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Panel on Constitutional Affairs

**Background Brief prepared by the Legislative Council Secretariat
for the meeting on 15 December 2008**

Financial provision for the Office of the Privacy Commissioner for Personal Data

Purpose

This paper gives a brief account of the deliberations of the Panel on Home Affairs (the HA Panel) on the financial provision for the Office of the Privacy Commissioner for Personal Data (PCPD).

Background

2. The Personal Data (Privacy) Ordinance (the Ordinance) (Cap. 486) enacted in August 1995 protects the privacy of individuals in relation to personal data. The Ordinance establishes a legal regulatory regime for the control of the collection, holding, processing and use of personal data. Responsibility for monitoring, supervising and promoting compliance with the Ordinance is conferred on the Privacy Commission for Personal Data (the Privacy Commissioner). PCPD is an independent statutory body set up in 1996 to support the Privacy Commissioner in discharging his statutory functions. PCPD had an initial establishment of 32 when it was first set up. According to its Annual Report 2006-2007, PCPD had a total establishment of 39 staff.

Deliberations of the HA Panel

3. During his briefing for members of the HA Panel on the work plan of PCPD for 2006 at the meeting held on 8 November 2005, the Privacy Commissioner raised the issue of resource constraints faced by PCPD. According to the Privacy Commissioner, the resource constraints had restricted the scope of new work commitment of PCPD. Reduction in subvention from \$35.075 million in the year ending March 2004 to \$33.276 million in the year ending March 2005, and to \$31.439 million in the year ending March 2006, precluded the commissioning of any new major policy initiatives. A substantial reduction in the corporate communications budget had also limited the ability of his office to promote public awareness of

personal data privacy and entertain growing number of requests for speaking engagements and training.

4. Some members expressed the view that the relevant policy bureau should provide sufficient resources to PCPD to ensure smooth implementation of the Ordinance. They were concerned that PCPD might have to scrap its services because of the resource constraints. In response to members' enquiry about the measures taken by PCPD to cope with the continued reduction in resources, the Privacy Commissioner explained that PCPD would maintain the same level of services and did not have any plan to streamline its manpower. PCPD would be able to cut down its operating expenditure by moving its offices from the Hong Kong Exhibition and Convention Centre in Wanchai to an office premises in Queen's Road East where the rental was much cheaper.

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

6. Members noted with concern that the Privacy Commissioner had stated clearly at the opening of the meeting that PCPD had not been given adequate resources for handling its heavy caseload. They were advised that 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 PCPD to strengthen its work given the seriousness of the spate of personal data leakage cases. They urged the Administration to address the problem promptly.

7. The Administration responded that 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. Of the extra provision of \$2.8 million, \$1.8 million was for the creation of three posts to strengthen the enforcement team of PCPD. The remaining \$1 million was for the purpose of stepping up the promotion and educational work to promote public awareness of the protection of personal data. Having regard to the recent spate of personal data leakage cases, the Constitutional and Mainland Affairs Bureau (CMAB) would explore the allocation of additional funding to PCPD from the financial provision allocated to CMAB upon receipt of such requests from PCPD. In addition, PCPD was advised to submit proposals under the established mechanism of the Resource Allocation Exercise, and the Administration would consider actively such proposals.

8. Some members considered that it was far from adequate for the Administration to provide only \$1.8 million to strengthen the enforcement team of PCPD given the anticipated high inflation rate. The Privacy Commissioner also pointed out to members that the extra provision only allowed PCPD to recruit an assistant information technology (IT) officer. Given the increasing invasion of personal data

privacy posed by technological advancements, there was a practical need for PCPD to recruit an IT expert to provide necessary technical advice. Unfortunately, there was no such provision under the annual funding allocation to PCPD.

9. In response to members' concerns about the manpower and resource requirements of PCPD, the Administration advised the Panel that CMAB fully recognized the importance for PCPD to step up its efforts in protecting personal data privacy, and the public expectations in this respect. CMAB was liaising with PCPD to discuss its specific resource requirements, and would strive to seek appropriate resources under the established mechanism to support the work of PCPD.

Relevant papers

10. A list of relevant papers of the HA Panel which are available on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
9 December 2008

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Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Home Affairs Panel	8 November 2005	<p>Paper provided by the Office of Privacy Commissioner for Personal Data [LC Paper No. CB(2)269/05-06(05)]</p> <p>Minutes of meeting [LC Paper No. CB(2)577/05-06]</p>
	4 July 2008	<p>Paper entitled "Protection of Personal Data Privacy" provided by the Administration [LC Paper No. CB(2)2454/07-08(01)]</p> <p>Speaking note of the Privacy Commissioner for Personal Data [LC Paper No. CB(2)2528/07-08(01)]</p> <p>Letter dated 18 July 2008 from the Administration regarding the manpower and resource requirements of the Office of the Privacy Commissioner for Personal Data [LC Paper No. CB(2)2657/07-08(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2850/07-08]</p>