

Registration of Persons (Amendment) Bill

Suggestions for Legislative Amendments

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Background

1. This submission is made in response to the Chairman of the Bill's Committee's invitation for specific legislative amendments that should be introduced to give effect to my proposals contained in earlier written and oral submissions dated 16 Sept and 11 October 2002 respectively on the captioned matter. The specific amendments proposed are underlined (addition) and strikethrough (deletion) as appropriate in the following paragraphs.

Specific Legislative Amendments

2. Proposed ROP Ordinance s.9 / ROP (Amendment) Bill clause 7

“Restriction on use of particulars

Subject to section 10, particulars furnished to a registration officer under this Ordinance may be used for and only for the following purposes -

- (a) enabling the Commissioner to keep a register of persons;
- (b) enabling identification of individuals as may be authorized, permitted or required by or under any Ordinance; or
- (c) such other purposes as may be authorized, permitted or required by or under any Ordinance.”

3. Proposed ROP Ordinance s.10 / ROP (Amendment) Bill clause 7

“Duty not to disclose photographs, fingerprints and particulars

Subject to the provisions of regulation 23 of the Registration of Persons Regulations (Cap. 177 sub. leg.), a registration officer shall not -

- (a) produce for inspection, or supply a copy of, the photograph of a person registered under the provisions of the Registration of Persons Regulations (Cap. 177 sub. leg.) or his fingerprint; or
- (b) disclose or supply a copy of the particulars furnished under regulation 4(1)(b) of the Registration of Persons Regulations (Cap. 177 sub. leg.),

except and unless with the written permission of the Chief Secretary for Administration which ~~may~~ –

- (c) may refer to a person or class or category of persons by name, office or description; and
- (d) may contain such terms and conditions as the Chief Secretary for Administration may deem fit to impose; ~~and~~
- (e) must state the reason or reasons for making such written permission.”

4. Proposed ROP Regulation 12(1A) / ROP (Amendment) Bill clause 14(a)

“Any person who, without lawful authority –

(a1) gains access to data in a chip;

- (a) stores data in a chip;
 - (b) adds to, erases, cancels or alters any data stored in a chip; or
 - (c) renders a chip ineffective,
- shall be guilty of an offence.”

Privacy Audit

5. I have read LC Paper No. CB(2)168/02-03(01) containing the Privacy Commissioner’s paper on the subject and noted the Commissioner’s support of the proposed privacy audit compliance requirement. However, with respect, I do not agree that such requirement can be met through a government-wide code of practice approved under S.12 of the PD(P)O *per se*.

Although introducing such a code of practice is a privacy-positive move and may form a basis for subsequent privacy audit, it is not a substitute for privacy audit and does not put the Commissioner under any duty to conduct privacy audit.

6. Sections 8(1)(e) and 36 of the PD(P)O empower the Commissioner to carry out privacy inspection specifically in relation to government departments and statutory corporations. The fact that none has been carried out since PD(P)O was enacted tends to reflect the low priority accorded by the Commissioner to this function of his office. Resource is always limited. How resource is allocated depends on the priority of the functions to be performed. I would suggest the priority of the various statutory functions of the Commission to be reviewed in the light of growing public concern in relation to privacy protection under the smart ID card scheme.

Matthew Lee
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