

**Legislative Council Panel on Constitutional Affairs
Meeting on 16 May 2011**

**Update on the Work of the Office of the Privacy Commissioner
for Personal Data**

Members were last briefed on 15 November 2010 by the Privacy Commissioner for Personal Data (“the Commissioner”) on the strategies and work plans of the Office of the Privacy Commissioner for Personal Data (“PCPD”). This paper serves to update Members of PCPD’s accomplishments.

Enforcement

Complaints

2. From April 2010 to March 2011, PCPD received 1,225 complaints, representing an increase of 20% over the previous year. Of these, 965 cases (79%) were against private sector organizations, 146 (12%) were against government departments and other public bodies, and 114 (9%) were against individuals. Of the complaints against private sector organizations, most were against financial institutions (219 cases), telecommunications companies (129 cases) and property management companies (116 cases).

3. The 1,225 complaints received in 2010-2011 involved a total of 1,586 alleged breaches of the requirements under the Personal Data (Privacy) Ordinance (“the Ordinance”). Of these, 554 (35%) related to the use of personal data without the consent of the complainants, 501 (32%) concerned mainly excessive or unfair collection of the complainants’ personal data, 175 (11%) were about continued use of personal data for direct marketing despite the complainants’ opt-out requests. These direct marketing-related complaints represent a considerable increase (150%) compared with the previous year (only 70 cases).

Compliance checks and self-initiated investigations

4. From April 2010 to March 2011, the Commissioner carried out 129 compliance checks against organizations that appeared to have adopted practices inconsistent with the requirements under the Ordinance. This compares with 111 checks carried out in 2009-10, representing an increase of

16%. Further, the Commissioner conducted self-initiated formal investigations. One notable investigation of this nature was against Octopus Holdings Limited and Octopus Rewards Limited for the sale of their customers' personal data to third parties without the explicit and voluntary consent of the customers. The investigation highlighted prevalent malpractices adopted by Hong Kong companies in the collection and use of personal data for direct marketing.

Investigation results

5. From April 2010 to March 2011, the Commissioner served 8 enforcement notices on the data users at fault to remedy the contraventions identified. In addition, the Commissioner issued 19 warning letters and obtained undertakings to remedy contraventions in 5 cases. He also provided advice or recommendations to data users in 212 complaint cases.

Privacy compliance assessment

6. In July 2010, the Commissioner completed a privacy compliance assessment for the Immigration Department on the smart identity card system and made recommendations to ensure that all personal data held are handled in accordance with the requirements under the Ordinance.

Inspection

7. In March 2011, PCPD completed an inspection of the personal data system of TransUnion Limited: a major credit reference agency in Hong Kong maintaining the credit records of about 4.3 million individuals. An inspection report was published which included, among other things, 20 recommendations for TransUnion to enhance its system of control in the areas of data collection, accuracy, retention, security and access, as well as IT security audit.

Prosecution

8. From January 1998 to April 2011, the PCPD has referred 77 cases to the Police. Of the 59 cases that were related to offences under the Ordinance, 15 cases ended up being heard in the courts with 11 convictions and 4 acquittals. During 2010-11, there were 13 referrals and 2 convictions. Both convictions involved offences under section 34 of the Ordinance, namely, repeated telemarketing calls despite the complainants' opt-out requests.

9. In March 2011, the Commissioner had a meeting with the Assistant Commissioner of Police and the Director of Public Prosecutions to identify ways and means to enhance the effectiveness of referrals and to boost the success rates of prosecution. The tripartite dialogue will continue on a need basis.

Review of the Ordinance

10. The Constitutional and Mainland Affairs Bureau (“CMAB”) published the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance on 18 October 2010 to launch further public discussions on the legislative proposals to strengthen personal data privacy protection under the Ordinance. The Commissioner noted that while the Administration had incorporated many of the proposals PCPD submitted in December 2007, some of its key proposals would not be pursued. To encourage public participation in the review of the Ordinance and to explain PCPD’s position regarding the shelved proposals, PCPD embarked on a short but intensive public engagement exercise with the Commissioner and his team attending 41 public forums and meetings with interested parties in the two-month consultation period. Two surveys were also conducted by PCPD to gauge public views on some of the shelved proposals. In the end, PCPD made a detailed submission to CMAB in December 2010 setting out PCPD’s comments on the Administration’s proposals and the findings of the two surveys (see http://www.pcpd.org.hk/english/files/review_ordinance/PCPD_submission_311210.pdf).

11. The Report on Further Public Discussions on Review of the Personal Data (Privacy) Ordinance was issued on 18 April 2011 by CMAB. The Report reaffirms that CMAB would pursue the majority of the proposals previously submitted by PCPD. PCPD’s initial response to the Report is in a press statement issued on the same day, a copy of which is at Annex A. PCPD will continue to study the Report in detail and submit comments to CMAB and the Legislative Council for further consideration.

Code of Practice on Consumer Credit Data

12. PCPD conducted a public consultation in January/February 2011 in response to the proposals made by the financial services industry to share more

mortgage data of the consumers than just negative mortgage data for residential properties. The justifications for the proposed expanded sharing of mortgage data are to facilitate comprehensive credit assessment of consumers thereby promoting responsible lending and borrowing as well as the stability of the property market and the banking system in Hong Kong. Taking into account the public views expressed and the consumers' right of personal data protection as provided in the Ordinance, the Commissioner made determinations on the privacy issues arising from the proposals of the financial services industry. On this basis, the Code of Practice on Consumer Credit Data was amended to provide for the additional sharing of positive mortgage data for residential properties as well as both positive and negative mortgage data for non-residential properties with effect from 1 April 2011.

Data User Returns Scheme (DURS)

13. In consultation with CMAB, PCPD has finalized detailed plans to introduce DURS to (i) the public sector; (ii) the regulated industries of banking, telecommunications and insurance; and (iii) organizations with a large membership base. PCPD will commence consulting the affected sectors in June 2011.

Enquiries and response to consultations

14. From April 2010 to March 2011, PCPD received a total of 18,103 cases of enquiries, as compared with 18,460 cases received in the previous year. The enquiries were mainly concerned with employment practice, processing of data access requests and use of personal data for direct marketing.

15. During the same period, PCPD has provided detailed comments in response to consultations from various government departments covering a wide range of subjects, and made submissions on various proposed legislative or administrative measures that have an impact on personal data privacy. Details are set out in Annex B.

Regional and global data protection activities

16. PCPD continues to participate actively in the Data Privacy Subgroup of the Asia Pacific Economic Cooperation (APEC) Electronic Commerce Steering Group, which is presently finalizing the project documents of the APEC Data Privacy Pathfinder Project. PCPD contributed to the

development of the project document entitled “Cross Border Privacy Rules Compliance Assessment Guidelines for use by Accountability Agents”, which was endorsed by the Data Privacy Subgroup in March 2011. At present, PCPD is working on two other documents, namely the Memorandum of Understanding on Accountability Agent Participation in the APEC Cross Border Privacy Rules Framework and the APEC Charter of the Cross Border Privacy Rules System Joint Oversight Panel.

Operation of Section 33 of the Ordinance

17. The PCPD has submitted a research paper to CMAB for consideration on some practical implementation issues such as (i) the meaning of “transfer” of personal data and (ii) overseas developments on restriction of cross-border transfer of personal data. The PCPD will continue to assist CMAB regarding the implementation of section 33.

Promotion and education activities

18. To promote the awareness and understanding of, and compliance with the provisions of the Ordinance, PCPD has continued to embark on a number of promotion and education initiatives.

Seminars and Workshops

19. From April 2010 to March 2011, PCPD conducted a total of 168 seminars and workshops, representing an increase of 79% over the previous year. They belonged to three categories.

20. First, free introductory seminars on personal data protection were offered to the public. To cater for increasing demand, the frequency of these seminars has increased from once per month to three times per month since February 2011.

21. Secondly, PCPD organized public seminars on topical issues. Starting from March 2011, seminars on the theme “Promotion of Personal Data Privacy – Proper Use of Technology in Daily Life” have been conducted once every month to educate the public on data protection in the use of Internet and advanced communications products, including social networking.

22. Thirdly, PCPD provided tailor-made courses in response to requests

from individual organizations and demand from specific sectors (for example, direct marketing and human resources management in 2010-2011). Since January 2011, free seminars have been specially arranged for university undergraduates and secondary school students.

23. PCPD has taken the initiative to promote compliance with the provisions of the Ordinance by launching a series of professional compliance workshops. The workshops are tailored to the needs of executives dealing with personal data in different work contexts. Offering a thorough grounding of the applications and interpretations of the Ordinance, they are suitable for data protection officers, human resource managers, solicitors, compliance officers, IT managers and company secretaries. 25 workshops are planned for April – June 2011. The initiative has the support of 25 professional organizations and trade associations.

Inculcating the youth with the notion of privacy and personal data protection

24. PCPD has been particularly active in recent months in incorporating privacy and personal data protection in Liberal Studies and Other Learning Experience (“OLE”) under the New Senior Secondary curriculum. A set of teaching materials, which includes basic knowledge about the Ordinance and work sheets on topical privacy issues, is being designed. In a campaign to encourage students to organize privacy awareness promotional activities in their schools, PCPD staff act as mentors and over 700 students from 31 secondary schools have enrolled as student ambassadors.

Data Protection Officers’ Club

25. The Data Protection Officers Club is a forum organized by PCPD for personal data officers from a broad range of organizations to exchange views and experiences on compliance with the Ordinance. Membership stood at 376 as at 31 March 2011. During 2010-11, PCPD continued to update members of the club of the latest developments of PCPD and privacy issues, particularly matters regarding the applications of the Ordinance. “Train the trainers” workshops were also conducted for them.

Publications

26. PCPD continued to publish guidance notes, information leaflets and other publications in specialized areas and on topical issues of public interest. A

list of these publications issued during 2010-11 is at Annex C.

Other promotional programmes

27. Other promotional programmes conducted during 2010-11 include:-
- (a) Mass media campaign (March - May 2010), which comprised infomercial broadcast on TV; banners display in MTR train compartments; and Announcements of Public Interest in TV channels, MTR train compartments and shopping centres;
 - (b) Industry-specific campaign (April - December 2010) for insurance practitioners with a view to raising their awareness of the importance of protecting customers' personal data;
 - (c) Privacy Awareness Week (May 2010), which comprised a week's intensive promotion activities targeted at elderly citizens;
 - (d) Consumer Road Show (February/March 2011), staged in six shopping centres and attracted over 10,000 visitors; and
 - (e) Education and Careers Expo (February 2011): PCPD took up a booth and reminded some 3,500 visitors to be cautious about the disclosure of personal data when seeking jobs.

Administration and Management

28. The administrative and financial irregularities identified by the Director of Audit in his Report No.53 have been remedied. The recommendations of the Director of Audit and the Public Accounts Committee have been followed up. In particular, an internal compliance check system has been set up to ensure compliance with PCPD's established policies and rules in finance, personnel and administrative matters. A special task force, reporting directly to the Commissioner, will be assembled to conduct annual checks. The first series of checks will be conducted in June 2011.

Office of the Privacy Commissioner for Personal Data
May 2011

Media Statement issued by PCPD on 18 April 2011

Privacy Commissioner responds to the Administration's Report on
Further Public Discussions on Review of the
Personal Data (Privacy) Ordinance

1. The Privacy Commissioner for Personal Data (“the Commissioner”) Mr. Allan Chiang notes the Report on Further Public Discussions on Review of the Personal Data (Privacy) Ordinance (“FPD Report”) issued today (18 April) by the Secretary for Constitutional & Mainland Affairs.
2. Mr. Chiang said, “I am glad that the Administration reaffirms that it would pursue the majority of the proposals previously made by my Office to provide greater protection to personal data privacy and enhance the effectiveness and efficiency of the operations of the Office of the Privacy Commissioner for Personal Data (“PCPD”). I look forward to an early implementation of the proposals.”
3. “However, I am disappointed with the Administration’s stance which differs from that of PCPD on some proposals which will have significant impact on personal data privacy. In these areas, PCPD maintains its stance, as made clear in its previous submissions. In particular, PCPD comments as follows.” said Mr. Chiang.

(a) Unauthorized Sale of Personal Data by Data User

The Administration proposes an opt-out approach to the sale of personal data. If a data subject does not respond to the data user’s notification of sale of the data within 30 days, the data user may deem that the data subject has not opted out of the sale activities.

PCPD’s comments:

Such deeming effect would in effect legalize the sale of personal data by data users that they are not otherwise permitted to engage in under the current Personal Data (Privacy) Ordinance (“PD(P)O”). The Commissioner considers that an opt-out approach is out of keeping with the strong public distaste expressed after the Octopus incident against the sale of personal data without the data subjects’ consent.

(b) Do-Not-Call Register

The Administration does not propose to set up a “Do-Not-Call” register on person-to-person telemarketing calls under the Personal Data (Privacy) Ordinance (“PD(P)O”).

PCPD’s comments:

The Commissioner acknowledges that regulating person-to-person telemarketing calls through the “Do-Not-Call” register may be more satisfactorily implemented under the Unsolicited Electronic Messages Ordinance (“UEMO”), which falls under the purview of the Commerce and Economic Development Bureau. As there was significant public support for this proposal in the two public surveys conducted by the PCPD in December 2010, he hopes that the Administration will continue to promptly and seriously consider the proposal under UEMO.

(c) Strengthen the enforcement powers of the PCPD

The Administration has decided not to confer the following power to the PCPD:-

- (i) conduct criminal investigation and prosecution;
- (ii) award compensation to aggrieved data subjects; and
- (iii) impose monetary penalty for serious contravention of Data Protection Principles.

PCPD’s comments:

The Commissioner is disappointed to note the Administration’s decision, which does not appear to be in accord with rising public expectation to strengthen the sanctioning powers of the PCPD and to deter privacy contraventions more vigorously.

4. The Commissioner will continue studying the FPD Report in detail and submit his views to the Administration and the Legislative Council for further consideration.

Responses to Consultations

- Comments on the Information Paper on Amendment Proposals to the Lifts and Escalators (Safety) Ordinance, Cap.327
- Comments on the Competition Bill
- Comments on the proposed amendments to the Fisheries and Protection Ordinance, Cap.171
- Comments on the proposed amendments to the Companies Bill: restriction to access to companies directors' and secretaries' residential addresses and the full identification numbers of all persons on the public register
- Comments on the legislative proposal from the Mandatory Provident Fund Schemes Authority to set up Automation of Benefit Transfer Process
- Comments on the Revised Code of Practice on Employment under the Disability Discrimination Ordinance
- Comments on the draft Guidelines on Election-related Activities in respect of the Election Committee Sub-sector Committee, District Council Election and Village Representative Elections
- Comments on the draft Protocol on Inter-departmental Communication of Information relating to Persons with Mental Health Problems
- Comments given to the Electronic Health Record Office (through participation in the Working Group on Legal, Privacy and Security Issues)
- Comments given on the setting up of Sexual Offences Records Checks for Child-related Works

PCPD's Publications
April 2010 – March 2011

1. Guidance on Data Breach Handling and the Giving of Breach Notifications
2. Guidance on the Collection and Use of Personal Data in Direct Marketing
3. Guidance on CCTV Surveillance Practices
4. Information Leaflet: Privacy Impact Assessments
5. “Personal Data is Essential: Protect your Privacy” – Leaflet For Senior Citizens
6. Data Protection Principles in the Personal Data (Privacy) Ordinance - from the Privacy Commissioner's perspective (Revised Edition, 2010)
7. Video: “Introduction of the Personal Data (Privacy) Ordinance and the Office of Privacy Commissioner for Personal Data”
8. Personal Data (Privacy) Ordinance Training Course – Trainer’s Kit