

立法會
Legislative Council

Ref : CB2/SS/3/12

LC Paper No. CB(2)1206/12-13
(These minutes have been seen
by the Administration)

**Subcommittee on Personal Data (Privacy) (Amendment)
Ordinance 2012 (Commencement) Notice**

**Minutes of the first meeting
held on Friday, 22 February 2013, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon CHAN Kin-por, BBS, JP (Chairman)
Hon James TO Kun-sun
Hon TAM Yiu-chung, GBS, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon Christopher CHEUNG Wah-fung, JP

Member absent : Hon SIN Chung-kai, SBS, JP

Public Officers attending : Constitutional and Mainland Affairs Bureau

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Office of the Privacy Commissioner for Personal Data

Mr Michael CHUNG
Chief Corporate Services Manager

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Cindy HO
Senior Council Secretary (2) 3

Mrs Fanny TSANG
Legislative Assistant (2) 3

Ms Avil MA
Clerical Assistant (2) 3

Action

I. Election of Chairman

Mr James TO, the Member who had the highest precedence in the Council among those who were present at the meeting, presided over the election of Chairman.

2. Mr CHAN Kin-por was nominated by Mr IP Kwok-him and the nomination was seconded by Mr WONG Kwok-hing. Mr CHAN Kin-por accepted the nomination. There being no other nomination, Mr CHAN Kin-por was declared Chairman of the Subcommittee. Mr CHAN Kin-por took the chair. Members agreed that election of a deputy chairman was not necessary.

II. Meeting with the Administration and the Office of the Privacy Commissioner for Personal Data

[LC Paper Nos. LS21/12-13, CB(2)676/12-13(01) and (02)]

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration/Office of the Privacy Commissioner for Personal Data ("PCPD")

Action

Admin/
PCPD

4. The Administration/PCPD were requested to provide written responses to the following issues raised by members at the meeting –

- (a) to follow up members' concerns in collaboration with the relevant authority regarding the sending of unsolicited commercial short messages through "WhatsApp";
- (b) to provide copies of the relevant guidance notes and leaflets published by PCPD regarding the new regulatory regime on use of personal data in direct marketing as well as the legal assistance for civil claims under the new provisions;
- (c) to provide supplementary information on PCPD's preparatory work for bringing the remaining provisions of the Personal Data (Privacy) (Amendment) Ordinance 2012 ("Amendment Ordinance") into operation on 1 April 2013; and
- (d) to consider members' view on the appropriateness of the Chinese rendition of "aggrieved individual" as "受屈人士" in the Information Leaflet of the legal assistance for civil claims under the Amendment Ordinance.

(Post-meeting Note : Supplementary information provided by the Administration/PCPD was circulated to members vide LC Paper Nos. CB(2)682/12-13 and CB(2)704/12-13 on 22 February 2013 and 26 February 2013 respectively. PCPD has revised the Chinese rendition of "the aggrieved individual who intends to institute proceedings to seek compensation" as "擬提起法律程序以尋求補償的人士" in the Information Leaflet of the legal assistance for civil claims.)

Legislative timetable

5. The Subcommittee completed the scrutiny of the Personal Data (Privacy) (Amendment) Ordinance 2012 (Commencement) Notice ("the Notice") and would not propose any amendment. The Chairman advised that he would report to the House Committee on 1 March 2013. The deadline for giving notice of amendments to the Notice was 13 March 2013.

Action

III. Any other business

6. The Subcommittee agreed that it would decide whether a further meeting with the Administration and PCPD should be held after receipt of the requested supplementary information. The next meeting was tentatively scheduled for 28 February 2013 at 2:30 pm.

(Post-meeting Note : With the concurrence of the Chairman, as no members requested to convene another meeting for further discussion, the Subcommittee did not hold a second meeting.)

7. There being no other business, the meeting ended at 10:02 am.

Council Business Division 2
Legislative Council Secretariat
24 May 2013

**Proceedings of the first meeting of the
Subcommittee on Personal Data (Privacy) (Amendment)
Ordinance 2012 (Commencement) Notice
on Friday, 22 February 2013, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000050 - 000221	Mr James TO Mr IP Kwok-him Mr CHAN Kin-por	Election of Chairman	
000222 - 000700	Chairman Administration Office of the Privacy Commissioner for Personal Data ("PCPD")	Opening remarks Briefing by the Administration and PCPD [L.N. 5 of 2013 and LC Paper No. CB(2)676/12-13(01)].	
000701 - 001317	Chairman Mr WONG Kwok-hing Administration PCPD	<p>Members noted that the majority of the provisions under the Personal Data (Privacy) (Amendment) Ordinance 2012 ("Amendment Ordinance") came into force on 1 October 2012, except the provisions relating to direct marketing and legal assistance which shall take effect on 1 April 2013. Mr WONG Kwok-hing expressed support for bringing the remaining provisions into operation as early as possible so as to afford better protection of personal data privacy.</p> <p>Mr WONG Kwok-hing expressed concern on whether the Amendment Ordinance would cover direct marketing activities in the form of electronic communications using "WhatsApp" and if so, whether the preparation work carried out by PCPD was adequate to cope with the challenges arising from the technological development in this regard.</p> <p>The Administration/PCPD advised that the sending of messages using "WhatsApp" (as well as other mobile messaging applications such as Viber and TalkBox) was regulated under the Unsolicited Electronic Messages Ordinance (Cap. 593) ("UEMO"). If anyone suspected that a sender using such applications was in contravention of UEMO, he/she might lodge a complaint with the Office of the Communications Authority. PCPD had also developed a guidance leaflet titled 'Protect Privacy by Smart Use of Smartphones' to assist users</p>	

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		<p>in using smartphones in a privacy-assuring manner which was published in November 2012.</p> <p>The Administration/PCPD further advised that the relevant provisions on regulating the use and provision of personal data in direct marketing were technology-neutral and all such activities were subject to the same regulatory regime.</p>	
001318 - 002025	<p>Chairman Mr James TO PCPD Administration Assistant Legal Adviser ("ALA")</p>	<p>Brief discussion on a recent incident of disclosure of the identity card numbers of more than 1 100 people online in protest against the Government proposal to restrict access to the personal data of company directors, and the Administration's confirmation that the incident was not related to the new regulatory scheme under discussion. ALA supplemented that the Privacy Commissioner for Personal Data ("Privacy Commissioner") was already empowered under the Personal Data Privacy Ordinance (Cap. 486) ("PDPO") to carry out inspections and investigations in relation to cases of alleged breaches of PDPO.</p>	
002026 - 002506	<p>Chairman Mr MA Fung-kwok Administration PCPD</p>	<p>Mr MA Fung-kwok was concerned about the grandfathering arrangement regarding personal data collected prior to 1 April 2013 and whether the data subjects could opt out after the new provisions had come into operation. He was also concerned about the readiness of the businesses for the new regime.</p> <p>PCPD's explanation on the new requirements for a data user to notify the data subject of his intention to use the latter's personal data in direct marketing and to obtain the data subject's consent or indication of no objection to the intended use under the new regulatory regime which would take effect on a prospective basis. These requirements did not apply under the circumstances in section 35D of the Amendment Ordinance.</p>	
002507 - 002919	<p>Chairman Mr Charles Peter MOK Administration PCPD</p>	<p>Mr Charles Peter MOK expressed concern about the sending of unsolicited commercial short messages through "WhatsApp" which should be regulated under UEMO, but it seemed that there had not been many prosecutions instituted under UEMO since it came into operation. He further pointed out that while cold calls were also under the ambit of UEMO, some cold calls might involve transfer of personal data to another person for use in direct</p>	

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		<p>marketing, which was regulated by PDPO. Mr MOK requested the Administration and PCPD to look at the grey area that might exist and plug any loophole.</p> <p>The Administration agreed to follow up the issue in collaboration with the relevant authority and provide information in writing.</p>	<p>Admin (para. 4 of the minutes)</p>
002920 - 003430	<p>Chairman Mr YIU Si-wing Administration PCPD</p>	<p>Mr YIU Si-wing's expression of concern about whether government departments involved in data leakage incidents would be held liable if there was abusive use of the data concerned by a third party for direct marketing activities, and the Administration/PCPD's responses to Mr YIU's concern.</p> <p>PCPD's briefing on the promotional and public educational work for data users involved in the collection and use of personal data for direct marketing activities as well as for data subjects (i.e. the general public).</p>	
003431 - 003900	<p>Chairman Mr Paul TSE PCPD</p>	<p>Mr Paul TSE expressed concern about whether PCPD had adequate resources in terms of legal manpower and financial provisions to support the launch of the legal assistance scheme on 1 April 2013.</p> <p>PCPD advised that additional funding had been provided to PCPD in the financial year 2012-2013 for engaging three additional legal staff members. PCPD further explained that as there was no express provision under the Amendment Ordinance which empowered the in-house barristers of PCPD to provide legal services to the public (such as provision of legal advice and attendance in court) and there was also uncertainty as to whether the legal advice given by PCPD's in-house solicitor/barrister to the aided person would enjoy legal professional privilege, lawyers in private practice would be engaged where necessary. As informed by the Administration, \$1.2 million had been earmarked in the next financial year of 2013-2014 for meeting the legal costs that might be incurred.</p> <p>At the request of Mr Paul TSE, the Administration/PCPD undertook to provide PCPD's</p>	

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		new guidance notes and leaflets on the new regulatory regime on data protection in direct marketing and the legal assistance for civil claims under the new provisions.	PCPD (para. 4 of the minutes)
003901 - 004656	Chairman Ms Cyd HO Administration PCPD	<p>Ms Cyd HO pointed out that the Bills Committee on Personal Data (Privacy) (Amendment) Bill 2011 which scrutinized the Amendment Ordinance before its enactment had suggested that, in order to facilitate compliance with the new notification and consent requirements under the new regime, in addition to the inclusion of best practices for the use and provision for use of personal data in PCPD's guidance notes, standard scripts and standard forms for the purposes of obtaining data subjects' oral or written consent to the intended use of their personal data should be provided in PCPD's guidance notes. Ms HO requested PCPD to obtain from the relevant business organizations their forms designed for such purposes to see whether the information regarding the collection, use or provision of personal data was presented in a manner that was easily readable and understandable as required under the Amendment Ordinance.</p> <p>PCPD advised that the New Guidance on Direct Marketing ("New Guidance") issued in January 2013 provided a detailed explanation regarding the specific information that had to be included in the notification to data subjects of the use of their personal data in direct marketing and obtaining their consent, including examples of the standard form for indicating consent/no objection for illustration. As regards Ms HO's request for obtaining a sample copy of the relevant forms from organizations that were involved in direct marketing activities, PCPD explained that the requisite form was not available at the present stage because the organizations concerned were still in the course of developing their personal data collection statements for compliance with the new requirements before the commencement date. Nevertheless, PCPD undertook to monitor the implementation of the New Guidance by data users after the remaining provisions in the Amendment Ordinance to come into force.</p>	
004657 - 005500	Chairman Mr WONG Kwok-hing	Mr WONG Kwok-hing expressed concern about the personal data held by government departments and	

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	Administration PCPD	<p>public organizations which had been lost inadvertently and enquired about the measures to curb leakage of personal data.</p> <p>The Administration responded that it had issued circulars to all policy bureaux and departments to explain the provisions in PDPO and compliance with the requirements under PDPO. Individual cases would be followed up rigorously including the taking of disciplinary action if necessary.</p> <p>Referring to the information leaflets published by PCPD, Mr WONG Kwok-hing considered that it might not be easy for the general public to understand the New Guidance. He suggested that consideration should be given to developing a cartoon format of the guidance to make it more easily comprehensible.</p> <p>PCPD advised that while the New Guidance targeted businesses, a simpler information leaflet to guide consumers to indicate their consent to the use or provision of their personal data in direct marketing and exercise their opt-out right was also issued in January 2013 for reference by the general public. In addition, leaflets on issues of concern in relation to protection of personal data that were encountered in daily life with examples given for illustration would be published by PCPD in end of 2013. The Administration supplemented that publicity on television, radio and other media would be launched to inform the public about the new provisions and issues of interest to data users.</p>	
005501 - 010048	Chairman Mr MA Fung-kwok Administration ALA PCPD	<p>Mr MA Fung-kwok expressed concern on whether the data subject had the right to request the data user to cease to use his/her personal data in direct marketing, if the data subject had previously given consent to or had not indicated objection to the intended use of his/her personal data in direct marketing in relation to the class of marketing subjects.</p> <p>The Administration advised that a data subject might at any time require a data user to cease to use his/her personal data in direct marketing, irrespective of whether the data was obtained directly from the data subject or not and whether an earlier consent had been given by the data subject to the data user for</p>	

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		such use. Upon commencement of the new regulatory regime on 1 April 2013, any data user who failed to comply with the request to cease to use personal data in direct marketing made by a data subject would be liable on conviction to a fine of \$500,000 and to imprisonment for 3 years under section 35G(4) of the Amendment Ordinance.	
010049 - 010904	Chairman Mr James TO PCPD Administration	<p>Mr James TO's request for supplementary information on the preparatory work for bringing the remaining provisions of the Amendment Ordinance into operation on 1 April 2013. His suggestion that a further meeting be held when the Administration/PCPD had provided the information.</p> <p>PCPD's response that in order to prepare businesses and consumers for the new regulatory regime on data protection in direct marketing, the relevant sectors were involved in the drafting process of the relevant guidelines and had been kept apprised of the latest development. According to PCPD and the Administration, no organizations that were involved in direct marketing activities had reflected to them that they could not comply with the new requirements under the new regulatory regime when they shall come into force on 1 April 2013.</p>	PCPD (para. 4 of the minutes)
010905 - 011537	Chairman Dr Priscilla LEUNG PCPD	<p>Dr Priscilla LEUNG's expression of concern about cyber-bullying activities and request for enhanced protection in this area. The Chairman expressed a similar view and urged the Administration to take action to remedy the situation.</p> <p>PCPD's response that in promoting consumers' awareness and understanding of personal data privacy, it had reminded people to be careful when putting personal data on social networking websites. Relevant information leaflets on protection of personal data privacy on Internet activities had been published by PCPD. In situation where harassment or intimidation behaviour was involved, it should be referred to the Police for follow up.</p>	
011538 - 012341	Chairman Mr Paul TSE PCPD Administration	Mr Paul TSE enquired about the preparatory work for the provision of legal assistance under the new sections 66A and 66B of the Amendment Ordinance, including the prescribed forms for use by aggrieved persons and respondents etc, as well as the financial viability of PCPD in providing legal assistance.	

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		The Administration's response that while the Privacy Commissioner was empowered to prescribe the forms for legal assistance under section 66A of the Amendment Ordinance, the implementation of the legal assistance scheme needed not be subject to the availability of these forms.	
012342 - 012909	Chairman Dr Priscilla LEUNG PCPD Administration	Dr Priscilla LEUNG raised query on the appropriateness of the Chinese rendition of "aggrieved individual" as "受屈人士" in the Information Leaflet of the legal assistance for civil claims under the Amendment Ordinance. PCPD undertook to consider the view and review the Chinese rendition in the Information Leaflet after the meeting.	Admin (para. 4 of the minutes)
012910 - 013100	Chairman Ms Cyd HO	Discussion on the need to hold a second meeting with the Administration/PCPD.	
013101 - 013213	Chairman ALA Administration	The Subcommittee deliberated and agreed to report to the House Committee on 1 March 2013.	
013214 - 013224	Chairman	Closing remarks	