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Mr. Arthur CHEUNG  
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(Fax No. : 2901 1297)

Dear Mr. Cheung,

**Personal Data (Privacy) (Amendment) Bill 2011**

Thank you for your letter of 6 January 2012.

The replies to the queries you raised are, seriatim, as follows:

(a) *Section 14(7) of Personal Data (Privacy) Ordinance (Cap. 486)*

Although the way section 14(7) is presented may not be ideal, there is no ambiguity as to its meaning.

(b) *Proposed section 19(1A) (Clause 12(1))*

Under section 18(1) of the Personal Data (Privacy) Ordinance ("PDPO"), a data subject may make a data access request asking the data user to inform him whether or not the data user holds his personal data and, if the data user holds the data, to provide a copy of the data. The current section 19(1) only sets out the timeframe for compliance with a data access request. It does not contain specific provision as to how the data access request should be complied with (for instance, whether the reply should be in writing

or not). The proposed amendment to section 19(1) and the proposed new section 19(1A) set out the specific requirements.

It should be noted that not holding the data and not being able to comply with a data access request within 40 days (the latter is dealt with under the current section 19(2)) are two different matters. The proposed amendment to section 19(1) and the proposed new section 19(1A) also aim to set out more clearly the requirements for circumstances in which data users hold the data or do not hold the data.

(c) *Proposed section 20(5) (Clause 13(4))*

The Administrative Appeals Board Ordinance (Cap. 442) contains provisions (e.g. sections 11, 12 and 13) under which the Administrative Appeals Board ("AAB") or AAB Chairman may make orders for discovery and inspection of documents relevant to the appeal. In proceedings before the AAB relating to non-compliance with a data access request, documents containing the relevant personal data could therefore be disclosed even before the AAB has decided whether the data access request should be complied with. The policy intent, however, is that the personal data should not be disclosed until after the AAB has decided that the data user must comply with the request. It would be necessary to insert provisions in the PDPO to deal with the inconsistencies with the relevant provisions in the AAB Ordinance. It is not possible to do so by amending the AAB standing instructions.

Similarly, the High Court Ordinance (Cap. 4) and the District Court Ordinance (Cap. 336) both contain provisions (e.g. sections 41 and 42 of the High Court Ordinance and sections 47A and 47B of the District Court Ordinance) under which the court may make orders for discovery and inspection of documents relevant to the action before the court. The Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336A) also contain provisions that permit discovery of documents without court order. In proceedings before a court relating to non-compliance with a data access request, documents containing the relevant personal data could therefore be disclosed even before the court has decided whether the data access request should be complied with. The policy intent, however, is that the personal data should not be disclosed until after the court has decided that the data user must comply with the data access request. It would be necessary to

insert provisions in the PDPO to deal with the inconsistencies with the relevant provisions in the High Court Ordinance and District Court Ordinance.

The newly added section 20(5) applies to proceedings before a magistrate but it is not necessary to include "Magistrates Ordinance" in the definition of "relevant Ordinance" as the Magistrates Ordinance does not contain any provisions relating to discovery and inspection.

Yours sincerely,

*Philomena Leung*  
(Philomena Leung)

for Secretary for Constitutional and Mainland Affairs

c.c. Clerk to Bills Committee

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