

Bills Committee on Telecommunication (Amendment) Bill 1999

The Administration's response to the letter issued by the Assistant Legal Adviser regarding protection of personal data in relation to the proposed section 7I of the Bill

The Administration exchanged views with the Bills Committee at its meeting on 17 February 2000 regarding the implications of section 7I on the protection of personal data under the Personal Data (Privacy) Ordinance ("PDPO"). The Assistant Legal Adviser (ALA) of the LegCo Secretariat subsequently issued a letter to the Administration on the problems of protection of personal data that may arise under section 7I. The Administration's response to the ALA's letter [LC Paper No. CB(1)1039/99-00(02)] is set out below.

2. At previous Bills Committee's meeting, the Administration has assured Members that the TA is obliged to comply with the PDPO. It is not our policy intention that the TA's power to disclose information under the Bill should prevail over the PDPO. We will not seek a new category of exemption to cover disclosure of personal data by a licensee to the TA or by the TA to the public as suggested by the ALA.

3. As we have explained in our paper to the Bills Committee "Powers of Telecommunications Authority (TA) relating to obtaining/disclosure of information and inspection of accounts/documents, etc." dated 18 January 2000 [LC Paper No. CB(1)830/99-00(01)], it is very rare that the information requested by the TA would need to include personal data. If in the rare circumstances that the information requested by the TA has to contain personal data (e.g. examining the billing statements of IDD services to investigate any suspected unauthorised pricing), the PDPO applies to both the licensees and the TA in their capacity as data users, in particular, both will need to comply with the data protection principles as prescribed in the PDPO. Even in those circumstances, the TA needs not disclose the identity of individual customers. For example, if he needs to publish a report which includes information received from the licensees, he can always obliterate any personal data, such as names and addresses, that form part of the information.

4. Licensees of the major public telecommunications services including FTNS licences, PRS licences and PNETS licences have all along been subject to the licence condition similar to section 7I regarding request for information by the TA. To comply with the PDPO, telecommunications licensees need to specify in the Personal Information Collection Statements (“PICS”) issued to their customers the purposes for which the data are to be used and the classes of persons to whom the data may be transferred. Upon the enactment of the new section 7I, it will be advisable for licensees to review their existing PICS to ensure that the statements have covered, as one of the purposes of the collection of personal data, the disclosure of the information to the TA where such disclosure is required by law for the discharge of the licensees’ obligations under licence conditions or provisions in the Telecommunication Ordinance. We will advise licensees to send such PICS again to their customers upon enactment of section 7I. This is to ensure compliance with PDPO as well as to ensure telecommunications users are fully informed.

5. In the unlikely circumstances that the TA is to contemplate disclosure of personal data in his published report, he will obtain the data subject’s prior consent.

6. We have liaised with the Office of the Privacy Commissioner for Personal Data on the compliance with the PDPO by the TA. The arrangement described above is in line with the practice of other entities being regulated such as banks.