

## A. Introduction

The Audit Commission ("Audit") conducted a review of the activities of the Office of the Privacy Commissioner for Personal Data ("PCPD"), focusing on the following areas:

- corporate governance;
- complaint management;
- promotional activities;
- overseas duty trips;
- hospitality expenditure;
- other administrative issues; and
- performance reporting in the Controlling Officer's Report ("COR").

2. **Mr Stephen LAM Sui-lung, Secretary for Constitutional and Mainland Affairs**, made an opening statement at the Committee's public hearing on 17 December 2009. The full text of his statement is in *Appendix 21*. **Mr Roderick B WOO, Privacy Commissioner for Personal Data ("Commissioner")**, made opening statements at the Committee's public hearings held on 17 and 21 December 2009, the full texts of which are in *Appendices 22 and 23* respectively.

3. The submission of the **Commissioner** to the Committee which set out the progress made by the PCPD in implementing the various recommendations of Audit is in *Appendix 24*.

## B. Corporate governance

4. According to paragraph 2.6 of the Director of Audit's Report ("Audit Report"), the PCPD did not have a structured strategic planning process. For example, the PCPD did not have a formal strategic plan, a formal annual business plan, a timetable for the annual conduct of strategic planning and a strategic planning group to drive the strategic planning process. The Committee asked how the PCPD could accomplish its mission and goals in the absence of structured strategic planning.

5. The **Commissioner** said that:

- although the PCPD did not have a structured strategic planning process, the substance of a formal annual business plan and the timetable for the annual conduct of strategic planning could be found in the yearly reports made by the PCPD to its Controlling Officer. The information contained in the reports was the result of a series of discussions (a copy of the report is in *Appendix 25*);
- in the past, the Commissioner had had the benefit of being able to frequently consult his top personnel on all strategic planning processes. The PCPD had not set up a formal strategic planning group before as there were only a very small number of persons who gave input to the Commissioner. Through an informal working approach, he could call on any member of the staff to assist on the "need to" basis without having to make that person a permanent member of a formal group; and
- since assuming office in 2005, after some familiarisation and having tackled some unforeseen incidents, he had started to make some long-term plans. Even though such plans were not specifically documented in any single set of papers, they were nonetheless strategic decisions and had long-term impact on the performance of the PCPD's functions. Details of the plans were set out in paragraph 10 of his submission (in *Appendix 24*). For instance, in 2006, he decided to relocate the office premises from the Convention Plaza to Wanchai, which attracted a lower rental, and entered into a five-year lease. Compared to the rent offered for renewal of the tenancy at Convention Plaza, the new lease had already achieved a saving of \$7.5 million for the first three years of lease. In 2006, he also formed an internal group to advocate a privacy law reform.

6. Responding to the Committee's enquiries on the PCPD's yearly reports to its Controlling Officer, **Mr Benjamin TANG, Director of Audit**, said that:

- the PCPD's yearly reports to its Controlling Officer were in fact the CORs on the PCPD. Such reports contained little information and could not serve the purposes of the formal strategic plans and formal annual business plans as proposed by Audit, which were important elements of corporate governance; and
- in Audit's view, irrespective of the size of an organisation, it was important to clearly document the rationale behind the organisation's policies, plans and actions so that records could be traced despite staff changes.

7. It appeared to the Committee that the CORs could not replace formal strategic plans which had a planning horizon of three to five years. The Committee asked the Commissioner whether he agreed with Audit that there was a need to implement a structured planning process.

8. The **Commissioner** said that he fully accepted Audit's recommendations. The PCPD would document its long-term strategic plans and set up a formal strategic planning group to drive the strategic planning process. The **Commissioner** further informed the Committee that:

- with the assistance of the group formed by the PCPD's management staff, strategic planning could be made and long-term strategic plans would be documented so that better governance could be achieved. In planning, the PCPD's resources and effective performance of the Commissioner's functions would be considered;
- the PCPD would consult the Personal Data (Privacy) Advisory Committee ("Advisory Committee") timely and seek professional opinions. Moreover, as recommended by Audit, he would strengthen the communication with the Advisory Committee and draw up formal meeting rules. He would also seek the views of Members of the Advisory Committee on significant policy on protection of personal data privacy; and
- he would consider making certain issues standing agenda items of meetings of the Advisory Committee. Such issues would include strategic planning.

9. In his letter of 15 January 2010, in *Appendix 26*, the **Commissioner** provided a formal long-term strategic plan (2010-2014) and a formal annual business plan for 2010 to the Committee. He also stated in the letter that he intended to invite the comments of the Advisory Committee on the plans at its meeting in February 2010.

10. The Committee noted that unlike other statutory organisations which normally were subject to the oversight of a statutory governing board, the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") did not provide for a governing body to oversee corporate governance of the PCPD. The Advisory Committee established under the PDPO was only responsible for advising the Commissioner on matters relevant to the privacy of individuals in relation to personal data, or other matters relevant to the operation of the PDPO. The Committee asked:

- about the plans of the PCPD and the Administration to strengthen the PCPD's corporate governance; and
- whether the PCPD and the Administration would consider putting in place certain standing arrangements to oversee compliance and internal control matters of the PCPD.

11. The **Commissioner** said that the PCPD, being a small organisation with a small workforce, did not have the expertise to review its corporate governance system and structure. He hoped that the Administration would grant a one-off subvention to the PCPD for carrying out an administrative review or a management study to identify areas of improvement. He would need to discuss this with the Constitutional and Mainland Affairs Bureau ("CMAB").

12. The **Secretary for Constitutional and Mainland Affairs** said that:

- in drawing up the bill for establishing the PCPD, the Administration had made reference to the experience of overseas privacy regulators. He understood that the privacy regulators in the United Kingdom, Australia, Canada and New Zealand were not subject to the oversight of a governing board. Therefore, the Advisory Committee established under the PDPO was advisory in nature; and
- the CMAB would discuss with the Commissioner the best way to enhance the corporate governance of the PCPD. Consideration could be given to establishing a subcommittee to oversee compliance and internal control matters and appointing professionals with expertise in corporate governance as its members.

13. The Committee noted from paragraph 2.13 of the Audit Report that there were no formal rules to govern the meetings of the Advisory Committee, such as their frequency, quorum and the need for prompt issuance of minutes of meetings. Moreover, meetings of the Advisory Committee were held much less frequently during the tenure of the incumbent Commissioner. For example, three meetings were held each year in 1997, 1999 and 2001. From 2005 to 2008, however, only one meeting was held per annum. The Committee queried whether the Commissioner considered that he alone could decide on the operation of the PCPD without involving the Advisory Committee or other stakeholders.

14. The **Commissioner** responded that:

- under section 46 of the PDPO, "the Commissioner and every prescribed officer shall maintain secrecy in respect of all matters that come to their actual knowledge in the performance of their functions and the exercise of their powers under this Part." As Members of the Advisory Committee were not the prescribed officers under the Ordinance, there were restrictions on the matters which he could raise with the Advisory Committee. For instance, he could not discuss with the Advisory Committee the cases under investigation; and
- convening a meeting of the Advisory Committee required a lot of preparation work and manpower. He had to prioritise the PCPD's work taking into account available resources. Yet, he accepted Audit's recommendation that there should be more regularised meetings of the Advisory Committee.

15. **Ms Margaret CHIU, Deputy Privacy Commissioner for Personal Data ("Deputy Commissioner")**, added that:

- the Advisory Committee agreed at its meeting held on 24 September 2009 that formal meeting procedures should be formulated to govern frequency of meetings, quorum, duty of confidentiality, declaration of interest and time within which draft minutes should be circulated for comments. The PCPD was in the course of drafting the formal meeting rules and it was expected that the rules would be in place by February 2010; and
- it was hoped that in future, the Advisory Committee would meet three to four times a year.

### **C. Complaint management**

16. The Committee noted from paragraphs 3.17 and 3.18 of the Audit Report that under section 39(3) of the PDPO, where the Commissioner refused to carry out or continue an investigation initiated by a complaint, "he shall, as soon as practicable, but in any case not later than 45 days after receiving the complaint", by notice in writing served on the complainant, inform the complainant of the refusal and the reasons for the refusal. Notwithstanding the statutory requirement, Audit's analysis indicated that, prima facie, this requirement was not met in many cases.

17. According to paragraph 3.19(g), the PCPD considered that refusal notices that were served within 75 days of the physical receipt of a complaint should be regarded as in compliance with the 45-day requirement. Paragraph 3.21 further revealed that even with the PCPD's interpretation, the number of non-compliance cases was still significant, totalling 868 cases in the five years from 2004 to 2008.

18. Against the above background, the Committee asked:

- about the PCPD's basis for allowing itself up to 75 days for serving refusal notices, which was contrary to the express requirement of the PDPO that such notices must be served not later than 45 days after receiving the complaint; and
- whether non-compliance with the statutory requirement would pose legal challenges to the PCPD.

19. **The Commissioner and Mr CHAN Kin-tin, Chief Personal Data Officer of the PCPD**, stated that:

- very often, a complaint lodged by a complainant did not contain sufficient information required for follow-up by a case officer. It took a period of time for the case officer to ascertain whether investigation could be carried out. If the 45 days were counted from the date when the complaint was first physically received by the PCPD, it would be impossible for the PCPD to fulfil the requirement of serving refusal notices within 45 days. The PCPD therefore took the view, as specified in paragraph 3.19(e) to (g) of the Audit Report, that where the information and materials presented by a complainant in his complaint did not formulate a case that satisfied all the conditions set out in section 37 of the PDPO, the complaint might be regarded as incomplete. The time to comply with section 39(3), i.e. the 45 days, did not start to run until a properly completed complaint was formulated, usually through the assistance of the case officer who handled the complaint;
- from the PCPD's experience, on a rough estimate, it took 30 days on average for a complaint to be properly formulated after clarification with, and obtaining the necessary information and relevant documents from, the complainant. Hence, the PCPD considered that refusal notices which were served within 75 days of the physical receipt of a complaint should be regarded as in compliance with the 45-day requirement. Nevertheless, it was still the PCPD's target to serve a refusal notice within 45 days;

- the PCPD's calculation of the 45-day period was based on a decision of the Administrative Appeals Board ("AAB") relating to a different matter. In that case, the AAB decided that the date of request for access to information should be counted from the date when the information requested was clearly spelt out; and
- both the Ombudsman and the AAB had looked into the PCPD's compliance with the 45-day requirement. In an appeal case heard in 2003, the AAB gave the opinion that the Commissioner's decision not to investigate would not be rendered void if a refusal notice was not given within 45 days from the receipt of the complaint. Neither would it deprive the right of the relevant parties to apply for judicial review or to appeal to the AAB.

20. Upon the Committee's request, the **Commissioner** provided in his letter of 4 January 2010 (in *Appendix 27*) the Ombudsman's Direct Investigation Assessment Report on the PCPD's Arrangements for Notifying Complainants of Refusal to Investigate issued in March 2009, as well as the Decision of the AAB in case number 35 of 2003.

21. In the light of the Commissioner's reply, the Committee queried:

- why the PCPD did not use other means to tackle the problem of non-compliance, such as by strictly enforcing the requirement and serving refusal notices on those complaints which could not be established within 45 days after receipt; and
- whether the root of the problem was the shortage of manpower within the PCPD, as mentioned in paragraph 3.19(m) of the Audit Report.

22. The **Commissioner** said that:

- since his assumption of office, the problem of non-compliance with the 45-day requirement was his top concern. The shortage of manpower was definitely one of the main reasons contributing to the problem. Worse still, over the past five years, the Operations Division had been suffering from high personnel turnover rates which ranged from 29% to 67%;
- the 45-day requirement was indeed very demanding. He had tried to trace the rationale for setting the timeline at 45 days. The PCPD had searched records and sought assistance from the Department of Justice and the Home Affairs Bureau ("HAB"), the then responsible policy bureau, to ascertain the rationale. The PCPD had also traced the history of the passage of the bill, but to no avail. Other local regulatory bodies and overseas privacy

regulators were not subject to a statutory time limit for notifying the complainant of refusal to carry out or continue an investigation;

- the operation of the PDPO commenced in December 1996. The PCPD detected, at a very early stage, practical difficulties in meeting the requirement under section 39(3) of the PDPO. In July 1998, the PCPD had already proposed to the HAB to amend the PDPO to relax the 45-day requirement. The proposal was supported by the HAB, but it had not yet materialised; and
- he considered that the 45-day requirement should be kept, but with some modifications. For those cases which the PCPD decided not to carry out formal investigation, the complainants should be notified in 45 days. For those cases which the PCPD had commenced formal investigation but subsequently decided to discontinue the investigation, the 45-day requirement should be removed so that the PCPD could stop investigating a complaint even after the expiry of the 45-day deadline.

23. Noting that the PCPD had informed the Administration of its practical difficulties in meeting the 45-day requirement as early as 1998, the Committee enquired:

- about the action that the Administration had taken to assist the PCPD in addressing the problem; and
- whether the CMAB knew the problem when it took over the policy responsibilities for human rights from the HAB in July 2007 and whether it had provided timely assistance to the PCPD.

24. The **Secretary for Constitutional and Mainland Affairs** replied that:

- the CMAB was aware of and had discussed the problem with the PCPD when it took over the relevant policy responsibilities from the HAB. The PCPD hoped to address the issue of the 45-day requirement with several other issues which it had raised with the HAB in the context of a comprehensive review of the PDPO. The legislative amendment on the 45-day requirement was therefore not initiated separately. The CMAB issued a public consultation document on the review of the PDPO in August 2009 and the proposal to amend the 45-day requirement was included therein; and
- at present, the CMAB assisted the PCPD in managing its complaint cases by providing additional resources.

25. The Committee referred to paragraphs 3.13 and 3.14 of the Audit Report which revealed that both the number and ages of long outstanding cases (i.e. those aged beyond 180 days) had increased since 2004. The Committee asked about the actions that the PCPD would take to address the problem of long outstanding cases.

26. The **Commissioner** and the **Chief Personal Data Officer of the PCPD** responded that:

- by temporarily redeploying its resources and rearranging its priority of attention, the PCPD had reduced the number of long outstanding cases from 33 as at June 2009 to 30 as at 2 December 2009, and the average age of the long outstanding cases had been reduced from 426 days as at June 2009 to 297 days as at 2 December 2009. However, this could cause a reduction in the manpower deployed for other duties. Therefore, without an increase in permanent manpower, the PCPD failed to see how such efforts and improvement could sustain; and
- in respect of the performance target on the handling of complaints, the PCPD and the housekeeping bureau had agreed on the percentage of cases that could be closed within 180 days of receipt of the complaints. For 2008, the target was 90% and the PCPD's actual performance was about 96%. The number of long outstanding cases represented only 3.3% of the total number of cases processed by the PCPD that year. This meant that the PCPD had exceeded the target.

27. Regarding the manpower resources of the PCPD, the Committee noted from the Work Report of the Commissioner, issued in December 2009, that the average success rate of the PCPD's bids for additional posts under the government resources allocation exercises ("RAEs") from 1998 to 2009 was only about 12%. Many of the bids were rejected. In 2009, the PCPD did not submit any bid. The Committee asked why:

- the PCPD did not submit any bid for additional posts in 2009; and
- many of the PCPD's bids in the past were rejected.

28. The **Commissioner** said that:

- he did not bid for additional posts in 2009 because he had lost heart, given that his previous bids were always rejected. For example, in 2008, of the 31 posts bid by the PCPD, only five were approved; and

- for 2009, he wanted to create one post in the Corporate Communications Division ("CCD") to undertake promotion of awareness of the PDPO and one temporary post in the Legal Division in the light of pressing need. Instead of submitting bids under the RAE, he tried to discuss with the CMAB the possibility of creating the two posts with special funding. In the end, the CMAB advised him to use the PCPD's reserve to create the posts.

29. The **Secretary for Constitutional and Mainland Affairs** said that:

- the CMAB was aware that Hong Kong people supported the protection of personal data privacy. Since assuming policy responsibilities for human rights in July 2007, the CMAB had attached great importance to the PCPD's work and had strived to provide resources at an appropriate level to support the PCPD. The CMAB had increased the annual budgetary allocation to the PCPD by 23% since 2007. The subvention to the PCPD increased from \$36.3 million in 2007-2008 to \$44.5 million in 2009-2010 and eight additional posts had been approved, which represented an increase of 14% of the PCPD's establishment. Of the eight additional posts, seven were for conducting compliance checks, which represented an increase of more than 20% of the manpower undertaking such area of work;
- the amount of funding bid by the PCPD in 2007 and 2008 was about \$31.2 million in total, whereas the amount of subvention granted by the CMAB to the PCPD in the two years had increased by \$6.84 million. Thus, the average success rate for these two years was more than 20%, better than that in the past. In fact, the PCPD bid for \$22.635 million in 2008, which was more than 50% of its annual subvention. After seriously considering the PCPD's bid, the CMAB granted it \$5 million and this was a significant proportion of the PCPD's subvention; and
- all the above demonstrated that the CMAB had tried its best to support the protection of personal data privacy by allocating additional resources to the PCPD, despite that the CMAB's expenditure envelope was less than those of other bureaux. At the same time, as the responsible policy bureau, the CMAB had to review the reason why the PCPD did not spend the entire subvention allocated to it. For example, the PCPD had a surplus of \$2.5 million in 2007-2008 and \$2.9 million in 2008-2009. Under the circumstances, in considering the PCPD's request for additional staff to undertake promotion, investigation and legal work, the CMAB suggested it to use its reserve to create the posts temporarily, pending a discussion on the appropriate arrangement for the following year.

30. In view of the Secretary for Constitutional and Mainland Affairs' reply, the Committee asked about the reason for the PCPD's surplus. The **Commissioner** and the **Deputy Commissioner** said that:

- apart from the PCPD's effort to monitor and control expenses, the main reason for the surplus was that staff vacancies could not be filled timely (information on the percentages of the surplus arising from the PCPD's inability to fill staff vacancies and from its efforts to reduce expenditures in other areas is in *Appendix 28*); and
- as for the eight additional posts mentioned by the Secretary, they were originally created with the PCPD's reserve and subsequently supported by government funding. They were posts for the Compliance Division, not the Operations Division which was the division responsible for investigation. Hence, the additional staff could not alleviate the workload of complaint handling officers.

31. To ascertain the reasons for the PCPD's manpower shortage and how it managed the situation, the Committee enquired:

- about the reason for the high staff turnover rate of the PCPD and the Administration's view on the situation;
- whether it was common for the PCPD to redeploy a significant proportion of its manpower to deal with ad hoc incidents, such as the one mentioned in paragraph 2.9(a) of the Audit Report;
- whether the PCPD had taken any action to streamline its working procedures; and
- whether the Advisory Committee had been informed of the PCPD's difficulties in complaint management, such as the non-compliance of the 45-day requirement.

32. The **Commissioner** and the **Chief Personal Data Officer of the PCPD** said that:

- the PCPD only had 55 staff, out of which 13 belonged to the Operations Division and 12 belonged to the Compliance Division. The main duty of the Operations Division was to handle complaints, whereas staff of the Compliance Division had other duties apart from handling complaints, such as answering enquiries and conducting compliance checks and matching procedures;

- the Operations Division had been operating under limited resources. The turnover rate of complaint handling officers in the division had increased from 33% in 2004 to 67% in 2008. The variety of work, the unpredictable number of complaints, the increasing challenges of technologies posed to personal data privacy and the 45-day requirement had been factors causing the high turnover rate. On the other hand, it was difficult to fill staff vacancies as there were not many people who had experience in the protection of personal data privacy (information on the reasons for departure as given by the complaint handling officers of the Operations Division from 2004 to 2008 is in *Appendix 29*);
- as the PCPD was a small organisation, when it had to deal with an urgent large-scale case, very often it had to redeploy staff from other divisions to help out;
- the PCPD had taken various actions to streamline its working procedures. As mentioned in paragraphs 3.10 and 3.11 of the Audit Report, in September 2008, the PCPD suspended the planning procedures for handling complaint cases, under which an action plan had to be prepared by a case officer for each case upon receiving the case file. A case officer had to obtain a lot of information before he could prepare a plan, and this was often difficult at the early stage of a case. The PCPD therefore suspended the procedures. However, in response to Audit's recommendation, the PCPD revisited the issue in September 2009 and decided to streamline the planning procedures. Under the streamlined procedures, action plans would only be prepared for those cases which would be investigated. The PCPD also tried to use quicker means to contact the complainants, such as by telephoning them where appropriate; and
- the Advisory Committee had been informed of the difficulties faced by the PCPD in handling complaints, including the shortage of manpower and difficulties in meeting the 45-day requirement.

33. The **Secretary for Constitutional and Mainland Affairs** said that:

- in the CMAB's view, the PCPD could fulfil its statutory functions and mission, although there was always room for improvement. As a policy bureau, the CMAB had the duty to strive for resources for the departments and organisations within its purview and allocate resources having regard to the Government's policy priorities. The results of the public consultation on the PDPO might lead to expansion of the PCPD's functions and more resources might be needed. The CMAB would take into account the outcome of the review and discuss the way forward for the PCPD with the Commissioner; and

- the CMAB was concerned about the high staff turnover rate of the PCPD and appreciated the difficulties faced by its staff. However, the CMAB respected the autonomy of the PCPD and would not interfere with its management.

34. In response to the Committee's requests, the **Commissioner** provided a summary of the matters discussed at meetings of the Advisory Committee in his letter of 18 December 2009 in (*Appendix 30*). He also provided, in *Appendix 31*, the distribution of the 55 staff of the PCPD for the Committee's information.

35. The Committee asked how the Administration would respond to the PCPD's request for increased recurrent funding for creating additional establishment posts. The **Secretary for Constitutional and Mainland Affairs** said that:

- the CMAB had tried its best to increase the annual budgetary allocation to the PCPD. Although the PCPD did not apply for funding under the RAE in 2009, the CMAB would grant it additional funding in 2010-2011. The CMAB noted that the number of complaints received by the PCPD had increased from about 800 to almost 1,000 a year. Hence, more resources would be allocated to strengthen the Operations Division. The CMAB also noted that the PCPD needed more manpower to promote public awareness of the PDPO, and was prepared to allocate additional resources for such work in next year's budget;
- the CMAB would consider raising the ceiling of the PCPD's reserve from \$5 million to 20% of the annual subventions from the Government, i.e. about \$9 million for the subvention of \$44.5 million for 2009-2010, so as to give the PCPD greater flexibility for coping with its increased workload; and
- the CMAB would decide how to address the difficulties encountered by the PCPD in meeting the 45-day requirement having regard to the outcome of the public consultation.

#### **D. Promotional activities**

36. The Committee noted from Audit's findings concerning the Hotel Privacy Campaign ("HPC") and the Privacy Awareness Week ("PAW") 2007 that there were deficiencies in the PCPD's budgetary control process for promotional events. The Committee also noted from the Commissioner's response given in paragraph 4.13(a) of the Audit Report that since taking office in August 2005, the Commissioner had assumed direct supervision of the CCD and met with its officers almost every day to steer and monitor the progress of all promotional activities and expenditure, including the HPC and the PAW 2007. The Committee enquired:

- why the PCPD had not formalised and documented its budgetary control requirements for promotional events; and
- about the basis and principles adopted by the Commissioner in making expenditure decisions on promotional events, such as the choice of venues.

37. The **Commissioner** and **Ms Shirley LUNG, Corporate Communications Manager ("CCM") of the PCPD**, said that:

- during the early years of the PCPD, the CCM prepared an overall plan of the promotional and educational activities to be held in a year based on the amount of funding allocated for this area of work in that year. But there was no budget for individual activities. Since 2008, the CCD had begun to develop the practice of preparing a budget to set out the items of expenditure for an activity. It should be noted that, as a whole, the promotional and educational activities were held within the overall budget provision every year and there had not been any over-spending;
- the Commissioner met and discussed the promotional events with staff of the CCD every day. Under such working approach, the CCM had to document key budgetary decisions made by the Commissioner, and submit comprehensive budget plans for all individual promotional events for record purposes. The Commissioner's objective was to achieve the greatest effectiveness in disseminating the importance of protection of personal data privacy among members of the public with the least cost; and
- the choice of venues would depend on the occasion, the participants and the desired media coverage. The PCPD always considered using the least expensive venues appropriate for the occasion. It had often used venues at low or no costs, such as schools, the Central Library and other government venues. In the past 10 years, the PCPD had only held promotional events in hotels on two occasions.

38. According to paragraph 4.31 of the Audit Report, the PCPD had, as recommended by Audit, set guidelines to guide future decisions on promotional expenditure items, including venue/food/beverages, honoraria for artists, service of an entertainment company, backdrop production and cash prizes. The Committee asked about the details of the guidelines.

39. The **Commissioner** replied that the PCPD had already compiled a Promotional Events Manual (in Annex 1 of **Appendix 24**) on 21 September 2009. Under the "Guidelines in relation to specific expenditure items" of the Manual, it was stated that "In planning for venue and catering for each promotional or educational event, it shall be proportional and appropriate having regard to (i) the nature/theme of the event; (ii) the estimated number of attendees; (iii) the proximity of the venue to the attendees. The 'moderate and conservative' principle shall be followed in choosing the low or medium-cost option for venue and catering." These were in fact the PCPD's principles in making decisions on promotional expenditure items, although not set out in writing in the past. The PCPD would comply with the guidelines in future.

40. To better understand the Commissioner's approach in administering the PCPD, the Committee asked whether because the PCPD was only a small organisation, the Commissioner tended to make decisions quickly through his daily contacts with top management personnel. The Committee also asked if the Commissioner agreed that the PCPD's administration fell short of the standard expected of a publicly-funded organisation.

41. The **Commissioner** said that:

- his approach was that before making a decision on a matter, the responsible staff was required to conduct a research on the basic facts for his consideration. For example, the CCD staff had to collate information on a promotional event for discussion with him at meetings. He would give his views at the meetings and might request them to gather additional information for further discussion. He would take into account all relevant considerations before making a decision; and
- he had all along worked in non-government organisations and attached more importance to performance than documentation. Since he assumed the office of the Commissioner, he also thought that action was more important than words at times, especially when there was insufficient manpower and a lot of work which needed to be handled urgently. However, the Audit review had taught him the importance of documentation and he would pay more attention to this aspect in future. He would try to strike a proper balance between the time spent on documentation and on action.

## **E. Overseas duty trips**

42. The Committee noted Audit's observation in paragraph 5.5 of the Audit Report that there had been a downward trend of the PCPD's expenditure on overseas duty trips, starting from 2005-2006. The expenditure decreased from \$535,700 in 2004-2005 by 73% to \$144,000 in 2008-2009. However, Audit's findings on the three overseas duty trips selected for case study also revealed that there were areas for improvement in this aspect.

43. According to paragraph 5.9 of the Audit Report, for the trip to Cambridge, the event organiser had offered to provide free accommodation to the Commissioner because of his status as a guest speaker. In his e-mails dated 1, 13 and 19 June 2006, the organiser repeatedly urged the PCPD to register promptly if it wanted free accommodation as his guest. The PCPD did not respond until 23 June 2006, but by then it was too late to secure free accommodation. As it turned out, the PCPD had to spend \$9,900 on hotel charges. Moreover, the reasons for not accepting the offer promptly were not documented.

44. The Committee enquired:

- whether the Commissioner agreed that the PCPD should have acted more expeditiously to avoid unnecessary expenditure on hotel charges; and
- about the measures that the PCPD would take to ensure that, for future overseas trips, the PCPD would give timely and due consideration to the option of free accommodation provided by the organiser.

45. The **Commissioner** said that:

- in June 2006, there were some incidents of data leakage in Hong Kong and he was not certain if he could really make the trip to Cambridge as scheduled. Hence, there was some delay in accepting the offer of free accommodation. In the end, he had to hire a hotel room at the PCPD's cost. Yet, the hotel room hired was economical and definitely not luxurious; and
- in response to Audit's recommendation, in future, when free accommodation was available, the PCPD would give timely and due consideration to avail itself of the same, when circumstances permitted. The PCPD had also issued a finance circular on 24 August 2009 (in Annex 2 of **Appendix 24**) specifically requiring that any refusal to take up sponsored accommodation had to be documented.

46. The Committee enquired about the details of the incidents that took place in June 2006. The Committee further queried why the Commissioner could not make up his mind to go on the trip on 19 June 2006 but could do so on 23 June 2006, only a few days later. The **Commissioner** said that at the material time he was considering whether he should stay in Hong Kong to handle the incidents and hence could not decide if he could go to Cambridge. By 23 June 2006 he decided that he could go. The decision was based on his subjective judgement.

47. Regarding the acceptance of free accommodation, it appeared to the Committee that it might not be advisable for a publicly-funded organisation to indiscriminately accept offers of free accommodation or air tickets, etc. by the organiser of an event attended by public officers on an overseas trip. The Committee asked about the Administration's guidelines to government officials in this regard. The **Secretary for Constitutional and Mainland Affairs** said that the guiding principle for government officials was to consider whether acceptance of the free offers would create a conflict of roles/interests. Applications for acceptance of free air tickets would be subject to even more critical examination.

48. The Committee noted from paragraphs 5.11 and 5.12 of the Audit Report that for the trip to Cambridge, the use of a wrong rate for calculating the "40% allowance" had resulted in the Commissioner being overpaid an amount of \$670. The PCPD had said that this was a bona fide mistake which escaped the notice of all staff involved in processing the claim. The Committee asked:

- about the officers who were responsible for ensuring the correctness of claims of overseas subsistence allowance ("OSA");
- whether the incident reflected a lack of compliance culture among staff of the PCPD; and
- whether the PCPD would institutionalise a system to prevent the recurrence of similar mistakes in future.

49. The **Commissioner** replied that:

- he did not file the claim for OSA by himself and it was filed by his assistant. He did not know that he had been overpaid. After Audit brought the matter to his attention, he immediately refunded the \$670 to the PCPD. Processing OSA claims was within the purview of the Administration and Finance Manager and four staff were involved;
- this was an isolated incident and an inadvertent mistake on the part of the responsible staff. For trips to the United Kingdom, there were two OSA rates then prevailing, a higher rate for London and a lower rate for areas other than London. The staff concerned might not know that Cambridge was outside London and the lower rate was applicable. As such, the staff used the London rate for calculating the OSA payable to him and all the staff concerned did not notice the mistake; and
- there was already a system in the PCPD for processing OSA claims. He took a serious view of the incident and had reminded the PCPD staff to comply with the system and exercise greater care in calculating the OSA in future, so as to avoid similar mistakes.

50. Regarding the trip to Canada, the Committee noted from paragraphs 5.15 to 5.19 of the Audit Report that the Commissioner had been given time off for 29 and 30 September 2007. However, the Commissioner was in fact in Toronto at that time on a personal trip and no time-off entitlement could have been earned. The Committee asked about the reason for such irregularity.

51. The **Commissioner** explained that he was not aware of the time-off arrangement and had not taken the initiative to apply for time off for 29 and 30 September 2007. After Audit brought the matter to his attention, in September 2009:

- he instructed his staff to deduct from the balance of his annual leave the days of time off he had taken and to rectify the records accordingly; and
- he also issued a directive on time off, directing that, with immediate effect, any person holding (including in an acting capacity) the office of the Commissioner would not be granted time off for whatever reason.

52. Regarding the checks and balances on the overseas duty trips of the Commissioner, the Committee asked whether the Administration and the PCPD would consider making it a standing arrangement whereby the Commissioner's overseas duty trips and the visit budgets would be subject to approval of the Advisory Committee.

53. The **Secretary for Constitutional and Mainland Affairs** informed the Committee that the Government and the Commissioner entered into a new Memorandum of Administrative Arrangements ("MAA") (in *Appendix 32*) on 4 September 2009. The new MAA had put in place a set of arrangements for the Commissioner's overseas duty trips with the aim of ensuring that the trips were not undertaken on the sole decision of the Commissioner. The arrangements were agreed between the PCPD and the CMAB after thorough discussion. The details were as follows:

- the Commissioner would consult the Advisory Committee on his intended overseas duty trips and confirm to the Advisory Committee that such duty visits were consistent with the discharge of his functions under the PDPO;
- the Commissioner would not proceed with the duty visits if the majority of the Members of the Advisory Committee advised that such duty visits were inconsistent with the discharge of his functions under the PDPO; and
- the Commissioner would then inform the Secretary for Constitutional and Mainland Affairs of the Advisory Committee's advice, and confirm that the operation of the PCPD would not be adversely affected during such visits.

## **F. Hospitality expenditure**

54. The Committee noted from paragraphs 6.11 and 6.12 of the Audit Report that for a hospitality lunch attended by three persons (a host and two guests) on 10 January 2007, the cost exceeded the PCPD's per-person limit on entertainment expenditure by 29%, but reimbursement for the full amount was made without an acceptable explanation, and there was no documentation of the business purpose of the lunch. For another hospitality lunch attended by four persons (a host and three guests) on 27 February 2008, the cost of the lunch was \$1,800 which exceeded the per-person limit by 50%. In the latter case, only part of the expenses was reimbursed. The Committee asked why the two cases were treated differently and whether the PCPD's guidelines on entertainment expenditure had stipulated the circumstances under which the limit could be exceeded.

55. The **Commissioner** said that:

- for the lunch on 27 February 2008, it was appropriate that the part of the expenses which exceeded the expenditure limit was not reimbursed. According to the PCPD's guidelines, expenses that exceeded the limit could be reimbursed provided that the reason for over-spending was recorded and considered justified; and
- for the lunch on 10 January 2007, it was only an oversight. The lunch was attended by him and heads of two public organisations and it was for official purpose. The claim was submitted by his assistant and he was not aware of it. The Administration and Finance Manager was the approving authority. After Audit brought the matter to his attention, he immediately withdrew the claim and refunded the entire amount to the PCPD, not just the amount that exceeded the limit.

56. In view of the Commissioner's reply, the Committee asked why he withdrew the claim altogether when the lunch was indeed for official purpose and at least part of the expenses was reimbursable under the PCPD's guidelines.

57. The **Commissioner** responded that when the matter came to his attention, he agreed that it was a mistake to reimburse the full amount to him. He would rather withdraw the claim altogether than asking his staff to calculate the amount that should be reimbursed to him. In fact, very often he paid for lunches/dinners held for official purpose with his money and did not claim any reimbursement.

58. The Committee noted from paragraph 6.6 of the Audit Report that the PCPD had held farewell dinners for the two former Commissioners in September 2001 and January 2005 and Audit had reservations about the appropriateness of using public funds for the purpose. The Committee enquired whether the Commissioner agreed with Audit's view.

59. The **Commissioner** replied that:

- the two farewell dinners took place before he assumed the office of the Commissioner, and he had no knowledge of them. He did not agree to use public funds for any purpose which was unrelated to official business. After Audit drew his attention to the dinners, the PCPD issued a finance circular on 18 September 2009 (in Annex 4 of **Appendix 24**) directing that no expenses incurred for meals to bid welcome or farewell to any member of the PCPD (including the Commissioner) should be paid out of the PCPD's funds. In fact, there had been a farewell lunch for the outgoing Deputy Privacy Commissioner and a welcome lunch for the incoming Deputy Privacy Commissioner, both in 2009, and public funds were not used; and
- he had written to the two former Commissioners to inform them of Audit's observations on their farewell dinners. In response, they reimbursed the PCPD for the costs of their farewell dinners.

60. The Committee noted that arising from Audit's observations on wines brought to events, Audit recommended in paragraph 6.14(c) of the Audit Report that the PCPD should set clear guidelines on gift-giving, specifying the nature and value of gifts that were appropriate to particular occasions and the public sector environment. The Committee asked whether such guidelines had been set.

61. The **Commissioner** said that:

- he was advised early in his term of office that it had been the PCPD's usual practice for wines to be brought as a gesture of goodwill to special official functions, when he was invited as a guest of honour or otherwise in his official capacity. Before the matter was raised by Audit, he of his own accord had already stopped this practice after 11 September 2007, as he felt that the practice was not appropriate. If he wanted to bring wines to an event, he would pay for the wines; and
- guidelines on gift-giving had already been set and promulgated in the Promotional Events Manual.

## G. Other administrative issues

### Office accommodation

62. The Committee noted that the PCPD had following shortcomings in respect of office accommodation:

- using the government accommodation standards as a benchmark, the PCPD's rented area exceeded Audit's assessed needs by 422 m<sup>2</sup> (or 58%), which cost about \$143,500 per month in rental. There was also no documentation of the basis/criteria on which the PCPD arrived at a total space need of 1,154 m<sup>2</sup> (paragraphs 7.3 and 7.4 of the Audit Report referred);
- the PCPD's practice regarding the provision of cellular offices for its staff was more generous than the government standards (paragraphs 7.6 and 7.7 of the Audit Report referred); and
- the PCPD took up a supplemental lease to provide for additional office space of 126 m<sup>2</sup> in anticipation of creating 16 posts, without first securing funding for the posts. As a result, additional office space was rented for posts either not created at all, or created only many months after the commencement of the supplemental lease (paragraphs 7.8 and 7.9 of the Audit Report referred).

63. Against the above background, the Committee asked about the PCPD's reasons for exceeding the government standards and not observing the "moderate and conservative" principle in deciding on its accommodation needs.

64. The **Commissioner** responded that:

- in 2005, in planning to relocate its office and sourcing suitable premises to lease, the PCPD had made reference to the office area then occupied in the Convention Plaza as an indicator of its needs. The rental of the PCPD's current office at Wanchai was only half of that of the Convention Plaza office though it was bigger. Having duly considered its operational needs, the PCPD decided to take up a lease of the whole of the 12/F and Room 1301 on the 13/F;
- in the process of relocation, upon the advice given by his staff, he allowed those officers who had previously worked in cellular offices to continue to do so in the new premises. In making the decision, he had taken into account some officers' need to handle more sensitive and confidential materials;

- in February 2007, he made an executive forward-looking decision to take on the unit adjoining Room 1301 (with an area of 126 m<sup>2</sup>) when it became available for rent, in view of the anticipated development of the PCPD. With the establishment of the Compliance Division in December 2006, recruitment/redeployment of staff was anticipated to perform the compliance work and additional work expected of the Division. At that time, he expected that the Government would approve additional posts for the PCPD soon; and
- his decision to rent the area of 126 m<sup>2</sup> was only wrong in terms of timing. At present, vacant office space was available for accommodating four staff. But the PCPD was conducting recruitment exercises and five more staff might be recruited in the near future. Moreover, the Government had approved new posts for the PCPD. If he had not rented the area in February 2007, he might have to accommodate the new staff in another floor or another building, which would cause a lot of administrative inconvenience.

65. In response to the Committee's question, the **Commissioner** replied that he did not have knowledge of the government accommodation standards, and the government representative in the Advisory Committee had not informed him of such standards. If he knew that there were such standards, he would have taken them into account when making the decision.

66. The **Secretary for Constitutional and Mainland Affairs** said that according to file records, the PCPD, at two meetings with the HAB held in August 2005 and February 2006, had informed the HAB that it would relocate its office. The HAB respected the autonomy of the PCPD and indicated that the PCPD's relocation did not require government approval. There was no record to show that the HAB had informed the PCPD of the government accommodation standards.

67. The Committee asked how the Administration would ensure that publicly-funded organisations were acquainted with government standards and guidelines. **Ms Bernadette LINN, Deputy Secretary for Financial Services and the Treasury (Treasury)**, said that the Financial Services and the Treasury Bureau ("FSTB"), in collaboration with the Efficiency Unit, was compiling a comprehensive set of government standards and guidelines on various subjects, including office accommodation, overseas duty trips, procurement, overtime and entertainment expenses, for reference by publicly-funded non-governmental organisations. It was hoped that this would help to address the many problems identified by Audit and which were common to such organisations.

68. The Committee enquired about the Commissioner's decision on Audit's recommendation in paragraph 7.11(d) that the PCPD should consider whether or not to renew the lease for the area of 126 m<sup>2</sup> which would expire in January 2010. The **Commissioner** informed the Committee that after due consideration of the costs and benefits involved, he decided to continue the lease until 31 January 2011 when the lease for the main part of the PCPD's office premises would expire. He would review the whole issue then (details of the Commissioner's consideration are given in Annex 5 of *Appendix 24*).

69. In response to the Commissioner's decision to renew the supplemental lease, **Mr YING Kwok-wing, Assistant Director of Audit**, said that Audit considered the decision acceptable, having regard to the disruptions that might be caused to the PCPD's operations in re-accommodating the staff affected.

#### Office car

70. The Committee noted Audit's findings in paragraphs 7.20 to 7.26 of the Audit Report that in 2003-2004, the PCPD purchased its office car without the Administration's approval for the necessary virement of funds between recurrent and capital subventions and, in so doing, breached the relevant requirements of the MAA. The Committee was particularly concerned that it was not an unintentional breach, but one made by the then Commissioner in the full knowledge that the Administration had rejected the PCPD's application for the virement of funds. The Committee asked:

- whether the CMAB was aware of this incident before it was revealed by Audit; and
- how the CMAB and the PCPD would ensure that the MAA requirements would be strictly complied with in future.

71. The **Secretary for Constitutional and Mainland Affairs** responded that:

- there was no record showing that the PCPD would proceed with the procurement of the office car after knowing the FSTB's disapproval of the virement of funds. The CMAB was not aware of the incident before Audit brought the matter to its attention;
- the CMAB had reviewed the appropriateness of the PCPD's conduct in the procurement of the office car in 2003-2004. The PCPD purchased the office car without the appropriate approval for virement of funding from its recurrent subvention account to its capital subvention account. Having consulted the FSTB, the CMAB considered that the act constituted a breach of the requirements of the MAA signed in November 1997. He had written to the PCPD to underline the importance of complying with the requirements of

the MAA at all times and to remind the PCPD to exercise prudence and strive for economy in its expenditure, including the procurement of equipment and services;

- the new MAA of 4 September 2009 was signed with a view to enhancing the administrative arrangements of the PCPD. Paragraph 7 of the new MAA was on "Governance", under which the PCPD was required to ensure that it was operated in a transparent and accountable manner; and
- the PCPD reported its financial position and its work to the CMAB every month, so the CMAB had knowledge of its operation. Through more frequent meetings with, and more frequent provision of information by, the PCPD, the CMAB would be able to monitor the implementation of the MAA and ensure the PCPD's compliance with the requirements. In extreme cases of non-compliance, the CMAB could stop the provision of subventions to the PCPD, but such decision would not be taken lightly. The CMAB would need to strike a balance between respecting the autonomy of the PCPD, which was an independent statutory body, and maintaining accountability in the use of public funds.

72. The **Commissioner** said that he was not aware of the incident until Audit brought it to his attention. The PCPD had learnt a lesson and similar incidents should not occur in future. He would ensure that the MAA requirements were complied with.

#### Other issues

73. The Committee referred to paragraphs 7.39 and 7.40 of the Audit Report which revealed another case of non-compliance by the PCPD. Audit found that \$1.23 million of a fund earmarked for implementing the Data User Registration Scheme ("DURS") was used for purposes not specifically related to the DURS. The Committee queried the reason for the incident and whether this reflected the existence of systemic weaknesses in the internal control systems or a lack of prudence in the use of public funds.

74. The **Commissioner** said that:

- there was no question about the legitimacy of the expenditure of \$1.23 million. It was a case of spending money appropriately but debiting the expenditure against the wrong account. In response to Audit's concern, the PCPD had returned the amount to the earmarked fund, by transferring \$1.23 million from its general reserve; and
- he admitted that there was much room for improvement in the PCPD's handling of administrative issues. He would endeavour to make improvements in this regard.

75. The **Secretary for Constitutional and Mainland Affairs** said that:

- Audit recommended that the CMAB should consider whether to require the PCPD to return to the Government the fund of \$5 million earmarked for the installation of computer system to implement the DURS if it had no firm plan to implement the scheme in the near future, or to allow the PCPD to keep the fund and take measures to ensure that it was not used for other purposes without the CMAB's prior consent; and
- as the PCPD did not indicate earlier any firm plan to implement the DURS, the CMAB was originally inclined to require the PCPD to return the earmarked fund to the Government. However, according to the latest information provided by the PCPD, it wished to implement the DURS in the foreseeable future. Hence, the CMAB would follow up with the PCPD on the implementation details before deciding whether the PCPD should be allowed to keep the fund.

#### **H. Performance reporting in COR**

76. The Committee noted Audit's concern in paragraph 8.4 of the Audit Report that in the 2009-2010 COR of the CMAB, there were no indicators to measure the outcome and productivity of the PCPD's work. There were also no indicators on the PCPD's promotional activities, and on its performance in approving and issuing codes of practice for the practical guidance of data users.

77. The **Secretary for Constitutional and Mainland Affairs** informed the Committee that the CMAB was working with the PCPD to develop appropriate outcome and productivity indicators, including indicators on the PCPD's promotional activities and the number of codes of practice or guidelines approved/issued by the PCPD. These would be included in the CMAB's COR in the following year.

#### **I. Conclusions and recommendations**

78. The Committee:

- notes that the key findings of the Director of Audit's Report ("Audit Report") mostly concern the inadequacies in the governance and administration of the Office of the Privacy Commissioner for Personal Data ("PCPD"), and not its performance in securing the protection of privacy of individuals with respect to personal data and in overseeing the enforcement of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO");

- considers that whilst the amounts of money involved in individual cases identified by the Audit Commission ("Audit") may not be very large, the inadequacies identified have revealed that the PCPD has not shown a standard of corporate governance and a corporate culture of prudent use of public funds expected of a publicly-funded organisation;
- affirms the efforts made by the Privacy Commissioner for Personal Data ("Commissioner") to reduce the expenditure of the PCPD;

#### Corporate governance

- notes that the PCPD, being an organisation with only 55 staff, may not have sufficient resources, manpower and expertise at its disposal to adequately develop and implement the necessary systems and processes to meet the expected standard of corporate governance;
- finds it unacceptable that the PCPD, as a publicly-funded organisation, has not adequately emphasised the importance of institutionalising an effective and formal corporate governance structure and systems, as illustrated by the following examples:
  - (a) the PCPD has not provided for systemic oversight of compliance and internal control matters;
  - (b) the PCPD did not have a structured strategic planning process;
  - (c) there were no formal rules to govern the meetings of the Personal Data (Privacy) Advisory Committee ("Advisory Committee"), such as their frequency, quorum and the need for prompt issuance of minutes of meetings; and
  - (d) meetings of the Advisory Committee were held much less frequently during the tenure of the incumbent Commissioner. The need for meetings appears to depend on the Commissioner's own perception instead of objective criteria;
- acknowledges that:
  - (a) the Government and the Commissioner entered into a new Memorandum of Administrative Arrangements on 4 September 2009, which supersedes the previous one signed on 18 November 1997; and
  - (b) the PCPD has accepted the audit recommendations in paragraphs 2.8 and 2.14 of the Audit Report. The PCPD will set up a formal strategic planning group to drive the strategic planning process, and has prepared a formal long-term strategic plan (2010-2014) and a formal annual

business plan for 2010. The formal meeting rules of the Advisory Committee are expected to be in place by February 2010;

- urges:
  - (a) the Secretary for Constitutional and Mainland Affairs and the Commissioner to discuss as soon as possible the establishment of standing arrangements to oversee compliance and internal control matters of the PCPD; and
  - (b) the Commissioner to make strategic planning a standing agenda item of the Advisory Committee meetings;

#### Complaint management

- notes that:
  - (a) the PCPD detected, at a very early stage after the commencement of the operation of the PDPO in December 1996, practical difficulties in meeting the requirement under section 39(3) of the PDPO, which provides that where the Commissioner refuses to carry out or continue an investigation initiated by a complaint, he shall serve a refusal notice on the complainant "as soon as practicable but, in any case, not later than 45 days after receiving the complaint"; and
  - (b) in July 1998, the PCPD proposed to the Home Affairs Bureau ("HAB"), the then responsible policy bureau, to amend the PDPO to relax the 45-day requirement;
- expresses dismay and serious concern that:
  - (a) the statutory requirement that a refusal notice must be served within 45 days was not met in many cases, one of the reasons being shortage of manpower within the PCPD;
  - (b) despite being alerted in July 1998 to the potential difficulties caused by the 45-day requirement, the Administration (particularly the HAB which was the responsible policy bureau before 1 July 2007) has allowed the problem of non-compliance to persist for over a decade;
  - (c) the non-compliance with the 45-day requirement could have undermined the credibility of the PCPD as a law enforcement agency, and indirectly that of the Administration;

- (d) the PCPD's interpretation of section 39(3) of the PDPO to give itself up to 75 days for serving refusal notices is, prima facie, contrary to the express requirement of the PDPO that such notices must be served "not later than 45 days after receiving the complaint". In any event, even with the PCPD's interpretation, the number of non-compliance cases was still significant, totalling 868 cases in the five years from 2004 to 2008;
  - (e) the PCPD suspended the planning procedures for handling complaint cases in September 2008; and
  - (f) both the number and the ages of long outstanding cases (i.e. those aged beyond 180 days) have increased since 2004;
- acknowledges that:
- (a) the Constitutional and Mainland Affairs Bureau ("CMAB") has included the proposal to amend the 45-day requirement in the public consultation document on the review of the PDPO issued in August 2009 and will decide how to address the problem having regard to the results of the consultation;
  - (b) to alleviate the manpower shortage of the PCPD, the CMAB had increased the annual budgetary allocation to the PCPD by 23% since 2007 and will grant it additional allocation in 2010-2011. The CMAB will also consider raising the ceiling of the PCPD's reserve from \$5 million to 20% of the annual subventions from the Government, i.e. about \$9 million for the subvention of \$44.5 million for 2009-2010;
  - (c) in response to the audit observations, in September 2009, the PCPD revisited the issue of the suspension of planning procedures, and decided to streamline the procedures; and
  - (d) the PCPD has accepted the audit recommendations in paragraph 3.24 of the Audit Report;
- strongly urges:
- (a) the Secretary for Constitutional and Mainland Affairs and the Commissioner to work out a feasible solution to address the problem of non-compliance with the 45-day requirement, taking into consideration the consultation results and complainants' legitimate expectation that they should be informed as soon as practicable when the PCPD refuses to carry out or continue an investigation initiated by their complaints;

- (b) the Secretary for Constitutional and Mainland Affairs, in consultation with the Commissioner, to clarify the proper construction of the 45-day requirement under section 39(3) of the PDPO and, pending the outcome of the public consultation, to take immediate and effective measures to ensure compliance with the 45-day requirement as properly construed; and
- (c) the Commissioner to make effective use of the additional resources allocated by the CMAB and explore effective ways to resolve the manpower shortage of the PCPD;

#### Promotional activities

- expresses serious concern that:
  - (a) there were deficiencies in the PCPD's budgetary control process for promotional events; and
  - (b) some promotional expenditure items can be costly and discretionary in nature, but there were no clear guidelines to guide decisions on these expenditure items and to ensure the prudent use of public funds;
- acknowledges that the PCPD has accepted the audit recommendations in paragraphs 4.12, 4.30, 4.35 and 4.38 of the Audit Report, and compiled a Promotional Events Manual in September 2009;
- urges the Commissioner to take effective measures to ensure that the PCPD staff will comply with the guidelines and requirements set out in the Promotional Events Manual;

#### Overseas duty trips

- expresses serious concern that:
  - (a) there were insufficient checks and balances on the overseas duty trips of the Commissioner;
  - (b) the PCPD did not have a policy on the acceptance of free offers by the organisers of the events attended by the PCPD staff on overseas duty trips;
  - (c) for the trip to Cambridge, the PCPD did not act expeditiously to secure free accommodation for the Commissioner who attended the event as a guest speaker, despite being urged repeatedly by the event organiser to do so, and the delay cost the PCPD \$9,900 in hotel charges. Neither

did the PCPD document the reasons for not accepting the offer promptly;  
and

- (d) there were weaknesses in the PCPD's internal control systems:
  - (i) due to the use of a wrong rate for calculating the "40% allowance", the Commissioner was overpaid an amount of \$670 for his trip to Cambridge; and
  - (ii) regarding the trip to Canada, the Commissioner was given time off, part of which he had not earned;

- acknowledges that:

- (a) after Audit brought the matter to his attention, the Commissioner immediately refunded to the PCPD the amount of \$670 overpaid;
- (b) in September 2009, the Commissioner issued a directive on time off, directing that, with immediate effect, any person holding (including in an acting capacity) the office of the Commissioner shall not be granted time off for whatever reason. He also instructed his staff to deduct from the balance of his annual leave the days of time off he had taken and to rectify the records accordingly;
- (c) the PCPD has accepted the audit recommendations in paragraphs 5.5, 5.13, 5.21 and 5.26 of the Audit Report; and
- (d) the new Memorandum of Administrative Arrangements of 2009 has enhanced the checks and balances on the Commissioner's overseas duty trips as follows:
  - (i) the Commissioner will consult the Advisory Committee on his intended overseas duty trips and confirm to the Advisory Committee that such duty visits are consistent with the discharge of his functions under the PDPO;
  - (ii) the Commissioner will not proceed with the duty visits if the majority of the Members of the Advisory Committee advise that such duty visits are inconsistent with the discharge of his functions under the PDPO; and
  - (iii) the Commissioner will then inform the Secretary for Constitutional and Mainland Affairs of the Advisory Committee's advice, and confirm that the operation of the PCPD will not be adversely affected during such visits;

- urges the Commissioner to:
  - (a) formulate a policy on the acceptance of free offers by organisers of the events attended by the PCPD staff (including the Commissioner) on overseas duty trips, and specify the factors for consideration in deciding whether to accept an offer; and
  - (b) take measures to strengthen the PCPD's internal control systems;

#### Other administrative issues

##### *Office accommodation*

- expresses concern that:
  - (a) there was no documentation indicating that the PCPD had carried out a comprehensive assessment of its needs for office space, before taking up the existing leases to rent a total office space of 1,154 m<sup>2</sup>. There was also no documentation of the basis/criteria on which the PCPD arrived at a total space need of 1,154 m<sup>2</sup>;
  - (b) the PCPD's rented area exceeded Audit's assessed needs, using the government accommodation standards as a benchmark, by 422 m<sup>2</sup> (or 58%) which cost about \$143,500 per month in rental;
  - (c) the PCPD's practice regarding the provision of cellular offices for its staff was more generous than the government standards;
  - (d) the PCPD took up a supplemental lease to provide for additional office space of 126 m<sup>2</sup> in anticipation of creating 16 posts, without first securing funding for the posts. As a result, additional office space was rented for posts either not created at all, or created only many months after the commencement of the supplemental lease; and
  - (e) the HAB had not informed the PCPD of the government accommodation standards;

##### *Office car*

- expresses dissatisfaction and finds it unacceptable that the procurement of the office car in 2003-2004 by the then Commissioner was in clear breach of the relevant requirements of the Memorandum of Administrative Arrangements;

- expresses concern that:
  - (a) the vehicle log books of the PCPD were not properly maintained, contrary to the instructions relating to vehicle log books;
  - (b) many journeys of the office car were questionable as to whether they complied with the PCPD's guidelines on the use of the office car; and
  - (c) there were some instances where PCPD staff used taxi for duty journeys while the office car was idle;

*Other issues*

- expresses concern that:
  - (a) the PCPD had used \$1.23 million of the fund earmarked for implementing the Data User Registration Scheme ("DURS"), for purposes other than the DURS; and
  - (b) there were instances of delays by the PCPD in completing staff performance appraisals, with undesirable consequences such as delays in granting salary increments to the staff concerned;
- acknowledges that:
  - (a) the PCPD has returned \$1.23 million to the fund earmarked for implementing the DURS, by transferring an equivalent amount from its general reserve;
  - (b) the Financial Services and the Treasury Bureau, in collaboration with the Efficiency Unit, is compiling a comprehensive set of government standards and guidelines on various subjects, including office accommodation, overseas duty trips, procurement, overtime and entertainment expenses, for reference by publicly-funded non-governmental organisations;
  - (c) the PCPD has accepted the audit recommendations in paragraphs 7.11, 7.27, 7.35 and 7.45 of the Audit Report; and
  - (d) the Secretary for Constitutional and Mainland Affairs has accepted the audit recommendations in paragraphs 7.28 and 7.41 of the Audit Report;

- urges:
  - (a) the Commissioner to take appropriate actions to:
    - (i) foster a culture of observing the "moderate and conservative" principle among the PCPD staff when making expenditure decisions;
    - (ii) foster a compliance culture within the PCPD, in the light of the various administrative non-compliance issues revealed by Audit; and
    - (iii) familiarise the PCPD staff with the requirements of the new Memorandum of Administrative Arrangements and ensure compliance;
  - (b) the Financial Services and the Treasury Bureau to expeditiously complete compilation of a set of government standards and guidelines on various subjects for reference by publicly-funded non-governmental organisations, and arrange suitable training on the standards and guidelines for staff of the organisations; and
  - (c) the Administration to require the government representatives in publicly-funded non-governmental organisations to proactively inform the organisations of applicable government standards and guidelines;

Performance reporting in Controlling Officer's Report

- expresses concern that in the Controlling Officer's Report:
  - (a) there are no performance indicators to measure the outcome and productivity of the PCPD's work;
  - (b) there are no indicators on the PCPD's promotional activities, although the PCPD has a statutory duty to promote awareness and understanding of the provisions of the PDPO; and
  - (c) there are no indicators on the PCPD's performance in approving and issuing codes of practice for the practical guidance of data users, although the PCPD has a statutory duty to promote and assist bodies representing data users to prepare codes of practice;
- acknowledges that the Secretary for Constitutional and Mainland Affairs has accepted the audit recommendations in paragraph 8.5 of the Audit Report;

- urges the Secretary for Constitutional and Mainland Affairs to expeditiously implement the above audit recommendations; and

Follow-up actions

- wishes to be kept informed of:
  - (a) the progress made in establishing standing arrangements to oversee compliance and internal control matters of the PCPD;
  - (b) the PCPD's decision regarding the proposal to make strategic planning a standing agenda item of the Advisory Committee meetings;
  - (c) the solution to address the problem of non-compliance with the 45-day requirement;
  - (d) the progress made in clarifying the proper construction of the 45-day requirement under section 39(3) of the PDPO and the immediate and effective measures to ensure compliance with the 45-day requirement as properly construed, pending the outcome of the public consultation;
  - (e) the progress made in resolving the manpower shortage of the PCPD;
  - (f) the measures taken to ensure that the PCPD staff will comply with the guidelines and requirements set out in the Promotional Events Manual;
  - (g) the progress made in formulating a policy on the acceptance of free offers by organisers of the events attended by the PCPD staff on overseas duty trips;
  - (h) the measures taken to strengthen the PCPD's internal control systems;
  - (i) the actions taken to foster a culture of observing the "moderate and conservative" principle among the PCPD staff when making expenditure decisions;
  - (j) the actions taken to foster a compliance culture within the PCPD and familiarise the PCPD staff with the requirements of the new Memorandum of Administrative Arrangements;
  - (k) the progress made by the Financial Services and the Treasury Bureau in compiling a set of government standards and guidelines on various subjects for reference by publicly-funded non-governmental organisations, and arranging suitable training on the standards and guidelines for staff of the organisations; and
  - (l) the progress made in implementing the various audit recommendations.