

立法會

Legislative Council

LC Paper No. CB(2)2640/11-12
(These minutes have been seen by
the Administration)

Ref : CB2/BC/8/10

Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011

**Minutes of twelfth meeting
held on Monday, 26 March 2012, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Dr Hon Philip WONG Yu-hong, GBS (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Ronny TONG Ka-wah, SC
Hon IP Kwok-him, GBS, JP

Public Officers attending : Item I

Constitutional and Mainland Affairs

Miss Adeline WONG
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG
Deputy Secretary for Constitutional and Mainland Affairs
(Designate)

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Department of Justice

Ms Mabel CHEUNG
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Elyssa WONG
Chief Council Secretary (2) 5

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Carrie WONG
Assistant Legal Adviser 4

Ms Catherina YU
Senior Council Secretary (2) 6

Ms Sandy HAU
Legislative Assistant (2) 5

Miss Liza LAM
Clerical Assistant (2) 5

Action

I. Meeting with the Administration
[LC Paper Nos. CB(2)1347/11-12(01), CB(2)1496/11-12(01) and
CB(2)1496/11-12(02)]

Members noted the Administration's responses to issues raised by the Bills Committee [LC Paper No. CB(2) 1496/11-12(01)] and the submission from a member of the public on the Bill [LC Paper No. CB(2)1496/11-12(02)].

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. The Bills Committee requested the Administration to –

Clause 24 (section 46 of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"))

(a) in connection with the proposed new sections 46(7) to (9) –

(i) consider including a schedule in the Bill listing out the authorities in jurisdictions outside Hong Kong which had entered reciprocal agreements with the Privacy Commissioner for Personal Data ("PCPD") in information sharing and the relevant agreements; and

(ii) consider publicizing information on cases where PCPD had provided information to authorities in jurisdictions outside Hong Kong under the reciprocal agreements.

Clause 31 (section 59 of PDPO)

(b) in connection with the proposed new section 59(2), reconsider its scope with reference to similar provisions in overseas legislation as provided by the Administration, i.e. the inclusion of circumstances such as preventing or reducing a serious threat to the life of an individual or public safety in the overseas example.

Clause 34 (section 63D of PDPO)

(c) consider whether the drafting of the proposed new section 63D(1) was appropriate, as it did not clearly reflect that the proposed exemption would be subject to archive purposes as defined;

(d) clarify whether only records of historical, research, educational or cultural interest were transferred to the Government Records Service ("GRS") for archive purposes and whether they had to be so specified to trigger the exemption; would there be other records not of those interests transferred to GRS and as such would not be able to enjoy the exemption; and

(e) provide written information on the meaning of "records".

Action

II. Any other business

Next meeting

4. Members agreed that the meeting originally scheduled for 10 April 2012 at 4:30 pm be cancelled and the next meeting would be held on 17 April 2012 at 4:30 pm.
5. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
24 July 2012

**Proceedings of the twelfth meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Monday, 26 March 2012, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000-000435	Chairman	Opening remark	
000436-001611	Chairman Admin Mr WONG Ting-kwong	<p><u>The Administration's responses to issues raised at previous meetings</u> [LC Paper CB(2)1347/11-12(01)]</p> <p><u>Clause 14 (section 22(4) of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"))</u></p> <p>Mr WONG Ting-kwong's enquiry on the rationale for imposing a criminal penalty under the proposed new section 22(4) on the supply of false or misleading information in a material particular in a data correction request while providing inaccurate or misleading information in the first instance was not an offence.</p> <p>The Administration's response that the data subject must have a specific purpose in mind to seek the correction when making a data correction request. The data concerned might not be provided by the data subject in the first place but obtained by the data user from other sources. Criminal penalty would therefore become necessary if the data subject knowingly or recklessly supplied false or misleading information for the purpose of making the data user comply with the correction request.</p> <p>Mr WONG Ting-kwong's expression of the concern of the Democratic Alliance for the Betterment and Progress of Hong Kong about the nuisance caused to data subjects by unsolicited calls alleged to be made on a random basis.</p> <p>The Administration's explanation that under PDPO, a data subject could request a data user to stop using his personal data in direct marketing.</p>	
001612-004115	Chairman Admin Ms Cyd HO Ms Emily LAU	<p><u>Clause 24 (section 46 of PDPO)</u></p> <p>Ms Cyd HO's concern about the provision of personal data of members of the public by the</p>	

Time marker	Speaker	Subject	Action required
		<p>Privacy Commissioner for Personal Data ("PCPD") to the Mainland authorities albeit no law substantially similar to PDPO was put in force in the Mainland.</p> <p>The Administration's response that, subject to the requirements under the existing legislation, e.g. with the written consent of the data subject, PCPD might disclose the personal data to an authority of a place outside Hong Kong where there was no legislation similar to PDPO.</p> <p>Ms Cyd HO and Ms Emily LAU's enquiry on the actions the Administration could take should an authority of an overseas jurisdiction breach the secrecy requirements.</p> <p>The Administration's response that the compliance of secrecy requirements by the authorities in other jurisdictions would be governed by the relevant law in their jurisdictions.</p> <p>Ms Cyd HO's suggestion of –</p> <p>(a) including a schedule in the Bill listing out the authorities in jurisdictions outside Hong Kong which had entered reciprocal agreements with PCPD in information sharing and the relevant agreements; and</p> <p>(b) making public information on cases where PCPD had provided information under the reciprocal agreements.</p> <p>Ms Emily LAU's view of the need to provide more safeguards for personal data exchanged during the cooperation between PCPD and authorities in jurisdictions outside Hong Kong.</p> <p>The Administration's undertaking to discuss members' concern with PCPD.</p>	<p>Admin (paragraph 3 of the minutes)</p>
004116-005400	<p>Chairman Admin Mr CHAN Kin-por Mr Alan LEONG</p>	<p>Mr Alan LEONG's view that making the proposed new section 46(9)(c) a mandatory condition under which PCPD might disclose matters to an authority of a place outside Hong Kong might provide better protection to data subjects.</p> <p>The Administration's response that making the proposed new section 46(9)(c) a mandatory condition would disallow PCPD to disclose matters which might be helpful to privacy investigations in which the person involved had in fact contravened the privacy provision.</p>	

Time marker	Speaker	Subject	Action required
005401-005914	Chairman Admin Ms Emily LAU	<p><u>Clause 28 (section 50A of PDPO)</u></p> <p>Ms Emily LAU's enquiry on whether the daily penalty under the proposed new section 50A would be sufficient to impose a deterrent effect.</p> <p>The Administration's response that so far there had only been three conviction cases for contravention of enforcement notices and the proposed penalty for offences relating to enforcement notices was appropriate.</p>	
005915-010129	Chairman Admin Ms Emily LAU SALA2	<p><u>Clause 28 (section 50B of PDPO)</u></p> <p>SALA2's response to Ms Emily LAU's enquiry that the Administration's proposal to replace "any other person" by "any prescribed officer" in the proposed section 50B(1) was appropriate.</p>	
010130-012059	Chairman Admin SALA2 Mr Alan LEONG Ms Emily LAU	<p><u>Clause 34 (section 63D of PDPO)</u></p> <p>SALA2's referral to his letter to the Administration seeking clarifications on issues concerning transfer of records to the Government Record Services ("GRS") [LC Paper No. CB(2)328/11-12(01)] and his view that it was unclear under the proposed new section 63D whether the exemption applied to the transfer of the data or the data after being transferred and the expression "<i>that are transferred to the Government Records Service for archive purposes</i>" in section 63D(1) qualified the transfer rather than the personal data.</p> <p>Mr Alan LEONG's view that SALA2's observation was valid if section 63D(1) was self-contained but there would be no grey area in the proposed exemption under section 63D if subsection (1) was read in conjunction with subsection (2)(b).</p> <p>The Administration's undertaking to review the drafting of the proposed new section 63D having regard to SALA2's concern.</p> <p>Ms Emily LAU's view that personal data contained in Government records should continue to be protected after the transfer.</p>	Admin (paragraph 3 of the minutes)
012100-013859	Chairman Admin Ms Emily LAU SALA2 Ms Cyd HO	<p><u>The Administration's responses to issues raised by the Bills Committee</u> [LC Paper No. CB(2)1496/11-12(01)]</p> <p><u>Clause 31 (section 59 of PDPO)</u></p> <p>SALA2's enquiry on the reasons for not</p>	

Time marker	Speaker	Subject	Action required
		<p>expanding the scope of exemption from Data Protection Principle ("DPP") 3 to cover cases where an exemption would be necessary to prevent or reduce a serious threat to the life of an individual or public safety as in the case of some overseas legislation.</p> <p>The Administration's response that –</p> <p>(a) the serious threat to the life of an individual scenario was already covered by the proposed exemption under section 59(2) for cases where the application of DPP3 would be likely to cause serious harm to the physical or mental health of an individual. The proposed new section 63C also provided similar exemption; and</p> <p>(b) in respect of public safety, section 57 had already provided for exemption for safeguarding security and defence; and section 58 for prevention or detection of crime, among other things.</p> <p>Ms Cyd HO and Ms Emily LAU's request for the Administration to reconsider the scope of section 59(2) with reference to similar provisions in overseas legislation having regard to SALA2's view.</p>	<p>Admin (paragraph 3 of the minutes)</p>
013900-014724	<p>Chairman Admin Ms Emily LAU SALA2</p>	<p><u>Clause 13 (section 20 of PDPO)</u></p> <p>Members noted that in Australia and New Zealand, there were provisions that data access requests should be subject to the secrecy provisions in the ordinances.</p>	
014725-015246	<p>Chairman Admin Ms Cyd HO SALA2</p>	<p><u>Clause 34 (section 63D of PDPO)</u></p> <p>SALA2's suggestion for the Administration to –</p> <p>(a) consider whether the drafting of the proposed new section 63D(1) was appropriate, as it did not clearly reflect that the proposed exemption would be subject to archive purposes as defined; and</p> <p>(b) clarify whether only records of historical, research, educational or cultural interest were transferred to GRS for archive purposes and whether they had to be so specified to trigger the exemption; would there be other records not of those interests transferred to GRS and as such would not be able to enjoy the exemption;</p>	<p>Admin (paragraph 3 the minutes)</p>

Time marker	Speaker	Subject	Action required
		Ms Cyd HO's request for the Administration to provide written information on the meaning of "records".	Admin (paragraph 3 of the minutes)
015247-015519	Chairman Ms Cyd HO Ms Emily LAU	Cancellation of the meeting originally scheduled for 10 April 2012. Date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
24 July 2012