department was frustrated by Google as the tech firm rejected a request to remove 370 YouTube videos for copyright infringements due to the incompleteness of the government notice.⁷ After that, content removal requests made by the Customs and Excise Department hit a record high of 372 in 2013, but then slumped to 42 in 2015.

b. More requests to social media

In spite of the declining trend of requests sent by the Hong Kong government, at least one company—Facebook—recorded continuing increases of user data requests and numbers of accounts involved, in particular in 2015, with an annual increase of 212%.

The Hong Kong government did not directly reply to the question raised by legislator Charles Mok in January this year over the spike of requests to Facebook. Facebook also declined to respond to media enquiries concerning which department made such requests and whether the rise was related to arrests after the 2014 Occupy movement, only saying that the government requests were for crime-related investigations.⁸

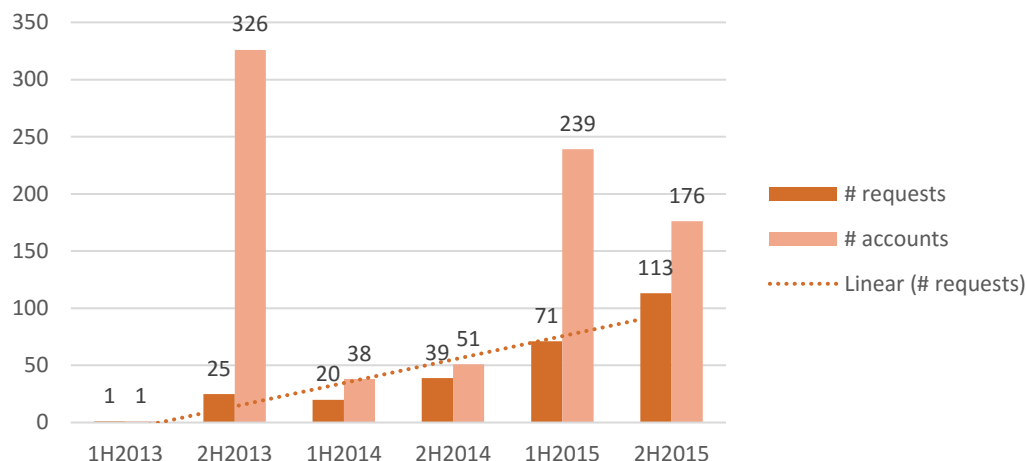


Chart 4 User data requests to Facebook by the Hong Kong government

⁷ The case reported by Google

(<https://www.google.com/transparencyreport/removals/government/notes/?hl=en#authority=HK&period=all>) was consistent with the government release made in February 2013 (<http://www.info.gov.hk/gia/general/201302/06/P201302060424.htm>), in which Customs and Excise was the only department which said its request was not acceded to by a SP (service provider).

⁸ Vivienne Zeng. (14 November 2015). 82 percent increase in Hong Kong gov't requests for Facebook user data. Hong Kong Free Press. <https://www.hongkongfp.com/2015/11/14/82-percent-increase-in-hong-kong-govt-requests-for-facebook-user-data/>

Despite the equivocation by both the government and Facebook, the social media platform was apparently an increasingly important target of government requests, which may have led to arrests by the Police.

According to a database maintained by HKTR (see transparency.jmsc.hku.hk/arrests-for-online-speech/), at least 19 people were arrested for comments made online from June 2014 to November 2016. 10 were arrested for remarks on Facebook, and another seven for remarks on HKGolden, a popular local online forum in Chinese, and two on other websites. 10 of them were related to the Occupy movement in 2014, two were involved in the Mong Kok riot in 2016 and another two were arrested for allegedly threatening returning officers of the 2016 Legislative Council election. All of these arrests were charged under Section 161 of the Crimes Ordinance—"access to computer with criminal or dishonest intent"—and four have been sentenced to either community service or time in a rehabilitation centre.

Critics, such as Principal Lecturer at The University of Hong Kong, Eric Cheung⁹, have argued that the authorities were exploiting the ambiguity of "access to a computer with criminal or dishonest intent" to repress political activists' speech on the internet. Section 161 has a lower threshold for prosecution than more substantial offences in Hong Kong such as "illegal gathering", "criminal intimidation", or "assaulting police".

The zeal of the Police to monitor activists' online speech is perhaps understandable in view of the vital role that social media activism played in 2014's Occupy Central movement. Protesters used popular social media platforms such as Facebook and Twitter to communicate and disseminate real-time information. Joshua Wong, pro-democracy activist and one of the founders of student activism group Scholarism and political party Demosistō, emphasised the importance of social media at an event in 2015: "Without Facebook there would be no Occupy Central, without Facebook there would be no Joshua Wong."¹⁰

c. More information revealed in general

Quantitatively, the number of items of information released by the government increased from seven in 2013 to 13 in 2016. Qualitatively, government—through departments such as the Inland Revenue—increasingly pursued a loose interpretation of laws that might forbid it to reveal information related to companies.

In the three government releases published in February 2013, February 2014 and October 2014, the Inland Revenue Department solely revealed the number of requests "due to the

⁹ Orchid member suggesting extermination of columnist arrested for dishonest use of computer (涉不誠實使用電腦 稱「屈穎妍應滅門」 蘭花系成員被捕). (28 May 2015). Apple Daily. <http://hk.apple.nextmedia.com/news/art/20150528/19163341>

¹⁰ Gary Scattergood. (26 May 2015). Activist Joshua Wong underlines importance of social media. Hong Kong PR Network. <http://www.prweek.com/article/1348441/activist-joshua-wong-underlines-importance-social-media-hong-kong-pr-network#lkWKzvO1R6PMoF2V.99>

secrecy provisions under the Business Registration Ordinance (Cap. 310) and the Inland Revenue Ordinance (Cap.112).” However, in the next two releases, published in February 2015 and January 2016, the department started to provide three additional items: the number of SPs (ICT companies) and accounts involved, and the compliance rate.

Although not all departments increased the quantity, or quality, of the information released, HKTR found that at least no department downsized the released information.

Such changes are improvements and demonstrate a greater scope to increase transparency under the current legal framework.

d. Absence of compliance rate

In the past Legislative Council questions regarding the issue, the legislators requested the government to provide specific items of information. However, some departments did not fulfil all requirements, only claiming that “relevant statistics are not available” or explaining that such information could not be provided by law.

The most extreme cases were found with regard to the Hong Kong Police Force, which neither revealed how many requests were acceded to by ICT companies nor delivered a reason. The Police Force made a total of 21,384 requests over the past five years, which account for a majority (82%) of all government requests. The failure to publish compliance rates or an explanation for this made the Police Force one of the least transparent departments.

e. Discrepancies in disclosures

Discrepancies in the government emerged when most of departments revealed the statistics as the legislators requested but some others such as Police Force and Inland Revenue Department withheld specific data.

The absence of compliance rate of the Police Force leads to a discrepancy between the government and companies. Excluding the data of this department, the government data shows 94% of user data requests were acceded to by ICT companies from February to December 2015, but the data from the companies shows that the overall compliance rate was only 59% for 2015.

Google says it rejected 239 user data requests from the Hong Kong government in 2015 alone¹¹, but the authorities say all departments excluding the Police were only rejected by

¹¹ Google. Google Transparency Report.
<https://www.google.com/transparencyreport/userdatarequests/HK/>

ICT companies 14 times in 2015. This comparison indicates that the Police, may have faced a large number of rejections.

The discrepancies underscore a lack of guidelines for information disclosure procedures. In fact, an investigation report published in March 2014 by the Office of The Ombudsman on the Access to Information regime in Hong Kong¹² highlighted the issue:

"Our observations in complaint cases show that government bureaux and departments (B/Ds) still do not fully understand the spirit and letter of the Code on Access to Information, as a result of which the exemption provisions are applied or not applied by B/Ds according to their own interpretations...There are inadequate guidelines governing the circumstances under which the exemption provisions should be used."

f. Absence of court orders

The Inland Revenue Department said the information about requests made under court orders was not available "due to the secrecy provisions under the Business Registration Ordinance (Cap. 310) and the Inland Revenue Ordinance (Cap.112)".

The Police Force also stated that "relevant statistics are not available". Excluding these two departments, the HK government made no request under a court order between February and December 2015.

Although it has not been made compulsory for the government to accompany requests to companies with a court order in Hong Kong, court orders still matter. The Companies Registry was refused a request in 2015 when an overseas SP said it could only provide the relevant information with an order issued by a court. As more ICT companies are putting emphasis on their users' privacy and freedom of expression after the Edward Snowden leaks in 2013, the government is expected to face more challenges in legal procedures when it requires companies to hand over or take down information.

¹² Office of The Ombudsman. The Access to Information Regime In Hong Kong. p3. http://ofomb.ombudsman.hk/abc/files/DI238_full_E-20_3_2014_with_Appendix_1.pdf

3. Recommendations

a. The HK government should set up an independent review of government request practices

The issues highlighted in the “Key findings” chapter, including absence of information and discrepancies in disclosures, may reflect deeper-rooted problems in the mechanisms of government information requests and disclosure.

HKTR and legislators have been calling for a review of current mechanisms. Legislator Charles Mok raised the issue again in January this year.¹³

However, the authorities have denied a review. The Secretary for Innovation and Technology, Nicholas Yang, wrote in a reply in January 2016 to Mok: “Since the above mechanisms and guidelines are functioning effectively, we do not think it is necessary to put in place separate procedures for internet service providers.” He explained that the work-related records would be maintained “in accordance with the guidelines stipulated in the Records Management Manual” and relevant information would be released in accordance with the Code on Access to Information.

Yang only listed the current policies but failed to answer whether they are sufficient to protect the information technology industry against potential nuisance from government departments, as well as to protect citizens’ privacy and freedom of expression.

“Existing mechanisms function effectively” or similar statements have been cited five times by the government in the past four years, but the “effectiveness” of mechanisms could be questioned. For example, the compliance rate withheld by the Police Force has left the public with questions: Is it because the Police never maintained such records? Or because the disclosure might harm public security? What is the mandate to disclose or not to disclose?

A review should be introduced to look at the practices from all sides, including citizens, industry and the government itself.

As government request practices involve various laws, governmental guidelines and departments, the review should also be independent. Commissioning an independent review would also help to ensure that all issues (i.e. privacy, public security, the interests of the information technology industry and administrative procedures) are fairly considered. HKTR suggests at least two areas of focus for the review: 1) to clarify legal issues,

¹³ LCQ21: Government's requests for information disclosure and removal to Internet service providers. (27 January 2016). The question is: “whether the Government will scrutinise if the procedures adopted by various government departments for making requests to service providers for information disclosure/removal are consistent with the principle of providing a fair and open business environment to the information technology sector, and if such procedures have invaded the privacy of members of the public”.

<http://www.info.gov.hk/gia/general/201601/27/P201601270385.htm>

administrative procedures and monitoring mechanisms; 2) to advise on a code of practice and possible amendments to existing laws that would better protect citizens' privacy and free speech.

b. The HK government should establish internal guidelines and them make public

The improvement in information disclosure by the Inland Revenue Department demonstrates a greater scope to increase transparency under the current legal framework.

However, in terms of request-making procedures and transparency around them, the situation doesn't seem optimistic. According to a story published by news magazine *Eastweek* in June 2013, an anonymous former member of staff of an internet service provider revealed that the Police, Customs and Excise Department and Department of Health used different types of forms when they sent user data requests to tech firms. For example, the form used by the Police was only one piece of paper and police officers were not required to inform the companies about the cases they requested the information for. Even so, the whistle blower said officers did not always fulfilled all requirements stipulated in the form, but local companies still tend to cooperate with the Police out of fear that failure to do so might otherwise incur trouble in the future.¹⁴

According to Section 58 (1)(a) of the Personal Data (Privacy) Ordinance, personal data held for the purposes of the prevention or detection of crime is exempt from the provisions of Data Protection Principle 6, which stipulates that a person has the right to ascertain whether someone else uses his/her personal data. However, there are no legal and publicly available guidelines providing details of due process for law enforcement or other government departments to request user data.

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 ICT companies: subpoenas, court orders and search warrants.¹⁵ These three procedures serve as a mechanism to compel government agencies to perform their duties within legal boundaries.

Hong Kong should begin by implementing universal standards and due process for all government departments in the future guideline, and make them public, which will help

¹⁴ Martin Lam, Ben Lei. (26 June 2013). Confidential form leaked: government departments misuse netizens' data (機密表格曝光 揭政府部門索網民資料兒戲). *Eastweek*. The whistle-blower said the form—titled "Police Request for Information"—was designed to be endorsed by a liaison officer of the Police but sometimes these endorsements were instead signed by direct supervisors, which is not the appropriate protocol for these types of situations. It was reported that the practices differed across Police districts, which left it hard for the SPs to verify whether it is necessary for them to comply or not.

¹⁵ Electronic Communications Privacy Act of 1986 (ECPA).
<https://it.ojp.gov/privacyliberty/authorities/statutes/1285>

companies and individuals decide how to appropriately react to information requests, and ensure that governmental practices fall under public scrutiny.

c. The HK government should make regular releases of information on disclosure/removal requests

The information about government data and content removal requests has been disclosed upon the request of Legislative Council members, and since these disclosures have been made five times since 2013, with both the quality and quantity of information improving, the government should have no technical issues in collecting such data on a routine basis.

In fact, the authorities already publish regular reports related to citizen's rights in the cyberspace, such as the annual reports by the Commissioner on Interception of Communications and Surveillance¹⁶, and the quarterly statistics of information requests under the Code on Access to Information¹⁷.

In other jurisdictions, there are regular disclosures of government data and content removal requests. In South Korea, the Ministry of Science, ICT and Future Planning publishes biannual numbers for requests about four major measures of surveillance: interception, communication metadata¹⁸, subscriber identifying information¹⁹ and search and seizure (communications contents). In terms of censorship, the Korea Communications Standards Commission, which has the authority to delete or block access to online information, also publishes the numbers of takedown requests on an annual basis.²⁰ In Taiwan, the Institute of Watch Internet Network (iWIN), a watchdog to handle public complaints on questionable internet contents pursuant to the Protection of Children and Youths Welfare and Rights Act, has included the number of takedowns in its monthly statistics.²¹

Hong Kong should not fall behind in the region and fail to operate an accountable government which regularly informs its citizens about what it is doing with their personal data and online content. Hong Kong is capable of regularly publishing data information and content removal requests, and the experience of other jurisdictions has proved such mechanisms can function effectively. Given the international standards, the HK government

¹⁶ Annual Reports to the Chief Executive by the Commissioner on Interception of Communications and Surveillance. Secretariat, Commissioner on Interception of Communications and Surveillance. <http://www.info.gov.hk/info/sciocs/en/welcome.htm>

¹⁷ Statistics of information requests concluded by individual departments and the result of processing. http://www.access.gov.hk/en/statistics/info_req_bds.html

¹⁸ According to Korea Internet Transparency Report, communication metadata refers to time, date of communications, phone numbers, location, etc.

¹⁹ According to Korea Internet Transparency Report, subscriber identifying information refers to name, ID, address, etc.

²⁰ Korea Internet Transparency Reporting Team. (October 2015). Korea Internet Transparency Report. pp.2 – 3. <http://transparency.kr/>

²¹ Taiwan Association for Human Rights. (October 2015). Taiwan Internet Transparency Report. p.45. <http://www.tahr.org.tw/transparency/>

is advised to release the statistics on a biannual basis in an open data format, which would enable easier auditing and analysis.

d. Hong Kong ICT companies should publish transparency reports

61 companies had released transparency reports by the end of 2015 globally, with seven of them revealing that they have received requests from the HK government. Their reports show that the seven ICT companies rejected an average of 40% of user data requests from Hong Kong, which has witnessed a continually decreasing number of requests since 2013, and it dropped faster than the number of all requests from HK government.

Although the data has yet to support a conclusion that corporate transparency reporting effectively controls the government in sending requests, such practices at least indicate that the companies have policies in place to handle the requests and are making efforts to make such information transparent to their users. This is a fundamental improvement in the information and technology sector following the 2013 Edward Snowden leaks.

However, no company headquartered in Hong Kong has published a transparency report or released statistics related to government requests. HKTR understands that transparency reporting is still emerging and has only been pursued by major technology firms based in North America and Europe in the past four years, but some Hong Kong companies have also been expanding their businesses across the globe, including in those regions. Hong Kong companies need to consider how to compete with the leading North American and European tech firms in every aspect, including with regard to their transparency policies. Transparency reporting has accelerated its spread in East Asia, with two South Korean internet companies—Kakao²² and Naver²³—for example, launching their own transparency reports in 2015. Hong Kong companies should not fall behind.

Citizens in Hong Kong are increasingly aware of their rights in the digital world. An example can be seen in the suspension of the Copyright (Amendment) Bill in early 2016 due to public concern that it may be exploited by the government to restrict freedom of expression on the internet. Another example is the launch of Access My Info²⁴, a web application aimed at helping telecommunication users to obtain their personal information according to the Personal Data (Privacy) Ordinance, which has facilitated hundreds of people in sending requests to telecom operators since its launch in May. Hong Kong ICT companies should respond to this growing rights awareness amongst the public—revealing how they handle government requests by publishing transparency reports would be a fundamental first step.

²² Kakao Transparency Report <http://privacy.kakaocorp.com/en/transparence/report/request>

²³ Naver Transparency Report <https://nid.naver.com/user2/privacycenter/globalInfo.nhn>

²⁴ Access My Info. <https://accessmyinfo.hk>

Postscript

Edward Snowden and transparency reporting

On 6 February 2013, the Hong Kong government for the first time released information about internet user data and content removal requests to internet service providers in reply to a question by legislator Charles Mok²⁵. The release is regarded as the city's first step into transparency reporting, although the information contained in it was still rudimentary. The release made headlines across news outlets the day after, despite the level of public concern for this issue being low. At that time, transparency reporting was still only a voluntary practice by six major tech firms²⁶ including Google, which first started to report such data in 2010.

Three months later, Edward Snowden entered the international public limelight with his disclosures about a mass surveillance programme in the US. Snowden arrived in Hong Kong on 20 May 2013 and thrust the city into the centre of a worldwide privacy crisis²⁷. The American computer professional, who previously worked for a contractor with the United States National Security Agency, revealed to the world that citizens' privacy was under threat because a programme code-named 'Prism'²⁸ allowed the NSA to directly access our personal data, email accounts, internet search terms and communication networks. Internet giants like Google, Facebook, Microsoft and Apple were involved.

The Snowden leaks underscored the privacy risk behind the development of the digital economy, and also brought up a crisis of confidence in both tech giants and governments, not only in the US. Business sectors, administrations and civil societies were all aware that action was required to cope with the crisis. Hong Kong, as a major business city, had never been that close to such an international political, legal and technological crisis. Snowden

²⁵ LCQ10: Request Internet service providers for disclosure or removal of users' information. (2013). <http://www.info.gov.hk/gia/general/201302/06/P201302060424.htm>

²⁶ Access Now. Transparency Reporting Index. <https://www.accessnow.org/transparency-reporting-index/>

²⁷ Glenn Greenwald, Ewen MacAskill, Laura Poitras. (11 June 2013). Edward Snowden: the whistleblower behind the NSA surveillance revelations. The Guardian. <http://www.theguardian.com/world/2013/jun/09/edward-snowden-nsa-whistleblower-surveillance>

²⁸ Glenn Greenwald, Ewen MacAskill. (7 June 2013). NSA Prism program taps in to user data of Apple, Google and others. The Guardian. <http://www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data>

finally left Hong Kong for Moscow a month later, but actions to protect privacy were already underway in Hong Kong.

Only two months after the Edward Snowden leaks, HKTR was officially launched on 10 August 2013²⁹ as a research and advocacy project under the Journalism and Media Studies Centre of The University of Hong Kong. HKTR aims to provide a baseline documentation of the state of transparency between the Hong Kong government and technology and communications companies, with a focus on requests for user information and content takedown, which are normally sent for legal concerns, such as crime investigation and copyright violation. HKTR has worked actively with all parties in the internet and human rights communities: government officials, legislators, advocacy groups, scholars, lawyers and computer experts.

In 2013, the number of companies worldwide which released transparency reports tripled from six to 18, and went on to double to 39 in 2014.

On 26 September 2014, *Hong Kong Transparency Report 2014* was published and made seven recommendations³⁰, including establishing and making internal guidelines public and extending the scope of disclosure.

Following the efforts of HKTR, the government has revealed an increasing amount of information, included in its replies to legislators' questions. In 2013 the government rendered only aggregated numbers of a three-year period with seven features, but in 2016 it provided 13 features and biannually aggregated numbers, which is in line with international standards of transparency reporting.

Occupy movement and mistrust

However, the government still ignores most of HKTR's recommendations on the premise that "the relevant mechanism has all along been functioning effectively". Meanwhile, the Hong Kong government has come under heightened pressure amid an expanding civil society in Hong Kong, with stronger rights awareness and a deeper mistrust of the

²⁹ Scholar criticises lack of transparency in government requests for website data (學者批政府索網站資料欠透明). (11 August 2013). Ming Pao Daily News. <http://www.e123.hk/ElderlyPro/details/263273/71>

³⁰ Jennifer Zhang, Launch of the Hong Kong Transparency Report 2014. (28 September 2014). Hong Kong Transparency Report. <http://transparency.jmsc.hku.hk/2014/09/26/launch-of-the-hong-kong-transparency-report-2014/>

government in the wake of the Occupy movement. This movement started on 28 September 2014³¹, two days after HKTR's first report was published.

The 79-day protest calling for universal suffrage according to international standards for the 2017 Chief Executive election was largely mobilised on the internet, in particular through increasingly popular social media platforms. Following on from the movement, there were arrests and indictments of activists who organised on social media. According to a database maintained by HKTR, at least 19 people have been arrested since June 2014 for online remarks in relation to calling for violence or "unlawful assembly", with four of those arrested being sentenced guilty so far. Facebook also revealed in its transparency report that there was a 212% annual spike in government requests for account data in 2015. The rise in requests has caused alarm and generated calls for greater scrutiny of the government's law enforcement practices, but this is difficult with a lack of access to such information and citizens are increasingly demanding improved transparency from the government.

At the same time, the Occupy movement—which ended peacefully—has apparently deepened mistrust of the government and is jeopardising its authority. A recent example can be found in the 2014 Copyright (Amendment) Bill which was shelved on 4 March 2016³² after more than three months of filibustering in the Legislative Council amid opposition from internet users and advocacy groups who were concerned that the government may take advantage of the proposed law to choke creative freedom online. Government efforts to adjust copyright law for the digital environment once again failed after 10 years of preparation and debate. In the United Kingdom, however, a new copyright policy which pursues the same "fair dealing" doctrine as Hong Kong, was successfully passed in 2014³³. Many other advanced countries have also adopted the same rule³⁴ but the issue became extremely politicised in Hong Kong as people lost trust in the government, in turn leading to a governance crisis where it is harder to introduce and implement new laws and policies.

³¹ Police fire tear gas and baton charge thousands of Occupy Central protesters. (28 September 2014). South China Morning Post. <http://www.scmp.com/news/hong-kong/article/1603350/police-fire-tear-gas-and-baton-charge-thousands-occupy-central>

³² Stuart Lau, Vivienne Chow. (4 March 2016). Blame game begins as Hong Kong copyright bill shelved indefinitely. South China Morning Post. <http://www.scmp.com/news/hong-kong/politics/article/1920593/blame-game-begins-hong-kong-copyright-bill-shelved>

³³ Intellectual Property Office, Viscount Younger of Leckie. (13 June 2014). The government is making a series of small but important changes to copyright law to make it better suited for the digital age. Government of the United Kingdom. <https://www.gov.uk/government/news/changes-to-copyright-law>

³⁴ Commerce and Economic Development Bureau. (16 July 2013). Public Consultation on Treatment of Parody under the Copyright Regime. Legislative Council Panel on Commerce and Industry. LC Paper No.CB(1)1508/12-13(03). p.14. <http://www.legco.gov.hk/yr12-13/english/panels/ci/papers/ci0716cb1-1508-3-e.pdf>

Increasing transparency would be an effective way for the government to regain public trust. HKTR calls on the government once again to review the current information and data transparency mechanisms and make a proactive and regular public disclosure of them.

Appendix A: User data requests 2011 – 2015

a. User data requests overview 2011 – 2015

i Number of user data requests 2011 – 2015

From 2011 to 2015, the Hong Kong government sent an average of 5,028 requests annually to service providers, of which 4,845 were user data requests, accounting for 92% of all government requests.

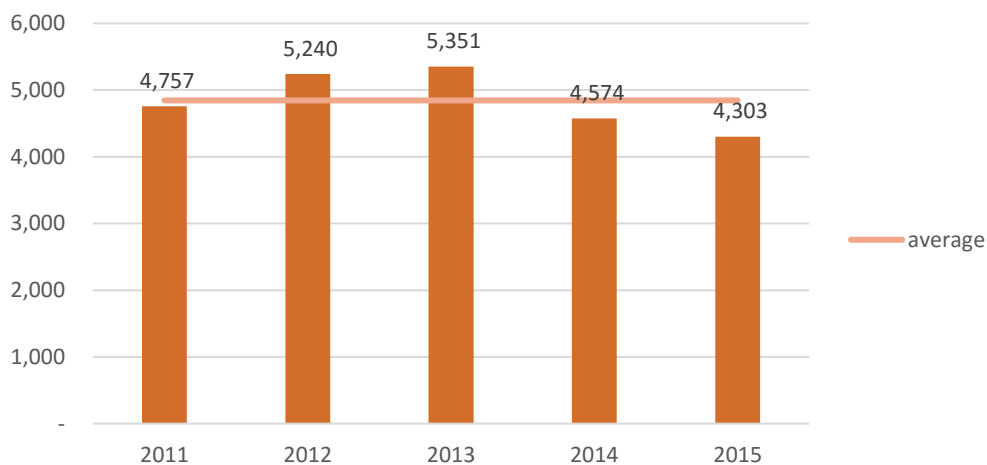


Chart 5 User data requests 2011 – 2015

ii Major sources of user data requests 2011 – 2015

Of the seven government departments which sent user data requests between 2011 and 2015, three together accounted for 99% of all requests: Hong Kong Police Force (87%, 21,101 cases), the Customs and Excise Department (11%, 2,751 cases) and the Office of the Communications Authority (1%, 277 cases).

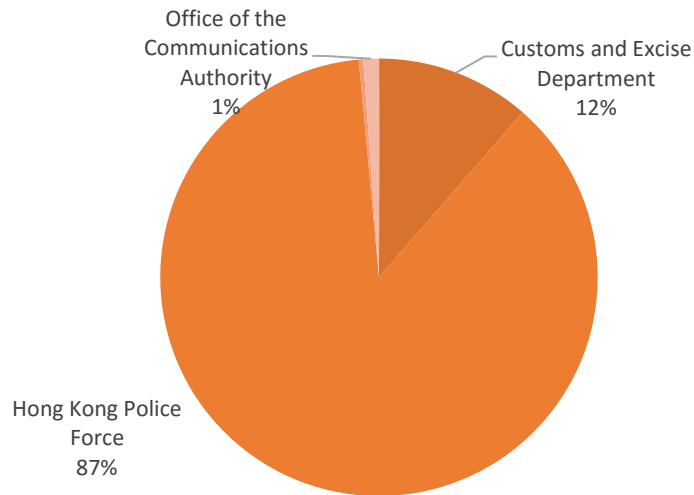


Chart 6 User data requests 2011 – 2015 (proportion of government departments)

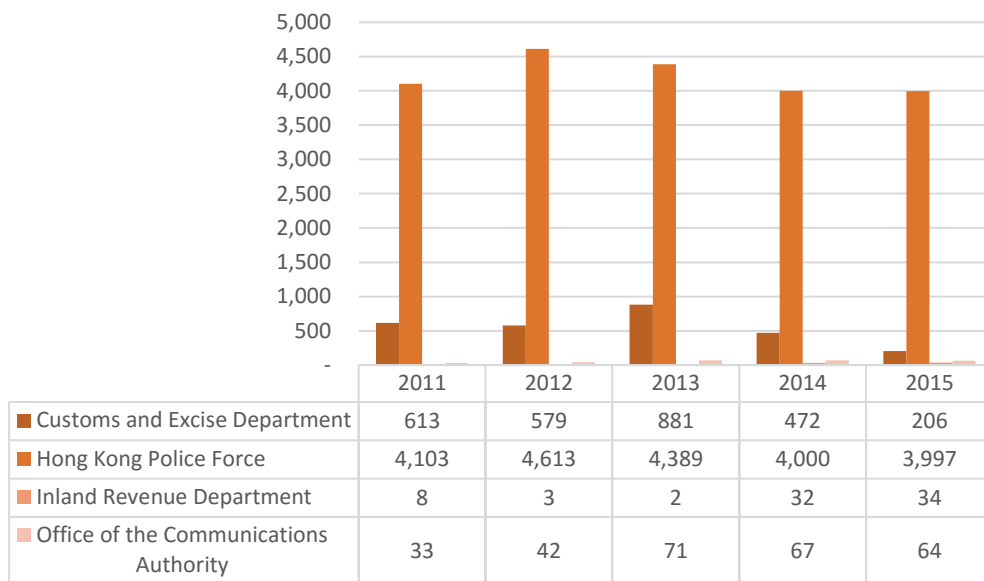


Chart 7 User data requests 2011 – 2015 (comparison of government departments and years)

iii Comparison of figures from the government and ICT companies 2013 – 2015

As of 2016, seven ICT companies have released information about user data requests from the Hong Kong government, but their data has only been comparable since 2013. HKTR compared information from both companies and the Hong Kong government.

From 2013 to 2015, data requests sent to the seven companies accounted for 44% (6,309 cases) of all data requests from the Hong Kong government. Both the absolute figure and the percentage went down from 67% (1,722 cases, 1H2013) to 32% (617 cases, 2H2015). This trend is in line with information from the government, which shows that its data requests have decreased since 2013, from 2,582 (1H2013) to 1,937 (2H2015).

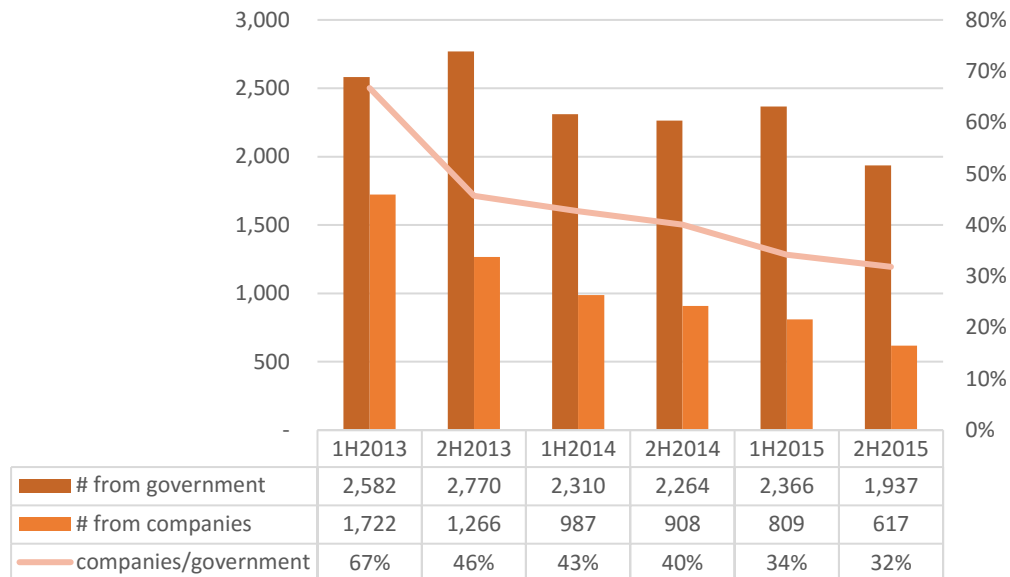


Chart 8 Comparison of user data request numbers released by the government and companies

b. User data requests 2015

From the government release published in January 2016, HKTR obtained more details about data requests between February and December 2015.

i Reasons for user data requests 2015

Two major reasons for government data requests:

- 1) **Crime prevention and detection** (98%, 3,889 cases): Hong Kong Police Force (3,760 cases), the Customs and Excise Department (128 cases), Agriculture, Fisheries and Conservation Department (1 case).
- 2) **Law enforcement** (2%, 91 cases): the Office of the Communications Authority (59 cases) Inland Revenue Department (31 cases), Companies Registry (1 case).

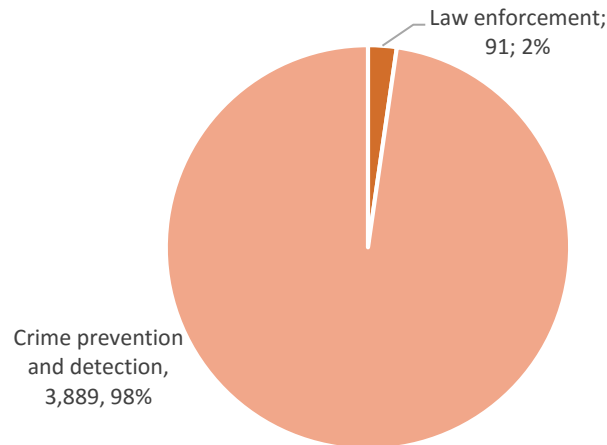


Chart 9 Reasons for user data requests 2015

ii Requests acceded 2015

The transparency reports by ICT companies normally reveal the amounts or percentages of government requests they accede to. The Hong Kong government also provided these figures in its four releases from February 2014 to January 2016.

However, the Police, which accounted for 87% of all user data requests, never revealed how many of its requests were acceded to by ICT companies.

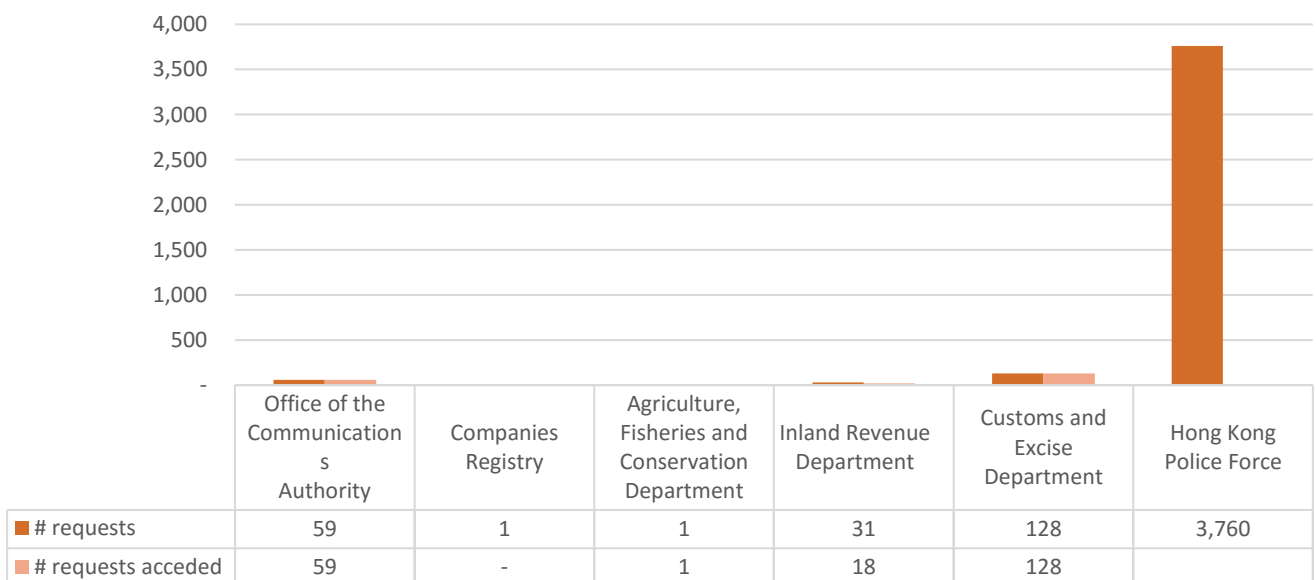


Chart 10 Comparison of user data requests acceded 2015 (released by the government)

According to government figures, and excluding the Police Force, 94% of the user data requests in 2015 were acceded to by companies. However, the information released by the companies shows only 59% of data requests from the Hong Kong government were acceded to in 2015.

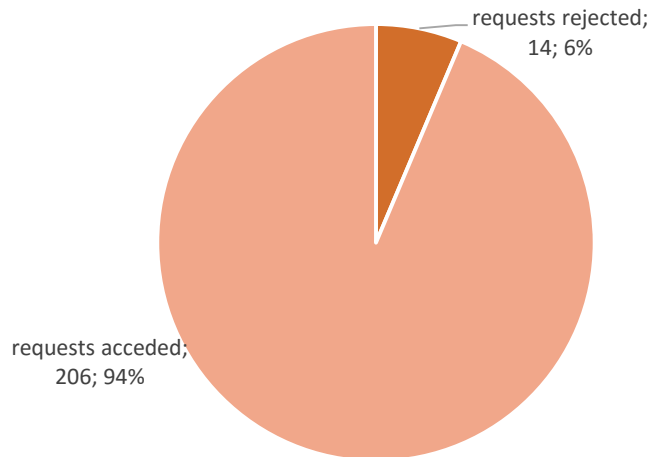


Chart 11 Percentage of user data requests acceded 2015 (released by the government)

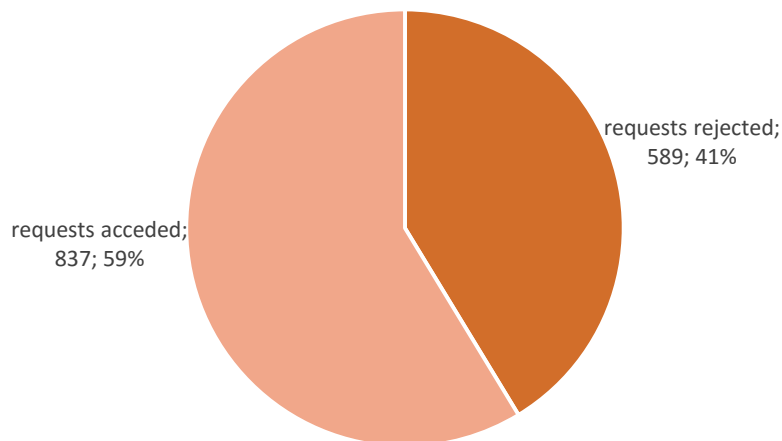


Chart 12 Percentage of data requests acceded 2015 (released by companies)

All of the data released by ICT companies also shows that 60% of the user data requests were acceded to.

The compliance rate of Microsoft (80%) ranked highest, followed by Apple (65%), Yahoo (63%), Facebook (57%) and Google (40%). Twitter and Verizon did not release such figures.

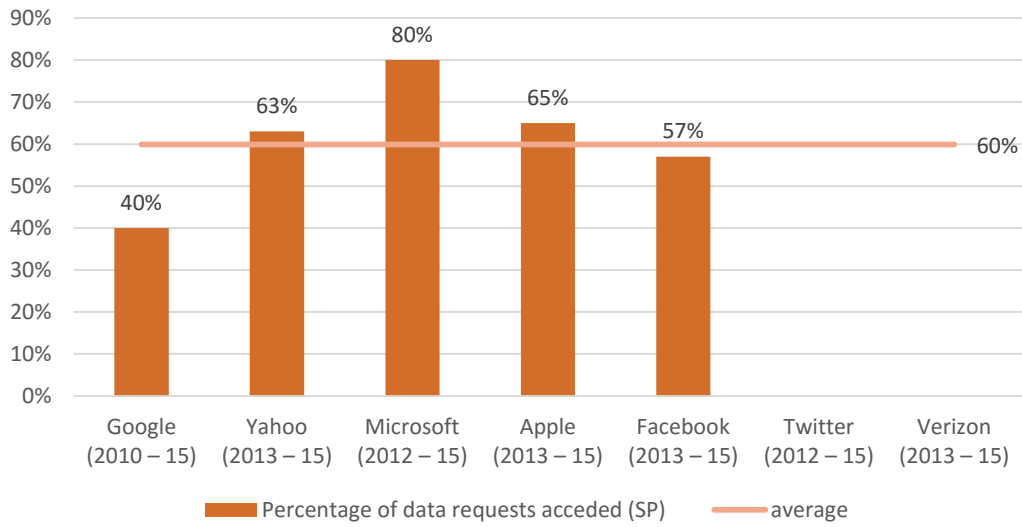


Chart 13 Comparison of percentage of user data requests acceded (released by companies)

c. Government departments' data requests 2011 – 2015

i Hong Kong Police Force

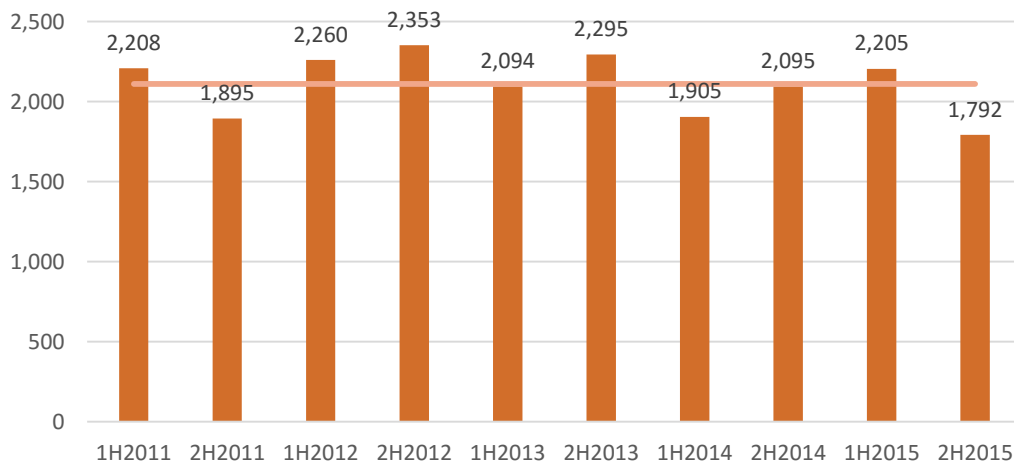


Chart 14 User data requests: Hong Kong Police Force

- From 2011 to 2015, the Police Force made an average of 2,110 requests biannually, or 4,220 annually.
- The nature of information requested was metadata.³⁵
- The reason for sending requests was crime prevention and detection, primarily involving technology crimes or crimes relating to the use of the internet.
- The Police Force did not reveal the exact number of requests acceded to, but confirmed that some requests were rejected, as "user accounts or records that do not exist are involved, or the registered user or internet protocol address is not in Hong Kong".

ii Customs and Excise Department

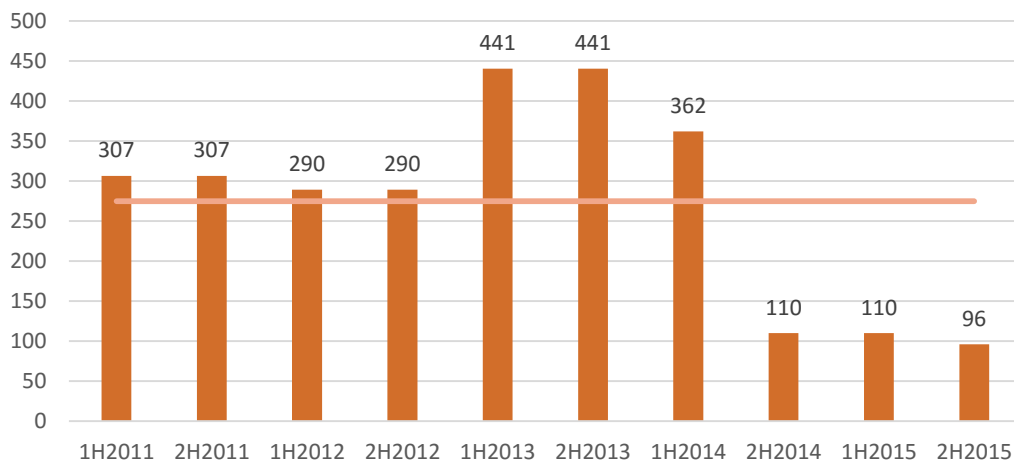


Chart 15 User data requests: Customs and Excise Department

- From 2011 to 2015, the Customs and Excise Department made an average of 275 requests biannually, or 550 annually.
- The nature of information requested was metadata, in particular user information.
- The reason for sending requests was crime prevention and detection.

³⁵ Metadata in this report refers to the basic information of an internet service provider's user, such as internet address, email, and logs.

iii Office of the Communications Authority

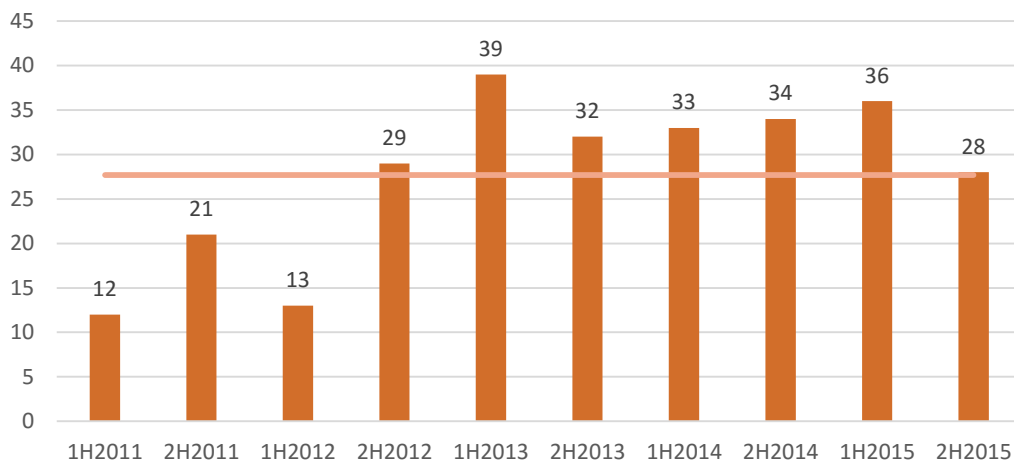


Chart 16 User data requests: Office of the Communications Authority

- From 2011 to 2015, the Office of the Communications Authority made an average of 28 requests biannually, or 56 annually.
- The nature of information requested was metadata, in particular information about the registrant of the complaint-related internet address.
- The reason for sending requests was investigation under the Unsolicited Electronic Messages Ordinance, categorised as 'law enforcement' in this report.

iv Inland Revenue Department

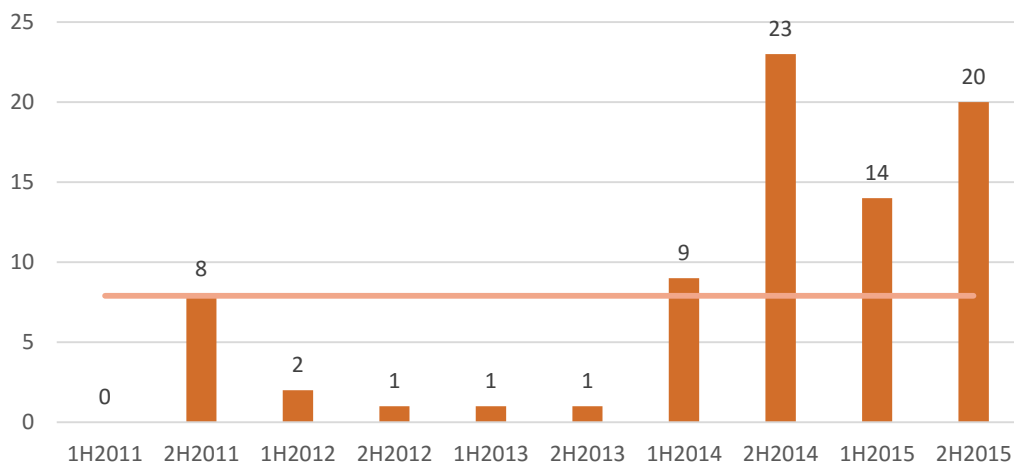


Chart 17 User data requests: Inland Revenue Department

- From 2011 to 2015, the Inland Revenue Department made an average of eight requests biannually, or 16 annually.
- The nature of information requested was metadata.
- The reason for sending requests was to "enforce the Business Registration Ordinance (Cap.310) and the Inland Revenue Ordinance (Cap.112) by requiring persons carrying out business through the internet to register their businesses and pay profits tax", categorised as 'law enforcement' in this report.
- From February to December 2015, four out of 22 requests were not acceded to by ICT companies, with one under processing.
- The Inland Revenue Department did not provide details of the type of information it requested or the reasons why companies refused to hand over the data citing "the secrecy provisions under the Business Registration Ordinance (Cap. 310) and the Inland Revenue Ordinance (Cap.112)". In the previous three government releases, even less information was revealed with the same ordinances being cited. An extreme case was the release of February 2014 when almost no information was provided by the Department. This means that the scope of information that can be released is not clearly defined by the two ordinances.

v Companies Registry

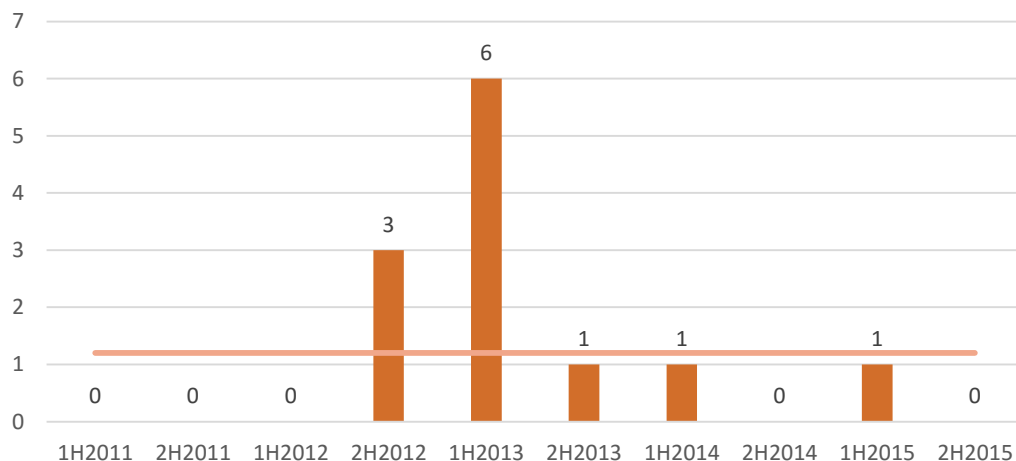


Chart 18 User data requests: Companies Registry

- From 2011 to 2015, the Companies Registry made an average of one request biannually, or two annually.

- The nature of information requested was metadata, in particular, contact information of the person-in-charge of the website the Companies Registry was investigating.
- The reason for sending requests was suspected infringement of the Companies Registry's copyright, categorised as 'law enforcement' in this report.
- One request in 2015 was rejected by a foreign SP. The SP said that it could only provide relevant information with an order issued by a local court, which the Registry did not provide.

vi Agriculture, Fisheries and Conservation Department

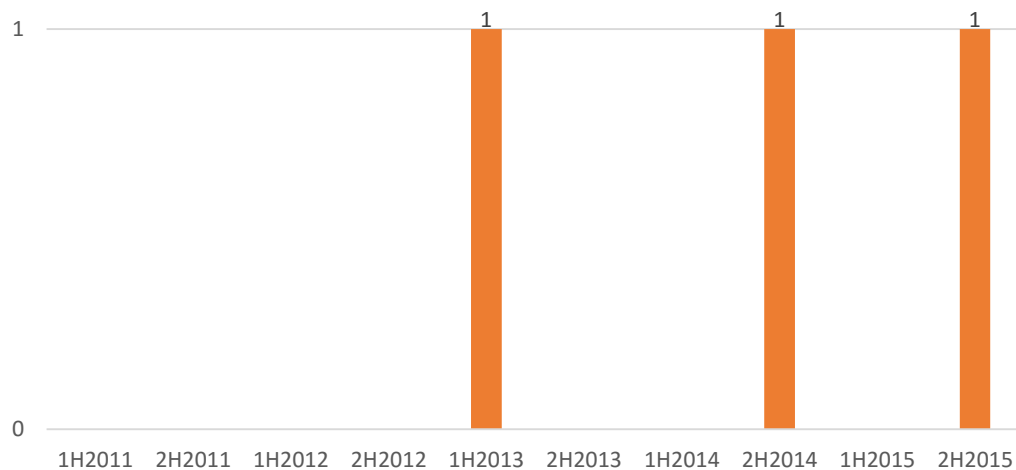


Chart 19 User data requests: Agriculture, Fisheries and Conservation Department

- From 2011 to 2015, the Agriculture, Fisheries and Conservation Department made a total of three requests.
- The nature of information requested was metadata, in particular user registration information.
- The reason for sending requests was crime investigation, categorised as 'crime prevention and detection' in this report.
- The only request in 2015 was acceded to by a website.

vii Home Affairs Department

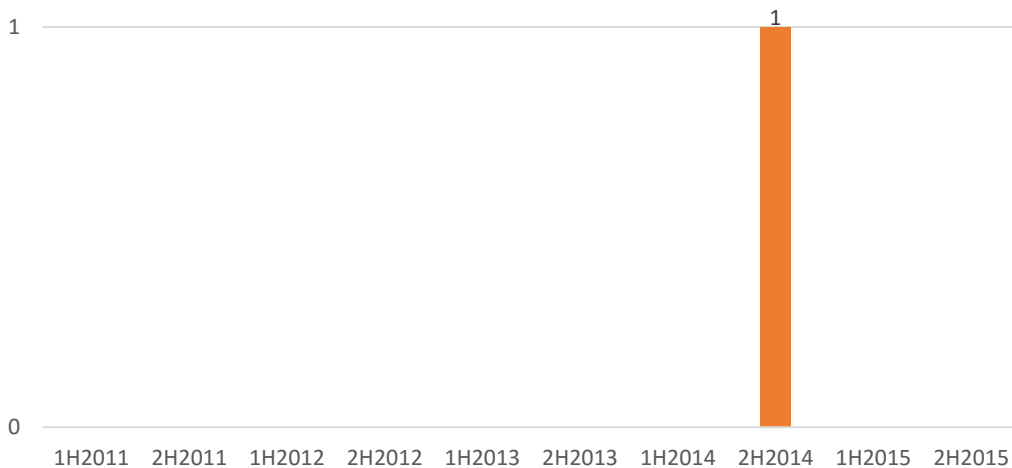


Chart 20 User data requests: Home Affairs Department

- From 2011 to 2015, the Home Affairs Department made one request.
- The nature of information requested was metadata, in particular the user's transaction record.
- The reason for sending the request was an investigation of a report of suspected unlicensed guesthouse operation.
- The only request in 2014 was not acceded to by an internet platform, as it required the Department's Licensing Authority to obtain such information in accordance with the legal process under the law of another country.

Appendix B: Content removal requests 2011 – 2015

a. Content removal requests overview 2011 – 2015

i Number of content removal requests 2011 – 2015

From 2011 to 2015, the Hong Kong government sent an average of 5,028 requests annually to ICT companies, of which 389 were content removal requests, accounting for 8% of all government requests.

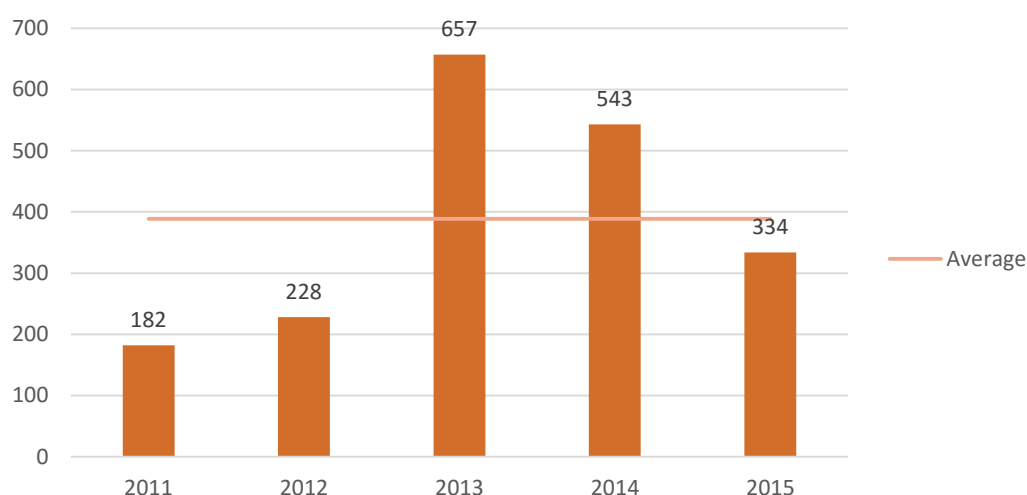


Chart 21 Content removal requests 2011 – 2015

ii Major sources of content removal requests 2011 – 2015

Of the 13 government departments which sent content removal requests between 2011 and 2015, four accounted for 98% of all requests: Department of Health – Drug Office (41%, 793 cases), Customs and Excise Department (33%, 651 cases), Hong Kong Police Force (15%, 282 cases) and Department of Health – Chinese Medicine Division (10%, 186 cases). Three divisions of the Department of Health (the two mentioned, plus the Family Health Service with four cases) together accounted for 51% of all content removal requests from the Hong Kong government. Nine other departments accounted for less than 2% of all requests.

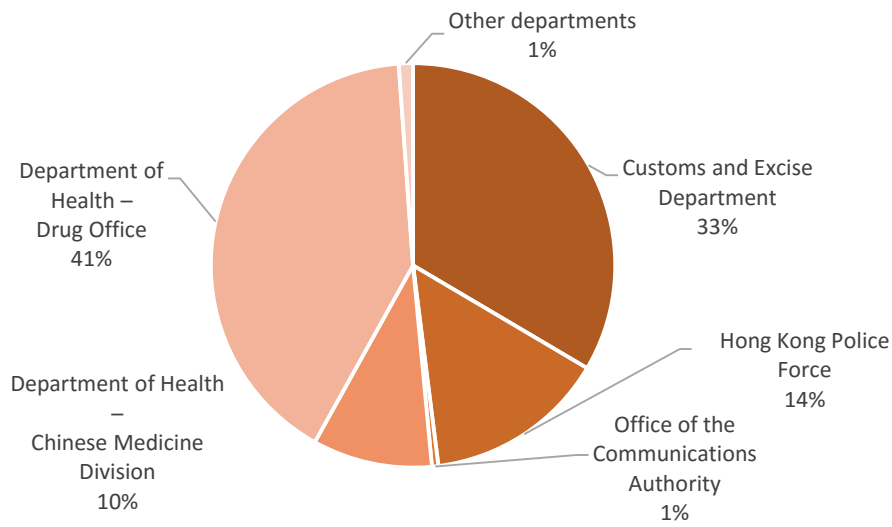


Chart 22 Content removal requests 2011 – 2015 (proportion of government departments)

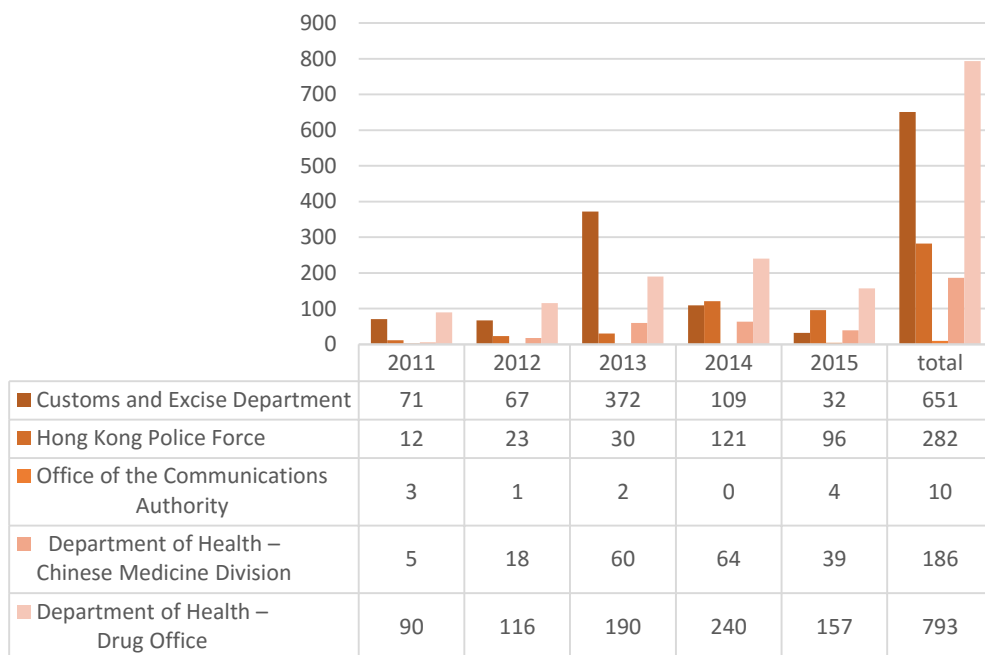


Chart 23 Content removal requests 2011 – 2015 (comparison of government departments and years)

iii Figures from ICT companies

As of 2016, only two ICT companies have revealed that they received removal requests from the Hong Kong government: Google and Twitter.

Google received a total of 21 requests from the second half of 2010 to 2015, seven (33%) of which were acceded to.

Twitter received two requests from 2012 to 2015, both of which were acceded to.

Google also revealed two cases:

i. July to December 2014

“ We received a request from the Technology Crime Division of the Hong Kong Police Commercial Crime Bureau to remove a YouTube video that they claim disseminates a false message that Hong Kong Police assaulted a person under arrest in a police vehicle.

Outcome: we did not remove the video. ”

ii. January to June 2012

“ We received a request from the Hong Kong Customs and Excise Department to remove 370 YouTube videos for containing allegedly copyright infringing material.

Outcome: we did not remove content in response to this request because the notice was incomplete. ”

The government responded to the second case in February 2013, saying that the “C&ED [Customs and Excise Department] advised the copyright owners to furnish the required information to YouTube direct. The copyright owners subsequently revealed to C&ED that YouTube had deleted some of the infringing videos after obtaining the relevant information.”

b. Content removal requests 2015

From the latest government release published in January 2016, HKTR obtained more details about content removal requests between February and December 2015.

i Reasons for content removal requests 2015

Four types of reasons for content removal requests:

- 1) **Suspected illegal sale of medicine** (59%, 180 cases): Department of Health – Drug Office (141 cases), Department of Health – Chinese Medicine Division (39 cases)
- 2) **Crime prevention** (28%, 87 cases): Hong Kong Police Force
- 3) **Infringing activities** (12%, 36 cases): Customs and Excise Department (31 cases), Family Health Service (four cases), Transport Department (one case)
- 4) **Indecent content** (1%, four cases): Office of Communications Authority

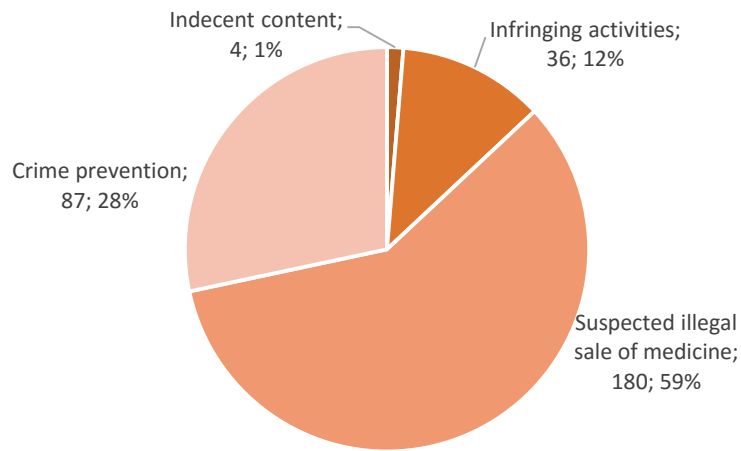


Chart 24 Reasons for content removal requests 2015

ii Requests acceded 2015

Based on a comparison of the government releases and the information from the ICT companies, HKTR found that there was an issue with incomplete information. Hong Kong Police Force, which accounted for around 28% of all government requests, has not revealed how many of its requests were acceded to by companies.

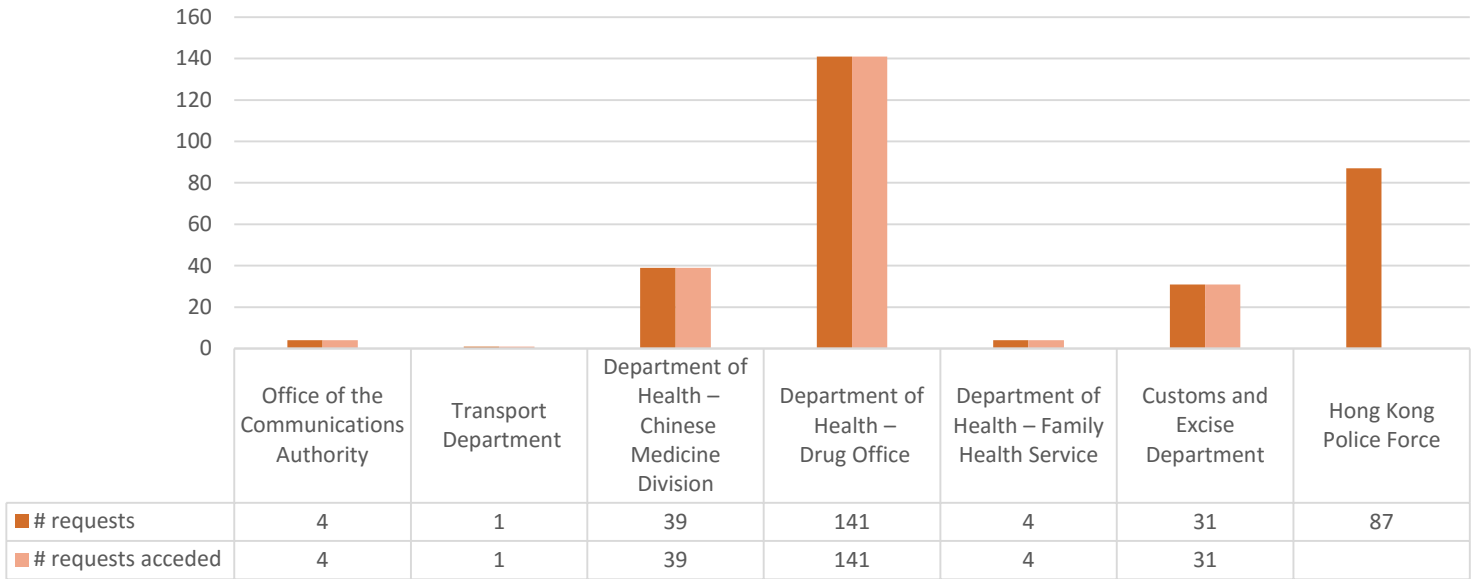


Chart 25 Comparison of content removal requests acceded 2015 (released by the government)

c. Government departments' removal requests 2011 – 2015

i Department of Health – Drug Office

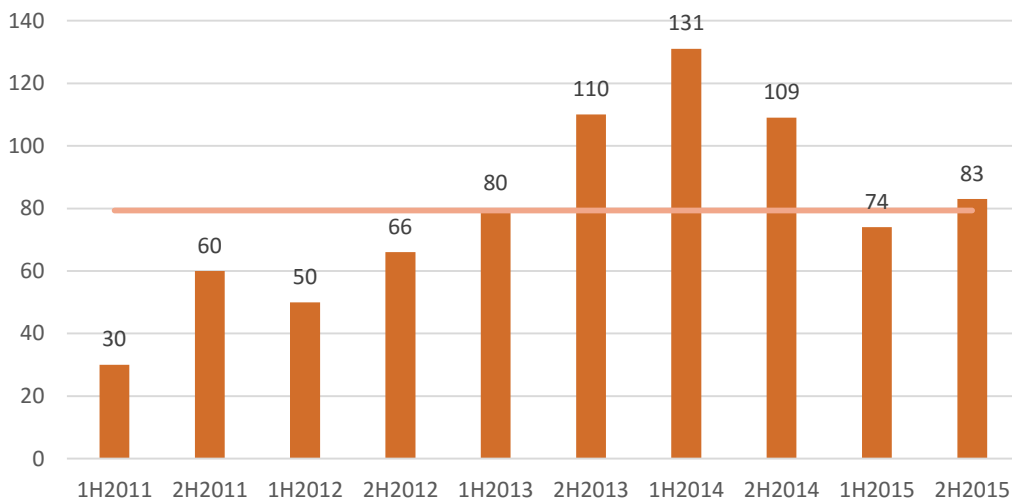


Chart 26 Content removal requests: Department of Health – Drug Office

- From 2011 to 2015, the Department of Health – Drug Office made an average of 79 removal requests biannually, or 158 annually.

- The nature of information requested for removal was hyperlink-related to auction or sale information. For example, 1,004 hyperlinks were removed from February to December in 2015.
- The reason for sending requests was to stop the suspected auction or sale of controlled or unregistered medicines, categorised as 'suspected illegal sale of medicine' in this report.

ii Department of Health – Chinese Medicine Division

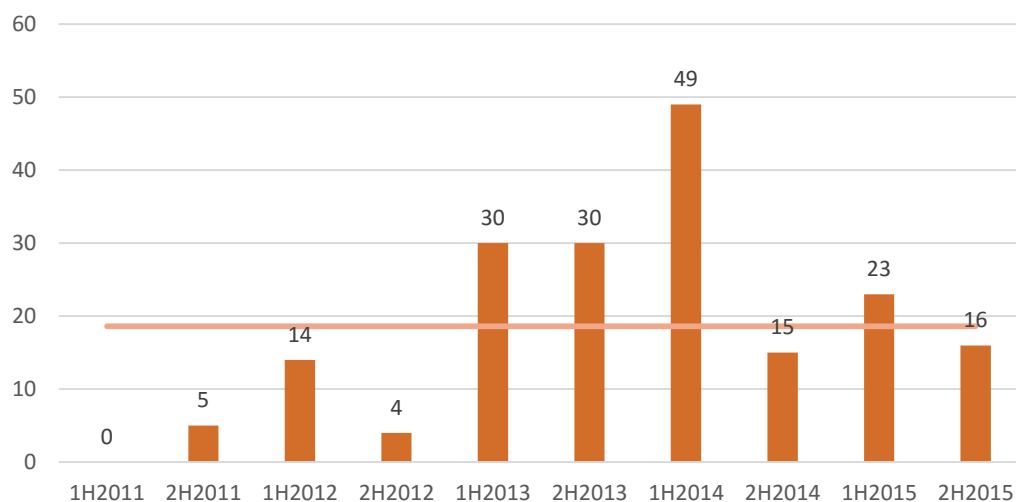


Chart 27 Content removal requests: Department of Health – Chinese Medicine Division

- From 2011 to 2015, the Department of Health – Chinese Medicine Division made an average of 19 removal requests biannually, or 38 annually.
- The nature of information requested for removal was hyperlink-related to auction or sale information. For example, 71 hyperlinks were removed from February to December in 2015.
- The reason for sending requests was to stop the suspected auction or sale of Chinese herbal medicines without trader licences and unregistered proprietary Chinese medicines, categorised as 'suspected illegal sale of medicine' in this report.

iii Department of Health – Family Health Service

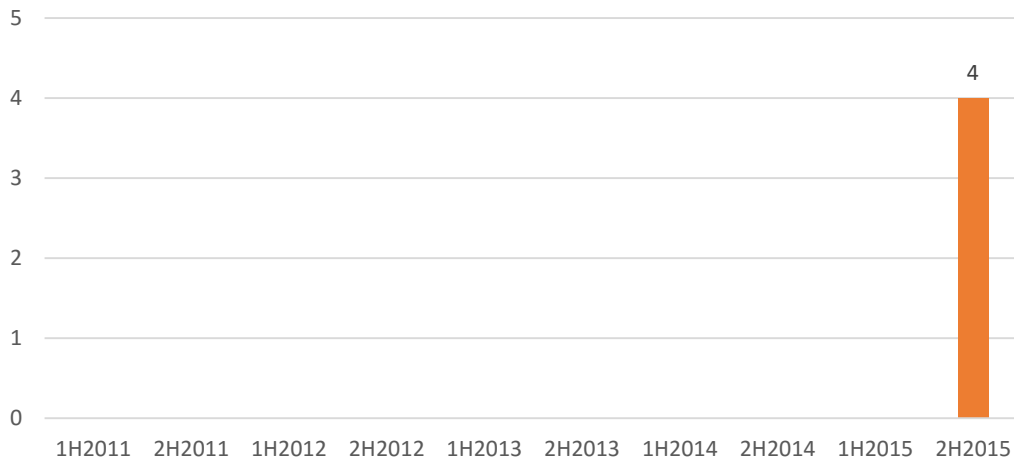


Chart 28 Content removal requests: Department of Health – Family Health Service

- From 2011 to 2015, the Department of Health – Family Health Service made a total of four removal requests.
- The nature of information requested for removal was online video.
- The reason for sending requests was to stop infringing activities whereby the department's videos were uploaded online without its consent, categorised as 'infringing activities' in this report.

iv Customs and Excise Department

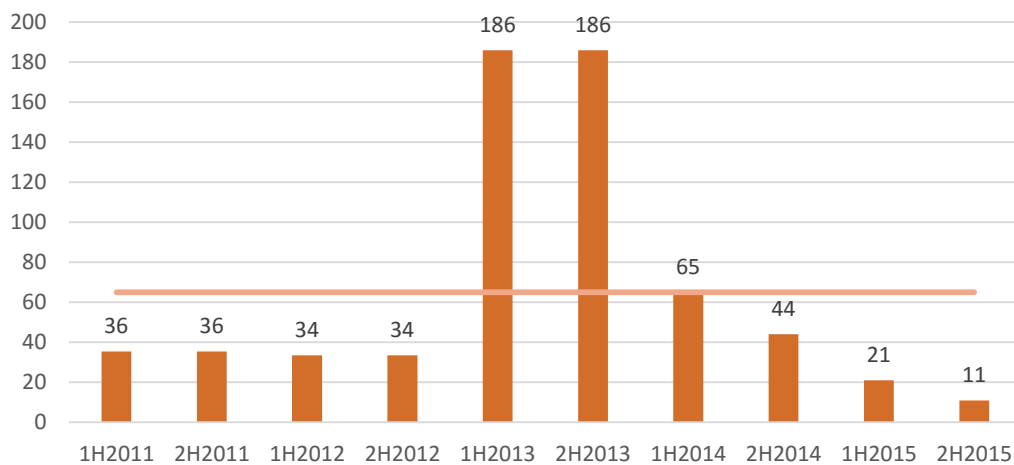


Chart 29 Content removal requests: Customs and Excise Department

- From 2011 to 2015, the Customs and Excise Department made an average of 65 removal requests biannually, or 130 annually.
- The nature of information requested for removal was user accounts or hyperlinks.
- The reason for sending requests was to stop infringing activities.

v Hong Kong Police Force

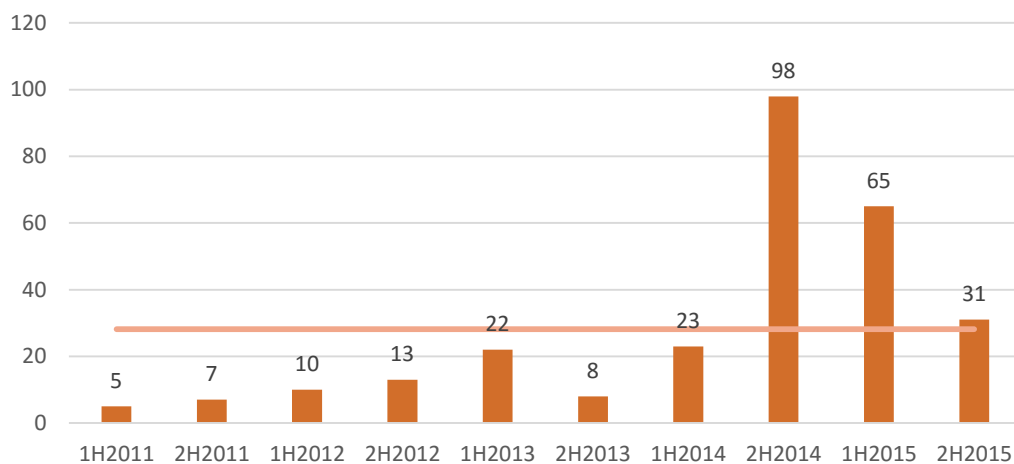


Chart 30 Content removal requests: Hong Kong Police Force

- From 2011 to 2015, the Hong Kong Police Force made an average of 28 removal requests biannually, or 56 annually.
- The nature of information requested for removal was obscene articles, phishing websites or involving access to a computer with criminal or dishonest intent.
- The reason for sending requests was crime prevention, primarily involving technology crimes or crimes relating to the use of the internet.
- Hong Kong Police Force did not reveal the exact number of requests acceded to, only stating that "most of the organisations concerned removed the relevant information as requested by the Police".

vi Office of the Communications Authority

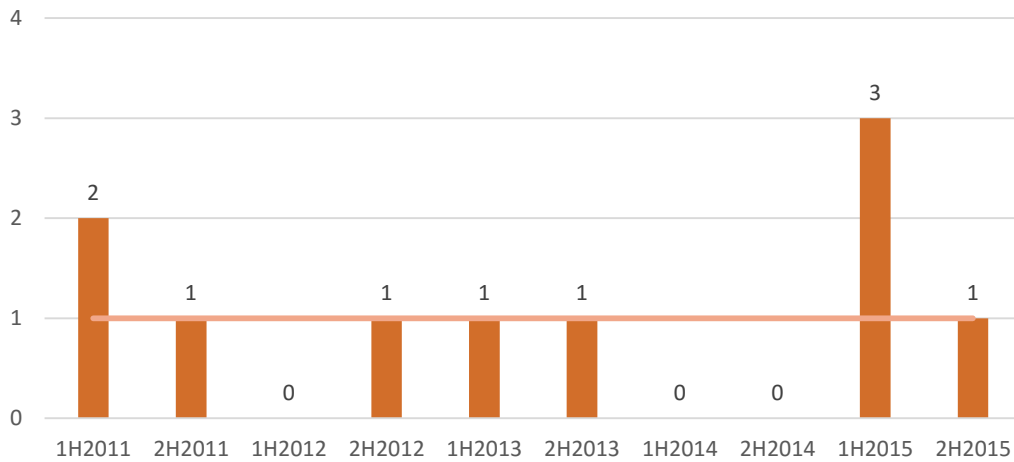


Chart 31 Content removal requests: Office of the Communications Authority

- From 2011 to 2015, the Office of the Communications Authority made an average of one removal request biannually, or two annually.
- The nature of information requested for removal was indecent content. For example, 22 articles and several photos were removed from internet discussion forums from February to December 2015.
- The reason for sending requests was to remove indecent content.

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