

立法會

Legislative Council

LC Paper No. CB(2)1741/10-11(03)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 16 May 2011**

Work of the Office of the Privacy Commissioner for Personal Data

Purpose

This paper summarizes the relevant issues raised by Members regarding the appointment of the Privacy Commissioner for Personal Data ("PCPD") and the work of his Office since the First Legislative Council ("LegCo").

Background

2. The Office of PCPD is a statutory body responsible for overseeing the enforcement of the Personal Data (Privacy) Ordinance (Cap. 486) ("the Ordinance"). The Office of PCPD is headed by PCPD appointed by the Chief Executive ("CE"). According to section 5(4) of the Ordinance, PCPD shall hold office for a period of five years and shall be eligible for reappointment for not more than one further period of five years. Section 8 of the Ordinance prescribes the functions and powers of PCPD as set out in **Appendix I**.

3. Mr Stephen LAU was appointed as the first PCPD when the Office of PCPD was established in 1996. His successor was Mr Raymond TANG whose appointment commenced in November 2001 but Mr TANG took up the post of the Chairperson of the Equal Opportunities Commission ("EOC") in January 2005. The previous PCPD, Mr Roderick WOO, was appointed on 1 August 2005 to fill the vacant position. The incumbent PCPD, Mr Allan CHIANG, has taken up the post since 4 August 2010.

4. Since July 2007, the Constitutional and Mainland Affairs Bureau ("CMAB") has taken over from the Home Affairs Bureau ("HAB") as the housekeeping bureau of the Office of PCPD. The Office of PCPD is funded mainly by recurrent subvention from the Government. When briefing the Panel on Constitutional Affairs ("the CA Panel") on his work on 15 November 2010, the incumbent PCPD advised that the Office of PCPD had about 60 staff members.

5. Section 11(1) of the Ordinance provides for the establishment of the Personal Data (Privacy) Advisory Committee ("the Advisory Committee") to advise PCPD on matters relevant to the privacy of individuals in relation to personal data or implementation of the Ordinance. Chaired by the Commissioner, the Advisory Committee comprises members appointed by the Secretary for Constitutional and Mainland Affairs ("SCMA"). The current composition of the Advisory Committee is in **Appendix II**.

6. At the Council meeting on 3 February 2010, the Public Accounts Committee tabled its report on the Office of PCPD in which a number of conclusions and recommendations regarding the governance and administration of the Office of PCPD have been made. Members may wish to refer to the progress report in implementing these recommendations provided by the Office of PCPD for the meeting of the CA Panel on 19 March 2010 (Annex A to LC Paper No. CB(2)1094/09-10(12)).

7. The Administration, with the support of the Office of PCPD, has conducted a comprehensive review of the Ordinance to examine whether its existing provisions still afford adequate protection to personal data having regard to developments, including advancement in technology, over the last decade or so. The Government published the Consultation Document on Review of the Personal Data (Privacy) Ordinance on 28 August 2009 for public consultation. On 18 April 2011, the Government published the Report on Further Public Discussions on Review of the Personal Data (Privacy) Ordinance. The CA Panel was briefed on the legislative proposals drawn up in the light of the views received during the second round of public consultation. The Administration advised that it aimed at introducing an amendment bill into LegCo in July 2011.

Relevant issues raised by Members

8. The Panel on Home Affairs ("the HA Panel") received a briefing by the previous PCPD on the work plan of the Office of PCPD at its meeting on 8 November 2005. The HA Panel also discussed the proposed approval procedure for overseas duty visits of PCPD and the Chairperson of EOC at its meeting on 9 December 2005. When the HA Panel discussed the review of the Ordinance at its special meeting on 4 July 2008, the issue about the resource requirement of the Office of PCPD was also raised. The CA Panel followed up on the financial provision for the Office of PCPD at its meeting on 15 December 2008 and received a briefing by the previous PCPD on his work at its meeting on 19 March 2010. The CA Panel received a briefing by the incumbent PCPD on his strategies and future work plans at its meeting on 15 November 2010. The relevant issues raised at these meetings are summarized in paragraphs 9 to 37 below.

Financial provisions for PCPD

9. During his briefing for the HA Panel on the work plan of the Office of PCPD on 8 November 2005, the previous PCPD raised the issue of resource constraints faced by the Office of PCPD. According to the previous PCPD, the resource constraints had restricted the scope of new work commitment of the Office of PCPD. Some members of the HA Panel expressed the view that the relevant housekeeping bureau should provide sufficient resources to the Office of PCPD to ensure smooth implementation of the Ordinance.

10. Following a spate of personal data leakage incidents involving government bureaux/departments and the Hospital Authority, the HA Panel discussed with the Administration and the previous PCPD the progress of the review of the Ordinance and the actions taken by the Office of PCPD in following up on these incidents at a special meeting held on 4 July 2008.

11. Members of the HA Panel noted with concern the statements made by the previous PCPD that the Office of PCPD had not been given adequate resources for handling its heavy caseload, and that the Office of PCPD had coped with the problem of inadequate funding by setting priorities to its investigation work. These members considered it necessary to provide adequate manpower and expertise for the Office of PCPD to strengthen its work given the seriousness of the spate of personal data leakage incidents. They urged the Administration to address the problem promptly.

12. The Administration advised that the Office of PCPD had been provided with a subvention of \$39.1 million in 2008-2009, representing an increase of \$2.8 million (or 7.7%) over the revised estimates for 2007-2008. CMAB would further explore the allocation of additional funding to the Office of PCPD from the financial provision allocated to CMAB upon receipt of such requests from the Office of PCPD.

13. When the CA Panel followed up on the financial provisions for the Office of PCPD at its meeting on 15 December 2008, the previous PCPD informed members that the level of the Office of PCPD's Reserve Fund had reached a dangerously low level of some \$1.3 million, as compared to the \$26 million and \$53.8 million reserve fund held by EOC and the Estate Agents Authority respectively as at 31 March 2007. Some members of the CA Panel expressed concern about the inadequacy of resources for the Office of PCPD to discharge its statutory functions. They considered that the lack of resources had constrained the work of the Office of PCPD on protection of personal data privacy and the Administration should enhance the financial provision for the Office of PCPD in the 2009-2010 Budget.

14. The Administration advised that in view of public concern over a spate of personal data leakage incidents, the Administration had conducted an in-year review of the resource requirements of the Office of PCPD and would provide from the CMAB's operating expenditure envelope for 2008-2009 an additional allocation of \$2.4 million to the Office of PCPD for strengthening its enforcement work.

15. Some members of the CA Panel were of the view that having regard to the nature of work of the Office of PCPD, a mechanism should be put in place for allocating supplementary provision to the Office of PCPD for handling unexpected incidents involving personal data privacy or for undertaking legal proceedings in its enforcement work. They further suggested the need to undertake a comprehensive review of the financial and manpower requirements of the Office of PCPD.

16. The Administration explained that under the existing mechanism, there were various channels through which the Office of PCPD could get supplementary resources for coping with ad hoc tasks not budgeted for. The Office of PCPD's reserve could be used for such purpose. One of the main purposes for setting up the Office of PCPD's reserve was to provide a funding source for litigation. The Administration recognized that the Office of PCPD's reserve was limited and would consider providing financial support to the Office of PCPD to undertake legal proceedings on a case-by-case basis upon the request of the Office of PCPD.

17. When briefing the CA Panel on his work on 19 March 2010, the previous PCPD presented a comparison of functions carried out by Ombudsman, EOC and the Office of PCPD, which illustrated that the subvention provided to PCPD was far less than that to The Ombudsman and EOC, despite its much wider scope of work (issued vide LC Paper No. CB(2)1146/09-10). Some members of the CA Panel reiterated their concern about the resource constraints faced by the Office of PCPD. They considered that the reason for the Office of PCPD failing to comply with the 45-day requirement of serving the refusal notice under section 39(3) of the Ordinance and the increase in the number of long outstanding cases (i.e. those aged beyond 180 days) was due to the lack of manpower resources and increasing caseload. These members urged the Administration to increase the provision for the Office of PCPD substantially in the coming year in view of the privacy impact of unforeseen incidents.

18. The Administration advised that the Government was firmly committed to the protection of personal data privacy and would strive to provide resources at an appropriate level to support the Office of PCPD for effective enforcement of the Ordinance. Since CMAB took over from HAB as the housekeeping bureau

of the Office of PCPD in July 2007, the provision for the Office of PCPD had increased from \$36.2 million in 2007-2008 to \$48.6 million in 2010-2011, representing an increase of 34% over 2007-2008. An additional provision of \$4.57 million had been earmarked for the Office of PCPD in 2010-2011 to step up enforcement and promotion work. This included the creation of five posts to strengthen the enforcement team of the Office of PCPD, to provide the necessary legal support and to enhance public education and promotion work. Apart from additional manpower resources, the Office of PCPD would conduct a post-implementation review of complaint cases with a view to streamlining procedures.

19. The incumbent PCPD informed the CA Panel on 15 November 2010 that the Office of PCPD had insufficient resources to cope with rapidly-increasing demand for its services, given in particular the proliferation of web and IT-enabled technological advancement. Members noted that the Office of PCPD had submitted non-recurrent bids for permanent office accommodation and IT equipment, and recurrent bid for creation of posts. Noting that the Administration had turned down the Office of PCPD's non-recurrent bid for permanent office accommodation, some members of the CA Panel reiterated their concern about insufficient financial and manpower resources for the Office of PCPD. They also expressed concern as to whether the Administration would accede to the Office of PCPD's request for additional resources. They considered that the increase in provision for the Office of PCPD from \$36 million in 2007-2008 to \$48 million in 2010-2011 was still far from adequate.

20. The Administration stressed that since the transfer of policy area of personal data protection to CMAB from mid-2007, the Bureau had increased the annual financial provision to the Office of PCPD. The Administration considered that the cost of \$117 million for the purchase of a permanent office was too high and it would be more cost-effective for the Office of PCPD to rent the existing office. The Administration advised that it would process the financial application of the Office of PCPD according to the established resource allocation mechanism and it had already allocated funding to the Office of PCPD for the creation of 13 posts during the past three years to strengthen the Office of PCPD's manpower provision. The Administration assured members that CMAB would strive to provide the Office of PCPD with adequate resources for the effective implementation of the Ordinance.

21. Some members of the CA Panel expressed concern about the heavy caseload of the Office of PCPD and enquired whether the number of long outstanding cases (i.e. those aged beyond 180 days) had surged and whether the quality of services provided by the Office of PCPD had been compromised due to increasing workload.

22. The incumbent PCPD assured the CA Panel that he would continue to streamline work procedure and redeploy internal manpower to cope with the increasing workload of the Office of PCPD. Through enhanced working procedure, cases were handled within a reasonable timeline with the number of long outstanding cases reduced as a result. The number of cases in which the Administrative Appeals Board had dismissed appeals against the decisions of PCPD was maintained at around 90% which could demonstrate that the quality of work of his Office had not been compromised.

Promotion and public education on protection of personal data

23. Some members of the HA Panel considered it pivotal for the Office of PCPD to strengthen its work on the preventive front by stepping up promotion and public education on protection of personal data. The Office of PCPD should therefore take a proactive role in advising and assisting private organizations to put in place a mechanism for the protection of personal data, akin to the advisory services provided by the Independent Commission Against Corruption ("ICAC") to the private sector on practices to prevent corruption. They suggested that the Office of PCPD should take measures to enhance the understanding of the public of the requirements of the Ordinance, such as drawing up a list of frequently asked questions on how to determine whether there was an infringement of privacy.

24. The previous PCPD explained that the Office of PCPD also recognized the importance of its educational role in enhancing protection of personal data privacy. However, there was only one training officer in the Office of PCPD to organize seminars on the Ordinance and to undertake other educational work. The Office of PCPD would like to recruit at least two more staff to handle promotion and educational work but lacked the resources to do so. The Office of PCPD had also issued codes of practice and pamphlets which were aimed at enhancing the understanding of the public about its work and the requirements under the Ordinance.

25. The Administration advised that it recognized that, apart from monitoring and enforcing compliance with the Ordinance, promotion and education was also a key component of the Office of PCPD's work, and had allocated an extra provision of \$1 million to the Office of PCPD in 2008-2009 to strengthen its work in this regard. To the Administration's understanding, the \$1 million would be used by the Office of PCPD to organize two promotion and education programmes. As contractors would be engaged for the production of promotion materials and videos, the implementation of the two programmes would not generate much extra work for the Office of PCPD's in-house promotion and education staff.

26. The incumbent PCPD informed the CA Panel in November 2010 that the Office of PCPD had launched a mass media campaign to enhance the community's understanding of the Ordinance which comprised –

- (a) a series of 10-episode Infomercial broadcast on the Jade channel of Television Broadcasts Limited;
- (b) banner display in train compartments of Mass Transit Railway;
- (c) Announcements of Public Interest on television; and
- (d) a Privacy Awareness Week of promotional activities targeting at senior citizens.

The incumbent PCPD further advised that the Office of PCPD had also launched an industry-wide educational campaign for the insurance industry in Hong Kong. In the coming year, the Office of PCPD would continue to conduct educational and promotional activities for members of the Data Protection Officers' Club and different sector of the community. A new attempt would be made to convey the message of personal data privacy among the younger generation through Liberal Studies and Other Learning Experience under the New Senior Secondary curriculum. The Office of PCPD would also carry out a series of consumer road shows in 2011 to educate people of their privacy rights and ways to handle their personal data more wisely in everyday life.

Corporate governance of PCPD

27. When the previous PCPD briefed the HA Panel on the work plan of the Office of PCPD on 8 November 2005, some members of the HA Panel considered that the Office of PCPD should sustain its efforts in enhancing the efficiency and cost-effectiveness of its work. The previous PCPD considered that there was well-established mechanism governing the finances of the Office of PCPD, which had to submit reports on its use of funding to the housekeeping bureau on a regular basis.

28. Arising from public concern about false claims of allowances by the former Deputy PCPD for his overseas duty visits and complaint of impropriety against the former Chairperson of EOC while in service as a judge of the Court of Appeal for improper applications for reimbursement of Leave Passage Allowance, the Administration consulted the HA Panel on the following proposed approval procedure for overseas duty visits of PCPD and the Chairperson of EOC -

- (a) to issue a Code of Conduct to PCPD and the Chairperson of EOC,

including a section on overseas duty visits, to promote higher standards of corporate governance and to uphold the highest standards of conduct for PCPD and the Chairperson of EOC;

- (b) to ask PCPD and the Chairperson of EOC to seek the approval of the Secretary for Home Affairs ("SHA"), Director of the housekeeping bureau at that time, before embarking on any overseas duty visit; and
- (c) to amend the Memorandum of Administrative Arrangements ("MAA") between the Government and the Office of PCPD and the MAA between the Government and EOC to set out the proposed approval procedure.

29. A majority of the members of the HA Panel expressed objection to the Administration's proposal to ask PCPD and the Chairperson of EOC to seek prior approval of SHA before embarking on overseas duty visits, although they appreciated the need for the two bodies to take measures to enhance the transparency of their administrative systems. These members were concerned that the proposal would give the impression that the Government was interfering with the work of the two statutory bodies and that PCPD and the Chairperson of EOC were subordinates to SHA, hence adversely affecting the independent status and autonomy of the two statutory bodies. They made a number of suggestions relating to the corporate governance of the Office of PCPD as follows -

- (a) the Advisory Committee could be given the responsibility to consider or to approve any duty visits proposed by PCPD, as it should be in a better position than the Administration to judge whether the purpose of any proposed duty visit complied with the statutory duties of the Office of PCPD;
- (b) the Administration could engage the Audit Commission to examine the cost-effectiveness of any overseas duty visits conducted by PCPD whenever there was any doubt about the usefulness of a visit or about the use of resources in connection with a visit;
- (c) the Office of PCPD should consider introducing best practices in pursuit of high standards of corporate governance and to enhance the transparency and accountability of its administrative system; and
- (d) the Administration should review and improve the governance structure of the Office of PCPD.

30. The previous PCPD invited members to note that he was required by law to act independently in discharging his statutory functions as stipulated in section 8 of the Ordinance, and one of which was to liaise and cooperate with his overseas counterparts in respect of matters of mutual interest concerning the privacy of individuals in relation to personal data. The Office of PCPD was of the position that an effective mechanism had already been put in place providing sufficient safeguards against misuse of public funds by PCPD in conducting overseas duty visits. The previous PCPD considered that the proposed approval procedure would undermine his independence.

31. The Administration explained that the proposed approval procedure had been drawn up in response to public concern about the inadequacy of existing monitoring mechanism for overseas duty visits of statutory bodies. HAB had no intention to interfere with the work of the Office of PCPD or EOC, but the Bureau had the responsibility to monitor the expenditures of these two bodies. Moreover, the Office of PCPD did not have an executive governing board and PCPD could approve his own overseas duty visits. The Administration also advised that The Ombudsman and the ICAC Commissioner were required to seek prior approval from CE before embarking on any overseas duty visit.

32. The Administration subsequently informed the HA Panel that it would continue to identify room for improvement to the existing monitoring system of the Office of PCPD through regular meetings with the Office. As the Office of PCPD had been discharging its responsibilities effectively, the Administration had no plan to review the governance structure of PCPD for the time being, but would consider doing so where necessary.

Enforcement power of PCPD

33. While members of the CA Panel had diverse views on PCPD's proposals of granting criminal investigation and prosecution power to PCPD, empowering PCPD to award compensation to aggrieved data subjects and requiring data user to pay monetary penalty for serious contravention of Data Protection Principles, they expressed concern that PCPD had inadequate powers for the effective enforcement of the Ordinance.

34. The incumbent PCPD pointed out that the recent serious contraventions of the Ordinance and unauthorized sale of personal data had reflected the inadequacy of the enforcement power of PCPD. The proposal of empowering PCPD criminal investigation and prosecution powers could meet the public expectation for enhancing deterrent measures against serious contravention of the Ordinance. His team had the knowledge and experience to perform these roles efficiently and effectively, while the discretion of whether or not to prosecute still vested with the Secretary of Justice. However, PCPD would

discuss with the Police and the Secretary for Justice on the formulation of policies and guidelines for referral of suspected cases of offences under the Ordinance to them for investigation and prosecution with a view to stepping up enforcement of the Ordinance.

35. The Administration explained that to afford better protection of personal data privacy, it had proposed to introduce in the Ordinance additional specific requirements on data users for the collection and use of personal data for direct marketing, make a serious contravention of the Ordinance such as the unauthorized sale of personal data an offence, and impose a heavier penalty on repeated non-compliance with enforcement notice etc. On enhancing the sanctioning powers of PCPD, the Administration had proposed to empower PCPD to provide legal advice and assistance to an aggrieved data subject to institute legal proceedings to seek compensation under section 66 of the Ordinance. In order to maintain checks and balances, the Administration, however, maintained its view that PCPD should not be provided with the power to carry out criminal investigations and prosecutions as it was important to retain the existing arrangement under which criminal investigation and prosecution were vested respectively in the Police and Department of Justice. Members may wish to note that the Government had announced in April 2011 that proposals of granting criminal investigation and prosecution power to PCPD, empowering PCPD to award compensation to aggrieved data subjects and requiring data user to pay monetary penalty for serious contravention of Data Protection Principles under the Ordinance would not be implemented.

Appointment of PCPD

36. At the meeting on 15 November 2010, some members of the CA Panel expressed dissatisfaction that the incumbent PCPD was not appointed according to the Paris Principle under which the head of a human rights institution should possess the expertise in that area. They were concerned that the new PCPD might not possess the requisite knowledge and experience on privacy protection given that the selection board for the appointment was mainly comprised of members of the business sector who lacked the expertise in human rights protection and there was no monitoring mechanism over the work of PCPD. Some members, however, believed that the new PCPD possessed the devotion and sense of responsibility to discharge his duties diligently. They considered that more time should be allowed for him to demonstrate his dedication to and effort for the protection of personal data privacy.

37. The incumbent PCPD advised that he was confident that he possessed the requisite knowledge in legal matters and experience in public administration, the commitment as well as a clear vision about the Office of PCPD to perform competently the roles of PCPD. He would strive to promote the protection of

personal data privacy in the community and work closely with the Advisory Committee, which comprised members with extensive experience and knowledge in a wide spectrum of professional fields, in discharging his duties.

Recent development

38. According to the Year Ender 2010 released by the Office of PCPD in March 2011, 1 179 complaint cases related to suspected contravention of the Ordinance were received by the Office of PCPD in 2010, and 12 of these cases were referred to the Police for consideration of prosecution. Among the cases referred to the Police, prosecution was instituted for one case so far, prosecution would not be instituted for seven cases, and the remaining four cases were being followed up. Dr Hon Margaret NG raised a written question on "Enforcement of the Personal Data (Privacy) Ordinance" at the Council meeting of 6 April 2011. The question raised by Dr Hon Margaret NG and the reply by SCMA are in **Appendix III**.

39. The incumbent PCPD is scheduled to brief the CA Panel on the work of the Office of PCPD in 2010 at the upcoming meeting on 16 May 2011.

Relevant papers

40. A list of the relevant papers available on the LegCo website is in **Appendix IV**.

Council Business Division 2
Legislative Council Secretariat
12 May 2011

~~則行政長官可藉書面通知委任一人署理專員職位，直至(視情況所需)——(由 1999 年第 34 號第 3 條修訂)~~

- ~~(i) 新的專員根據第 5(3) 條獲委任為止；或~~
~~(ii) 專員回任為止。~~
 (2) 根據第(1)款獲委任署理專員職位的人，在他獲委任的期間——
 (a) 須執行專員在本條例下的職能；及
 (b) 可行使專員在本條例下的權力。
 (3) 第 6 條須適用於根據第(1)款獲委任署理專員職位的人，猶如該人是專員一樣。

8. 專員的職能及權力

- (1) 專員須——
- 就遵守本條例條文作出監察及監管；
 - 促進及協助代表資料使用者的團體為第 12 條的施行擬備實務守則，以在遵守本條例條文(尤其是各保障資料原則)方面提供指引；
 - 促進對本條例的條文(尤其是各保障資料原則)的認識及理解以及遵守；
 - 對他認為可影響在個人資料方面的個人私隱的建議制定的法例(包括附屬法例)加以審核，並向建議制定該法例的人報告其審核結果；
 - 進行視察，包括對屬政府部門或法定法團的資料使用者所使用的任何個人資料系統的視察；
 - 為更佳地執行他的其他職能而對資料處理及電腦科技進行研究及監察其發展，以顧及該等發展在個人資料方面對個人私隱相當可能有的不利影響；
 - 與——
 - 在香港以外任何地方執行專員認為與其在本條例下的任何職能相似(不論全部或部分相似)的職能的人，進行聯絡及合作；及

~~then the Chief Executive may, by notice in writing, appoint a person to act as the Commissioner until, as the case requires— (Amended 34 of 1999 s. 3)~~

- ~~(i) a new Commissioner is appointed under section 5(3); or~~
~~(ii) the Commissioner resumes his office.~~
 (2) A person appointed under subsection (1) to act as the Commissioner, whilst he is so appointed—
 (a) shall perform the functions; and
 (b) may exercise the powers,
 of the Commissioner under this Ordinance.
 (3) Section 6 shall apply to a person appointed under subsection (1) to act as the Commissioner as if that person were the Commissioner.

8. Functions and powers of Commissioner

- (1) The Commissioner shall—
- monitor and supervise compliance with the provisions of this Ordinance;
 - promote and assist bodies representing data users to prepare, for the purposes of section 12, codes of practice for guidance in complying with the provisions of this Ordinance, in particular the data protection principles;
 - promote awareness and understanding of, and compliance with, the provisions of this Ordinance, in particular the data protection principles;
 - examine any proposed legislation (including subsidiary legislation) that the Commissioner considers may affect the privacy of individuals in relation to personal data and report the results of the examination to the person proposing the legislation;
 - carry out inspections, including inspections of any personal data systems used by data users which are departments of the Government or statutory corporations;
 - for the better performance of his other functions, undertake research into, and monitor developments in, the processing of data and computer technology in order to take account of any likely adverse effects such developments may have on the privacy of individuals in relation to personal data;
 - liaise and co-operate with any person in any place outside Hong Kong—
 - performing in that place any functions which, in the opinion of the Commissioner, are similar (whether in whole or in part) to any of the Commissioner's functions under this Ordinance; and

(ii) 該等人士在某些相互關注的並涉及在個人資料方面的個人私隱的事項方面進行聯絡及合作；及

(h) 執行根據本條例或其他成文法則委予他的其他職能。

(2) 專員可作出所有為更佳地執行其職能而需要作出的或對此有助的所有事情，或為更佳地執行其職能而連帶須作出的所有事情，而在不影響前文的概括性原則下，專員尤可——

(a) 在認為任何類別的財產對——

(i) 為專員或任何訂明人員供給地方；或

(ii) 專員可執行的任何職能的執行，屬必要時，取得及持有該財產，並可在持有該財產所按的條款及條件的規限下，處置該財產；

(b) 訂立、履行、轉讓、更改或撤銷任何合約、協議或其他義務，或接受他人所轉讓的合約、協議或其他義務；

(c) 承辦及執行合法信託，但限於以推動專員在本條例下須予執行或准予執行的職能為宗旨的信託或具有其他類似宗旨的信託；

(d) 接受饋贈及捐贈，不論是否受信託所規限的饋贈或捐贈；

(e) 在獲得行政長官事先批准下，成為任何關注 (不論是全部或部分) 在個人資料方面的個人私隱的國際組織的正式成員或附屬成員； (由 1999 年第 34 號第 3 條修訂)

(f) 行使本條例或其他成文法則賦予他的其他權力。

(3) 專員在執行其職能或行使其權力時，可製備及簽立任何文件；凡任何與他執行職能或行使權力所合理附帶或相應引起的事宜，專員亦可在與該等事宜有關連的情況下，製備及簽立任何文件。

(4) 任何文件如看來是以專員的印章簽立的，須予接納為證據，在沒有相反證據的情況下須當作已妥為簽立。

(5) 為向資料使用者提供指引，專員可不時安排擬備不抵觸本條例的指引以顯示他擬執行其在本條例下任何職能或行使其在本條例下任何權力的方式，並安排將該指引藉憲報公告刊登。

(ii) in respect of matters of mutual interest concerning the privacy of individuals in relation to personal data; and

(h) perform such other functions as are imposed on him under this Ordinance or any other enactment.

(2) The Commissioner may do all such things as are necessary for, or incidental or conducive to, the better performance of his functions and in particular but without prejudice to the generality of the foregoing, may—

(a) acquire and hold property of any description if in the opinion of the Commissioner such property is necessary for—

(i) the accommodation of the Commissioner or of any prescribed officer; or

(ii) the performance of any function which the Commissioner may perform,

and, subject to the terms and conditions upon which such property is held, dispose of it;

(b) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation;

(c) undertake and execute any lawful trust which has as an object the furtherance of any function which the Commissioner is required or is permitted by this Ordinance to perform or any other similar object;

(d) accept gifts and donations, whether subject to any trust or not;

(e) with the prior approval of the Chief Executive, become a member of or affiliate to any international body concerned with (whether in whole or in part) the privacy of individuals in relation to personal data; (Amended 34 of 1999 s. 3)

(f) exercise such other powers as are conferred on him under this Ordinance or any other enactment.

(3) The Commissioner may make and execute any document in the performance of his functions or the exercise of his powers or in connection with any matter reasonably incidental to or consequential upon the performance of his functions or the exercise of his powers.

(4) Any document purporting to be executed under the seal of the Commissioner shall be admitted in evidence and shall, in the absence of evidence to the contrary, be deemed to have been duly executed.

(5) The Commissioner may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of data users, guidelines not inconsistent with this Ordinance, indicating the manner in which he proposes to perform any of his functions, or exercise any of his powers, under this Ordinance.

Appendix II

A Personal Data (Privacy) Advisory Committee ("PDPAC") was established under the Ordinance to advise the Commissioner on matters relevant to the privacy of individuals in relation to personal data.

Chairman: Mr. Allan CHIANG, Privacy Commissioner for Personal Data

Members: Members of PDPAC for a period of two years with effect from 1 October 2009 to 30 September 2011:

Mr. Bunny CHAN Chung-bun, Chairman, Prospectful Holdings Ltd
(1st Appointment date: 1 October 2007)

Ms. Virginia CHOI Wai-kam, Managing Consultant & Country Manager, Tamty McGill Consultants International Ltd.
(1st Appointment date: 1 October 2005)

Mr. Anthony CHOW Wing-kin, Partner, Peter C Wong, Chow & Chow
(1st Appointment date: 1 October 2007)

Ms. Shirley HA Suk-ling, Director, DIGITALHONGKONG.COM
(1st Appointment date: 1 October 2009)

Mr SIU Sai-wo, Chief Executive Officer & Chief Editor, Sing Tao Daily
(1st Appointment date: 1 October 2008)

Mr. Edwin TAM Kwok-kiu, Managing Director, InfoTech Services (H.K.) Ltd
(1st Appointment date: 1 October 2005)

Dr YIP Chi-kwong, Managing Director, Gemmy Development Co. Ltd.
(1st Appointment date: 1 October 2007)

Deputy Secretary for Constitutional and Mainland Affairs or Principal Assistant Secretary for Constitutional and Mainland Affairs
(1st Appointment date: 1 October 2005)

Appendix III

Press Releases

LCQ2: Enforcement of the Personal Data (Privacy) Ordinance

Following is a question by Dr Hon Margaret Ng and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Stephen Lam, in the Legislative Council today (April 6):

Question:

According to the Year Ender 2010 released earlier by the Office of the Privacy Commissioner for Personal Data ("PCPD"), 1 179 complaint cases related to suspected contravention of the Personal Data (Privacy) Ordinance (Cap. 486) ("the Ordinance") were received by PCPD in 2010, but only 12 of these cases were referred to the Police for consideration of prosecution. Among the cases referred to the Police, prosecution was instituted for only one case so far (the offender was convicted by the court), prosecution would not be instituted for seven cases, and the remaining four are still being followed up. There have been comments that the aforesaid rather low prosecution and conviction figures may give an impression to the public that "the law is laid aside and unused". In this connection, will the Government inform this Council:

(a) whether it knows why PCPD did not make any referral to the Police for a great majority of these complaint cases, and why prosecution has not been instituted by the Police in a majority of the cases referred to them; and

(b) whether the authorities will refine the prosecution policy relating to the Ordinance with a view to enhancing enforcement against contravention of the Ordinance; if they will, of the details?

Reply:

President,

My reply to the two parts of the question is as follows:

(a) The Office of the Privacy Commissioner for Personal Data (PCPD) completed 1 076 complaint cases in 2010. Amongst these, 928 cases involved allegations on contravention of data protection principles (DPPs), which did not constitute any criminal offence. One of them involved contravention of an enforcement notice and was referred to the Police for further investigation. The remaining 148 cases involved alleged offences under the Personal Data (Privacy) Ordinance (the Ordinance) (Cap. 486). Of these 148 cases, after considering the information collected, the Privacy Commissioner for Personal Data (Privacy Commissioner) referred 11 of them to the Police for further investigation. Details of the remaining 137 cases are as follow:

* Three cases in which the parties complained against took remedial action by signing an undertaking;

* One case in which no contravention of the requirements under the Ordinance was found after investigation;

- * Nine cases were outside the purview of the Ordinance;
- * 61 cases were found to have no prima facie evidence;
- * Four cases were withdrawn by the complainants during enquiries;
- * Five cases were found to be unsubstantiated after enquiries with the parties being complained against;
- * 51 cases in which the complainants had not responded to enquiries from the PCPD; and
- * Three cases were resolved through mediation.

Of the 12 cases referred by the Privacy Commissioner to the Police for further investigation, one was withdrawn by the complainant and three cases are still under investigation. For the eight remaining cases, two cases resulted in conviction. The other six cases were not prosecuted by the Department of Justice (DoJ) because of insufficient evidence after considering factors such as the actual circumstances of the relevant acts and the evidence collected.

(b) The Statement of Prosecution Policy and Practice is applicable to the prosecutions instituted under the Ordinance. The reasonable prospect of conviction will be taken into account by the DoJ when considering prosecution. If there is a reasonable prospect of conviction, further assessment will be made on whether prosecution is in the public interest. The existing prosecution policy is based on sound legal principles to ensure that criminal justice can be administered to all in a fair and just manner.

Instituting prosecution is one of the aspects of law enforcement. According to the Ordinance, the Privacy Commissioner may also handle the complaints received through other enforcement actions (for example issuing warning letters or enforcement notices to the parties complained against). As such, the effectiveness of the enforcement of the Ordinance cannot be simply measured by referring to the number of prosecution cases.

Ends/Wednesday, April 6, 2011
Issued at HKT 12:32

NNNN

**Relevant documents on the Work of
the Office of the Privacy Commissioner for Personal Data**

Committee	Date of meeting	Paper
Panel on Home Affairs	8.11.2005 (Item VI)	Agenda Minutes
	9.12.2005 (Item V)	Agenda Minutes
	4.7.2008 (Item I)	Agenda Minutes CB(2)2657/07-08(01)
Panel on Constitutional Affairs ("CA Panel")	15.12.2008 (Item III)	Agenda Minutes
	19.3.2010 (Item V)	Agenda Minutes CB(2)1146/09-10(01)
	15.11.2010 (Item IV)	Agenda
Legislative Council	6.4.2011	Official Record of Proceedings Page 14 - 16 (Written question)
CA Panel	18.4.11 (Item IV)	Agenda