

Legislative Council Panel on Constitutional Affairs
Work report for the
Office of the Privacy Commissioner for Personal Data

Purpose

This paper briefs Members of the functions discharged and works performed by the Privacy Commissioner for Personal Data (“the Commissioner”) in the past few years. It also touches on the operational constraints and challenges ahead. Members are also invited to note the progress of the works undertaken by the Office of the Privacy Commissioner for Personal Data (“PCPD”) in response to the comments given by the Director of Audit in his “value-for-money” Report published on 27 October 2009 (“the Audit Report”) and those contained in the Public Accounts Committee’s Report on 3 February 2010 (“the PAC Report”).

The Work Report of the Commissioner

2. The Commissioner published an end-of-term Work Report (“the Work Report”) in December 2009 which gave an account of the different functions and works performed by his office in discharge of the functions and powers in the last few years under section 8 of the Personal Data (Privacy) Ordinance, Cap 486 (“the Ordinance”). The Work Report covered the following aspects :

- (i) promotional activities;
- (ii) guidance work;
- (iii) compliance work;
- (iv) enforcement work which included the investigation of complaint cases;

- (v) law reform; and
- (vi) global liaison and cooperation

A copy of the Work Report was sent to every member of the Legislative Council in December 2009 and Members are kindly requested to refer to the same for particulars of work done by the PCPD in the last few years (up to December 2009).

3. The Commissioner has always been mindful of the importance of the principles of transparency and accountability in the discharge of his functions. He has maximized the limited resources at his disposal to achieve economy, efficiency and effectiveness.

The Audit Report and the PAC Report

4. The Director of Audit commenced a “value for money” audit on PCPD in March 2009 and presented the Audit Report to the Legislative Council in November 2009. The Audit Report contained recommendations to the PCPD in the following areas :

- (i) Corporate governance;
- (ii) Complaint management;
- (iii) Promotional activities;
- (iv) Overseas duty trips;
- (v) Hospitality expenditure;
- (vi) Other administrative issues (concerning office accommodation, office car, duty travelling expenses; capital subvention for computer installation; staff performance appraisals); and
- (vii) Performance reporting in Controlling Officer’s Report.

5. The Audit Report acknowledged the efforts made by the Commissioner in economizing on expenditures in various areas of his operations.

6. PCPD accepted the recommendations contained in the Audit Report and had promptly taken steps to implement most of them.

7. The PAC conducted an inquiry based on the contents of the Audit Report. The PAC in its “Conclusion and Recommendations” affirmed the efforts made by the Commissioner to reduce the expenditure of PCPD. The only area where PAC expressed “dismay and serious concern” was about the non-compliance with the 45-day statutory requirement as laid down in section 39(3) of the Ordinance. The reasons contributing to the situation are, as pointed out in the PAC Report, the strict time limit set by the Ordinance and the shortage of manpower which the PCPD has been suffering from. Otherwise PAC expressed “concerns” about the other matters singled out in the Audit Report. The PAC Report recommended a series of follow-up actions to be taken by the Commissioner and the Constitutional and Mainland Affairs Bureau (“CMAB”).

8. The Commissioner has taken active steps to address the concerns expressed in the Audit Report and the PAC Report. These steps are detailed in a progress report presented to the CMAB in February 2010 (see **Annex A** which is up-dated as of February 2010).

To stay selective in order to be effective

9. The scope and manner of PCPD’s operation are unavoidably

affected by the Government subvention. Since the numbers of complaints and administrative appeal cases are beyond his control, the Commissioner has to exercise his judgment in the selection of matters to be given priority of attention. Hence, in the 5-year Strategic Plan made in January 2010 (see **Annex B**), the key emphasis is on :

- the carrying out of more compliance checks and audit to minimize the risks of personal data privacy breach
- further streamlining the handling procedure of the complaint cases
- the promotion of data privacy awareness on focused groups that have the greatest needs
- continuing the efforts of maintaining transparency and interaction with the public

10. Technological developments have posed increasing privacy risks to individuals as personal data can now be collected and disseminated with amazing ease and speed. The Commissioner plans to intensify the monitoring of such technological developments which may have an adverse impact on personal data privacy. The success factors of PCPD's operations hinge on :

- the independence of the Commissioner to enable him to discharge his functions and powers without fear or favour;
- the sufficiency of operational resources to cope with the increased demands from public and organizational data users for more guidance and enforcement actions;
- the strengthening of the regulatory regime of the PCPD with an updated piece of privacy legislation;
- the existence of a permanent office premises for stability to facilitate its effective functioning and communication with

the public; and

- the maintenance of Hong Kong's advantageous position and status in international privacy arena as protector of personal data privacy right and with a mature legislative framework to thrive the transborder flow of personal data.

11. The CMAB has in the wake of the Audit Report and the PAC Report granted additional funding to the PCPD in February 2010 to step up promotional and enforcement actions.¹ The CMAB has agreed to increase the reserve ceiling of the PCPD from the current level of \$5 million to a new ceiling set at 20% of the PCPD's annual recurrent subvention.

12. To the extent that such funding is of a non-recurrent nature, it does not ensure the sustenance of a healthy development and growth of the PCPD in meeting public expectation. Only an increase in the annual subvention on a recurrent basis will allow the Commissioner to create more permanent establishment positions and provide long-term solutions to the staff shortage problem. The PCPD will once again submit bids in the forthcoming Resources Allocation Exercise for the financial year 2010/2011.

The Office of the Privacy Commissioner for Personal Data, Hong Kong
March 2010

¹ An one-off non-recurrent provision of \$1.4 million to be granted in 2009-10 to step up promotion work. An additional provision of \$4.57 million on a non-recurrent basis to be granted for years 2010-11 and 2011-12 for the creation of time-limited posts of one Chief Personal Data Officer, one Senior Personal Data Officer, one Personal Data Officer, one Corporate Communications Officer I (CCOI) and one Legal Counsel.

Privacy Commissioner for Personal Data

Progress in implementing the various Audit and PAC recommendations

Audit/PAC's Recommendations	Progress to Date
Corporate governance	
<p>1 <u>Audit</u></p> <ul style="list-style-type: none"> ● The PCPD to consider implementing a structured strategic planning process, taking into account the needs for formal strategic plan, formal annual business plan, timetable for the annual conduct of strategic planning, and a strategic planning group. <p><u>PAC</u></p> <ul style="list-style-type: none"> ● The Secretary for Constitutional and Mainland Affairs (“SCMA”) and the PCPD to discuss as soon as possible the establishment of standing arrangements to oversee compliance and internal control matters of the PCPD. ● PCPD to make strategic planning a standing agenda item of the Personal Data (Privacy) Advisory Committee (“PDPAC”) 	<p>Completed :</p> <ul style="list-style-type: none"> ● A 5-year strategic plan and the 2010 business plan were compiled in January 2010 ● A strategic planning group comprising heads of divisions of the PCPD was formed in January 2010 to drive the strategic planning process. <p>The PCPD stands ready to discuss with the SCMA the best way to enhance the corporate governance through standing arrangements.</p> <p>Completed.</p> <ul style="list-style-type: none"> ● PCPD has resolved and started making strategic planning a standing agenda item of PDPAC. ● The PDPAC meeting on 9 February 2010 discussed the 5-year strategic plan and the 2010 business plan.

Audit/PAC's Recommendations		Progress to Date
2	<p><u>Audit</u></p> <ul style="list-style-type: none"> ● The PCPD to remind the PDPAC of the need to compile a set of formal rules governing its meeting procedures and to provide relevant assistance to the PDPAC. 	<p>In progress :</p> <ul style="list-style-type: none"> ● A set of formal meeting rules of the PDPAC was agreed by members of the PDPAC at the meeting on 9 February 2010, subject to minor amendments.
Complaint Management		
3	<p><u>Audit</u></p> <ul style="list-style-type: none"> ● The PCPD to conduct post-implementation review on streamlined planning procedures at appropriate time. ● The PCPD to make increased efforts to clear long outstanding cases. 	<p>To be conducted in March 2010.</p> <p>In progress :</p> <ul style="list-style-type: none"> ● The number and average age of long outstanding cases had been reduced considerably. However, because of the redeployment of the limited human resources, the 45-day problem has been aggravated. ● The Constitutional and Mainland Affairs Bureau ("CMAB") indicated that additional funding would be given to PCPD on a non-recurrent basis to PCPD in 2010-11 and 2011-12 through the creation of the time-limited posts of (i) one Chief Personal Data Officer; (ii) one Senior Personal Data Officer; and (i) one Personal Data Officer to cope with the increase in the number of complaint cases handled by the Operations Division of the PCPD. ● The PCPD had started work on the recruitment.

Audit/PAC's Recommendations	Progress to Date
<ul style="list-style-type: none"> ● The PCPD to carry out thorough risk assessment to identify, assess, and formulate measures to manage the risks arising from the non-compliance with the 45-day requirement of serving the refusal notice under section 39(3) of the PDPO. ● The PCPD to ensure that the CMAB and PDPAC are involved in the risk assessment exercise. ● The PCPD to ensure that the issue of non-compliance with the 45-day requirement forms a standing agenda item in PDPAC meetings and CMAB's progress review meetings, until the issue is satisfactorily resolved. ● The PCPD to provide the PDPAC and CMAB on a regular basis with statistics showing age distribution of the refusal notices served. 	<p>In progress :</p> <ul style="list-style-type: none"> ● The risk assessment of non-compliance with the 45-day requirement of serving refusal notice was an item on the agenda of the PDPAC meeting held on 9 February 2010 and was duly discussed. ● One suggested measure to minimise the risk is an increase of manpower through recruitment of time-limited posts using the additional non-recurrent funding provided by CMAB ● Another suggestion is that the legislative amendment process including amendment of section 39(3) of the PDPO after public consultation be expedited. <p>Completed :</p> <ul style="list-style-type: none"> ● The risk assessment exercise was discussed by members of the PDPAC (of which representatives from CMAB sit as a member) at the meeting held on 9 February 2010. <p>Completed :</p> <ul style="list-style-type: none"> ● PCPD has started making the non-compliance with the 45-day requirement a standing agenda in PDPAC meetings and progress review meetings until the issue is satisfactorily resolved. <p>Completed :</p> <ul style="list-style-type: none"> ● PCPD had provided PDPAC and CMAB with statistics showing age distribution of the refusal notices served at PDPAC meeting held on 9 February 2010 and will continue to do so regularly in future.

Audit/PAC's Recommendations		Progress to Date
	<p><u>PAC</u></p> <ul style="list-style-type: none"> ● SCMA and the Commissioner to work out a feasible solution to address the problem of non-compliance with the 45-day requirement, taking into account the result of the public consultation and complainants' legitimate expectation. ● SCMA, in consultation with the Commissioner, to clarify the proper construction of the 45-day requirement and, pending the outcome of the public consultation, to take immediate and effective measures to ensure compliance with the 45-day requirement. ● The Commissioner to make effective use of the additional resources allocated by the CMAB to resolve the manpower shortage. 	<p>In progress. The PCPD will closely liaise with the CMAB in the light of the consultation result.</p> <p>In progress. The PCPD will render assistance to CMAB to clarify the proper construction of the 45-day requirement.</p> <p>In progress. PCPD has commenced recruitment exercise to increase manpower for the Operations Division to cope with the increased number of complaint cases and to speed up the processing of cases.</p>
Promotional Activities		
4	<p><u>Audit</u></p> <ul style="list-style-type: none"> ● The PCPD to compile a Promotional Events Manual setting out budgetary control (including timely submission of budget proposals and expenditure reports for the Commissioner's approval and monitoring). ● The PCPD to strengthen Administration Division's role in budgetary control process of promotional events. When processing requests for payment from Corporate Communications Division for an event, the Administration 	<p>Completed. The PCPD has compiled a Promotional Events Manual in September 2009</p> <p>Completed. The role of Administration Division is laid down in the Promotional Events Manual as recommended by Audit.</p>

Audit/PAC's Recommendations		Progress to Date
	<p>Division should be required to make reference to the approved budget, and should not pass a payment if it would cause the budgeted amount to be exceeded.</p>	
5	<p><u>Audit</u></p> <ul style="list-style-type: none"> The PCPD to set clear guidelines in the Promotional Events Manual on expenditure of venue/food/beverages, honoraria for artists, service of entertainment company, backdrop production and cash prizes. 	<p>Completed. The guidelines recommended by Audit had been included in the Promotional Events Manual.</p>
6	<p><u>Audit</u></p> <ul style="list-style-type: none"> The PCPD to state the expenditure-sharing requirement in the Promotional Events Manual. <p><u>PAC</u></p> <ul style="list-style-type: none"> The Commissioner to take effective measures to ensure that the PCPD staff will comply with the Promotional Events Manual. 	<p>Completed. The Promotional Events Manual provides that due consideration should be given to expenditure-sharing with participants when joint promotional activities are to be undertaken.</p> <p>In progress.</p> <ul style="list-style-type: none"> In approving any proposed promotional events, PCPD will check whether the guidelines and requirements set out in the Promotional Events Manual have been observed.

Audit/PAC's Recommendations		Progress to Date
7	<p><u>Audit</u></p> <ul style="list-style-type: none"> The PCPD to make continued efforts to ensure meeting the “moderate and conservative” principle in organizing international seminars in future. 	This is being done.
Overseas Duty Trips		
8	<p><u>Audit</u></p> <ul style="list-style-type: none"> The PCPD to make continued effort to economise on expenditure on overseas duty trips. 	This is being done.
9	<p><u>Audit</u></p> <ul style="list-style-type: none"> The PCPD to give timely and due consideration to the option of free accommodation provided by the organiser, and to document the justification if the option is not taken. <p><u>PAC</u></p> <ul style="list-style-type: none"> The PCPD to formulate a policy on the acceptance of free offers by organizers of the events attended by the PCPD staff (including the Commissioner) on overseas duty trips, and specify the factors for consideration in deciding whether to accept an offer. The PCPD to take measures to strengthen the PCPD's internal control systems. 	<p>This will be done.</p> <ul style="list-style-type: none"> A policy is being formulated for adoption. Consideration would be given as to whether there is any conflict of interests in accepting free offers. This is under consideration.

Audit/PAC's Recommendations		Progress to Date
10	<u>Audit</u> <ul style="list-style-type: none"> The PCPD to take appropriate measure to ensure correct rate is used in calculating the "40% allowance" in future. 	The Commissioner issued a directive on 20/1/2010 to remind the staff to comply with the system for processing Overseas Subsistence Allowance (OSA) claims and exercise greater care in calculating the OSA in future. This will be re-issued from time to time as reminders.
11	<u>Audit</u> <ul style="list-style-type: none"> The PCPD to re-circulate the time-off directive (that PC is not entitled to claim time off) periodically for the attention of the staff responsible for the administration of time off. 	Completed. The Commissioner directed on 20/1/10 that the directive on time off should be re-circulated once every six months.
12	<u>Audit</u> <ul style="list-style-type: none"> The PCPD to continue applying "moderate and conservative" principle in making expenditure decision on future overseas duty trips. 	This is being done.
Hospitality Expenditure		
13	<u>Audit</u> <ul style="list-style-type: none"> The PCPD to continue efforts to economise on hospitality expenditure in future. 	This is being done.

Audit/PAC's Recommendations		Progress to Date
	<ul style="list-style-type: none"> ● The PCPD to review the appropriateness of using public funds to hold farewell dinners for Commissioners. ● The PCPD to set guidelines on gift giving, specifying nature and value of gifts that are appropriate to the occasion and the public sector environment. ● The PCPD to clearly document the business purpose, and enforce the per-person financial limit, for hospitality meals hosted by the PCPD officers. ● The PCPD to document the justification if there are compelling reasons for exceeding the financial limit for hospitality meals. 	<p>Completed. The PCPD issued Finance Circular No. 03/09 dated 18/9/09 prohibiting any expenditure on meals to bid welcome or farewell to any member of the PCPD (including the Commissioner).</p> <p>Completed. The guidelines were laid down in the Promotional Events Manual.</p> <p>Completed. The Commissioner issued Finance Circular No. 03/09 dated 18/9/09, which requires that expenditure on official entertainment should be fully supported by receipts wherever possible, and vouchers must accompany with sufficient supporting information such as the list of guests and the purpose of the function.</p>
Other Administrative Issues		
14	<u>Audit</u> <ul style="list-style-type: none"> ● The PCPD to conduct thorough assessment of accommodation needs with reference to government standards before renewing or taking up new leases. ● The PCPD to document the justifications if there is justification for exceeding the government standards. ● Before entering into new lease for additional space to accommodate anticipated additional posts, the PCPD to ensure that funding for creation of the posts is available. 	<ul style="list-style-type: none"> ● This will be done before renewing or taking up new leases. (Note: the current lease expires in January 2011) ● This will be done. ● This will be done.

Audit/PAC's Recommendations		Progress to Date
	<ul style="list-style-type: none"> ● The PCPD to consider whether to renew the lease for unit 1302. 	Completed. The Commissioner had informed the PAC at the public hearing that he had renewed the lease of unit 1302 until 31 January 2011. Audit has not raised any concern.
15	<u>Audit</u> <ul style="list-style-type: none"> ● The PCPD to remind staff to complete vehicle log books. ● The PCPD to remind staff of the need to ensure the use of the office car is in accordance with the guidelines. ● SCMA, in conjunction with the Secretary for Financial Services and the Treasury, should review the appropriateness of the manner in which the PCPD purchased its office car in 2003-04. 	<p>Done</p> <p>Done</p> <p>Done by SCMA</p>
16	<u>Audit</u> <ul style="list-style-type: none"> ● The PCPD to continue exercising strict control over the use of taxi for duty journeys in accordance with the Financial Circular No. 03/08 dated 19/12/08. ● The PCPD to remind staff to use office car before considering using taxi. 	<p>This is being done.</p> <p>Done</p>
17	<u>Audit</u> <ul style="list-style-type: none"> ● SCMA to consider requiring the PCPD to return the earmarked fund to the Government, if no firm plan to implement the DURS in the near future. 	<ul style="list-style-type: none"> ● SCMA may not need to consider requiring the PCPD to return the earmarked fund since the plan for implementation of DURS is one of the work targets of PCPD's 2010 Business Plan.

Audit/PAC's Recommendations	Progress to Date
<ul style="list-style-type: none"> ● If the PCPD is allowed to keep the earmarked fund, SCMA to take appropriate measures to ensure that the fund is not used for other purposes without the CMAB's prior consent. <p><u>PAC</u></p> <ul style="list-style-type: none"> ● The Commissioner to take appropriate actions to foster a culture of observing the "moderate and conservative" principle among the PCPD staff when making expenditure decision. 	<ul style="list-style-type: none"> ● This is for action by SCMA. <ul style="list-style-type: none"> ● PCPD will include in its induction training to newly recruited staff session on imparting to them the culture of observing the "moderate and conservative" principle. ● Staff of PCPD will be reminded on regular basis through Commissioner's meetings and team meetings on the need to observe "moderate and conservative" in making expenditure decision. ● PCPD would look to CMAB for advice and assistance on how to develop a culture of observing the "moderate and conservative" principle among its staff. PCPD wishes to be informed in detail of how government departments and agencies have gone about successfully developing such culture. These may well serve as good referential examples to follow.

Audit/PAC's Recommendations		Progress to Date
18	<p><u>Audit</u></p> <ul style="list-style-type: none"> ● The Commissioner to take appropriate action to foster a compliance culture within the PCPD, in the light of the various administrative non-compliance issues revealed by Audit. ● The Commissioner to take appropriate action to familiarise the PCPD staff with the requirements of the new Memorandum of Administrative Arrangements (MAA) and ensure compliance. ● The PCPD to ensure timely completion of staff performance appraisals. 	<ul style="list-style-type: none"> ● PCPD will include in its induction training to newly recruited staff session to foster a compliance culture. ● Staff of PCPD will be reminded on regular basis through Commissioner's meetings and team meetings to foster a compliance culture. ● PCPD would look to CMAB for advice and assistance on how to develop a culture of observing the compliance culture among its staff. PCPD wishes to be informed in detail of how government departments and agencies have gone about successfully developing such culture. These may well serve as good referential examples to follow. ● PCPD will include in its induction training to newly recruited staff session on the terms of the MAA to ensure compliance. <p>This will be done.</p>
Performance Reporting in Controlling Officer's Report		
19	<p><u>Audit</u></p> <ul style="list-style-type: none"> ● SCMA should, in consultation with the PCPD, develop outcome indicators and productivity indicators, to include in the Controlling Officer's Report (COR) performance indicators on the PCPD's promotional activities and on the number of codes of practice or guidelines approved / issued by the PCPD. 	<p>Completed. CMAB in consultation with PCPD have developed new outcome indicators and productivity indicators in the COR including the following :</p> <p>(i) numbers of cases resolved through mediation, warning and recommendations issued, enforcement notice issued, cases</p>

Audit/PAC's Recommendations		Progress to Date
		referred to prosecution; (ii) average time (days) taken to complete a simple complaint case and a complicated case; (iii) number of code of practice / guidelines / guidance notes issued; and (iv) number of promotional activities carried out

Office of the Privacy Commissioner for Personal Data Strategic Plan (2010-2014)

This strategic plan sets out the mission, key goals, specific objectives and action strategies of the Office of the Privacy Commissioner for Personal Data (“PCPD”) for the period of 2010 and 2014.

Mission

The mission of the PCPD is to secure the protection of privacy of the individual with respect to personal data through promotion, monitoring and supervision of compliance with the Personal Data (Privacy) Ordinance (“PDPO”).

Key Goals

The key goals of the PCPD are to ensure that:

- (1) individuals are aware of their rights as data subjects under the PDPO and how to exercise them;
- (2) public and private sector organizations are aware of their obligations as data users under the PDPO and how to meet them;
- (3) individuals and public/private sector organizations are aware of the role of the PCPD and how we can assist them;
- (4) enquiries are responded to courteously and efficiently to the satisfaction of the enquirer;
- (5) complaints are investigated and resolved efficiently in a manner that is fair to all parties concerned;
- (6) all other functions of the PCPD are carried out cost-effectively and efficiently; and

- (7) all other jurisdictions with data protection laws are aware of the robustness of our law protecting the privacy of the individual with respect to personal data so as to obviate any interference in the free flow of personal data to Hong Kong.

Functions

The functions of the Privacy Commissioner for Personal Data (“**the Privacy Commissioner**”) are set out in section 8 of the PDPO. They can loosely be divided into four types:-

- | | |
|-----------------------------------|---|
| 1. Promotion and Education | <ul style="list-style-type: none">✧ Promoting public awareness and understanding of the PDPO;✧ Providing appropriate training to targeted groups of data users✧ Promoting good practice by providing guidance to data users through the issue of code of practice and other guidance materials. |
| 2. Enforcement | <ul style="list-style-type: none">✧ Conducting inspections of personal data systems.✧ Initiating investigation.✧ Investigating complaints.✧ Issuing enforcement notices.✧ Working with law enforcement agencies to enforce the law✧ Data Matching Procedures applications. |

- 3. **Minimizing privacy impact** ✧ Examining proposed legislations and amendments that may impact upon personal data privacy.
- ✧ Monitoring technological developments.
- 4. **International and regional co-operation** ✧ Liaising and co-operating with overseas data protection authorities on the development of personal data protection.

The strengths, weaknesses, external opportunities and threats to the operation and the achieving of the objectives of PCPD

PCPD is a statutory body that is 100% funded by Government subvention. Its independent status enables the Privacy Commissioner to discharge his functions and powers without fear or favour. A dedicated team of staff possessing expertise on personal data protection working in a compact organization that is closely knitted constitute operational strengths that enable the PCPD to perform its functions in an efficient and effective manner.

The scope and manner of its operation is however, necessarily limited by the amount of resources provided to the Privacy Commissioner. The mobility rate of the staff and the difficulty to recruit staff of specific expertise also pose considerable problems to its daily operations. There are some inherent operational weaknesses that the PCPD has to face. These include the lack of career advancement and the impossibility to achieve economy of scale in its daily administration.

With the growing concern on the need to build up proper privacy governance, organizational data users, especially Government departments and bureaux, are more ready to approach PCPD for advice or invite PCPD to participate in undertaking Privacy Impact Assessments and Privacy Compliance Audits. These organizational data users welcome and are keen to partner PCPD in privacy promotional activities. Hong Kong's standing as a privacy pioneer jurisdiction in regional and international privacy arenas, such as APEC, Asia Pacific Privacy Authorities forums and the International Conference of Data Protection and Privacy Commissioners are increasingly recognized. These are

external opportunities which are helpful and encouraging to the PCPD in the discharge of the Privacy Commissioner's functions under the PDPO.

However, the Privacy Commissioner has to face serious privacy challenges posed by technological advancements. People are found to be more ready to trade in personal data privacy for the convenience that technology has brought them and the social habits they choose to acquire. This is aggravated by the fact that younger people are growing up in an environment surrounded with technologies that render them less aware of their personal data privacy rights. The fast and borderless flow of personal data to areas with no comparable personal data privacy protection also gives rise for concern. These are threats that may frustrate and make more difficult the attaining of PCPD's objectives and targets.

Having duly conducted the environmental scan mindful of the above relevant factors, the PCPD's strategic planning team comprising its key management staff have assisted the Privacy Commissioner in preparing this Strategic Plan.

PCPD's Priorities

- Continued efforts to improve the turnaround times for complaint investigation casework, whilst maintaining the quality and consistency of our findings
- Review complaint investigation casework levels to ensure the optimum match between resources and capacity
- Find more efficient ways to promote good practice on personal data protection when the greater part of our resources are being directed to improving casework handling
- Publicize personal data protection benefits with targeted programmes of guidance, risk-based enforcement and policy proposals that inspire public confidence
- Continue to improve PCPD's organizational and individual performance, effectiveness and efficiency
- Bring into the operation the Data User Returns and Register of Data Users as provided under Part IV of the PDPO
- Complete our IT re-procurement, enabling us to make better use of IT systems and

- Successfully deploy the necessary resources and capacity to handle additional personal data protection work arising from the e-Health Recording Sharing Programme

Specific Goals

For the period of 2010 and 2014, the PCPD will aim to achieve the following specific goals:-

- To carry out more compliance checks and audits to minimize the risk of personal data privacy breach.
- To further streamline the handling procedure of the Operations Division with available resources with a view to minimizing the processing time of complaints.
- Promotion of data privacy awareness will be focused on groups that have the greatest need.
- To continue with the effort of maintaining transparency and greater interaction with the public using all practicable means, including publishing more investigation reports, case notes and issuing more public announcements.

Specific Objectives and Action Strategies

1. Review of the PDPO

To assist the Government in the ongoing review of the PDPO, the PCPD will provide its views and other assistance to the Government timely and as the available resources permit.

The Government released the Consultation Document on Review of the PDPO in August 2009. The review was initiated by the PCPD in June 2006 when an internal Ordinance Review Working Group was formed to assess the adequacy of protection of personal data privacy. After a year

and a half's work, the Working Group completed its review and presented to the Government in December 2007 more than 50 amendment proposals. The Government has taken on board most of the proposals made by the PCPD. In order to facilitate the public to obtain all relevant information relating to PCPD's proposals, the PCPD issued a paper titled "*PCPD's Information Paper on Review of the Personal Data (Privacy) Ordinance*" on 9 September 2009. In response to the consultation, PCPD provided its submission to the Government on various amendment proposals made in the Consultation Document before the close of the consultation in November 2009. The PCPD shall continue its efforts to assist the Government to expedite the legislative amendment process.

2. Data Users Returns

The PCPD will give priority to the preparation works to bring into operation the Data User Returns ("**DURS**") and Register of Data Users as provided under Part IV of the PDPO.

Data users are required under the DURS to submit the types of personal data they hold and the purposes for which they are held. The requirement of registering with the PCPD would force organizations to be more open and transparent. When investigating a complaint, the PCPD officers would be able to refer to the registration information to find out if the data is being used for reasons other than that provided on the registration form. Making such information available on a central public register will bring benefits to society as a whole.

Section 14(2) of the PDPO provides that the Privacy Commissioner shall, before specifying a class of data users to comply with the section, consult with them and then require these data users to furnish prescribed information to the Privacy Commissioner in a specified format, which will then be recorded in the Data Users Register.

A decision will be made by the Privacy Commissioner as to whether the DURS shall initially apply to the public sector. An implementation by phases is desirable. The setting up of a basic framework with targeted data users to be included by phases is the preferred approach in allowing for gradual integration into the system.

3. eHealth Record Sharing Programme

The PCPD will help in the privacy impact assessment (“**PIA**”) in respect of the Government’s eHealth Record Sharing Programme.

The Food and Health Bureau on behalf of the Government has invited the PCPD to conduct a PIA that will proceed in tandem with the development of the eHR sharing system, and a Privacy Compliance Audit (“**PCA**”) upon individual components of the eHR sharing infrastructure commencing operation.

The PIA and PCA will cover a wide range of issues affecting data privacy including data sources, collection, storage, deletion, access control, disclosure and use, authentication, consent issues, records sharing, security safeguards, privacy risk management, etc.

The Project will be implemented by phases over 5 to 10 years. Legislation will be in place as and when required to complement the operational needs. Subject to appropriate funding arrangement to provide for resources to PCPD to undertake the Project, a sustainable data privacy team is essential to the continuity of such a long-term project.

4. Regional and Global Data Protection Activities

The PCPD aims to continue its participation in the work of the APEC’s Data Privacy Subgroup (“**Subgroup**”) and will follow closely the implementation of the APEC Privacy Framework. The PCPD will also look for opportunities in participating in more regional and global data protection activities.

For the purpose of fostering the development of compatible approaches to data privacy in the APEC region, the Electronic Commerce Steering Group (“**ECSG**”) of the APEC established in the Subgroup in February 2003 to develop a set of privacy principles and implementation mechanisms. The PCPD was invited by the then Commerce, Industry and Technology Bureau to participate in the work of the Subgroup in 2003. The Subgroup developed the APEC Privacy Framework, the full

version of which was endorsed in November 2005. Since then, the Subgroup has been working towards the practical aspects of promotion and education as well as domestic and international implementation of the Framework. In 2007, the APEC Ministers endorsed the APEC Data Privacy Pathfinder. Member economies agree to work together to create implementation frameworks by pursuing nine projects that work towards achieving an overarching set of objectives and accountable cross-border information flows. In November 2009, the APEC Ministers endorsed the APEC Cooperation Arrangement for Cross-Border Privacy Enforcement, which is one of the products of the Data Privacy Pathfinder. The work plan of the Subgroup is to complete the other Pathfinder projects by the end of 2010.

5. Promotional and Educational Activities

(i) *Regional and Global Data Protection Activities*

The PCPD aims to continue with its regional and global data protection activities.

Asia Pacific Privacy Authorities (“**APPA**”) is the principal forum for privacy authorities in the Asia Pacific Region to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints. Participants of APPA currently include the Privacy Commissioners of Australia (including the Commissioners of the States of New South Wales, Victoria and the Northern Territory), New Zealand, Canada (including the Province of British Columbia), the Korean Information Security Authority, and Hong Kong.

At its two bi-annual meetings, reports from members’ jurisdictions on privacy developments will be received and a wide range of topical personal data privacy issues will also be discussed. The PCPD will continue to participate actively in APPA activities.

(ii) *Educational Activities*

The PCPD aims to organize 2 to 3 industry-specific educational

activities in the next five years. Moreover, the PCPD will recruit an additional officer who will be mainly responsible for conducting seminars to the general public.

(iii) *Promoting Privacy Rights Among the General Public*

Free Public Introductory Seminars

To raise public's awareness and understanding of the PDPO, the PCPD will continue to organize free public introductory seminars on the requirements of the PDPO regularly.

Moreover, the PCPD will recruit an additional officer who will be mainly responsible for conducting seminar to the general public.

Privacy Awareness Week

Privacy Awareness Week (“PAW”) was first launched in 2007 by APPA member jurisdictions. It is an annual promotion for both public and private organizations covered by privacy legislation in APPA member jurisdictions to promote privacy awareness to their staff, customers and to the wider community. During each PAW members jointly organize an APPA-wide promotion. The PCPD will continue to join hands with APPA member organizations to organize different kinds of promotional activities in PAW to promote the awareness of personal data privacy protection.

Participation in relevant exhibitions

In order to reach out target audience, the PCPD expects to participate in relevant large-scale expositions, e.g. Education & Careers Expo, to disseminate the message of personal data privacy protection to the audience.

Promotional and educational activities to targeted data subjects

The PCPD will identify specific data subjects (e.g. senior citizens or young people) and organize relevant promotional and educational

activities to them.

Mass Media and Website

To widely publicize the importance of data privacy, the PCPD will produce Announcement of Public Interest (“**API**”) for broadcasting on television and other public forums.

The PCPD will continue to disseminate privacy protection messages to different segments of the community via its website (www.pcpd.org.hk). More interactive elements will be integrated into its website.

(iv) Promoting Compliance Among Data Users

Data Protection Officers’ Club (“**DPOC**”)

DPOC has been established for over 10 years and will continue to play the role as a communication platform between PCPD and data protection officers.

In 2010-2014, various kinds of activities will be organized for DPOC members to enhance their knowledge of data protection.

Industry-specific educational activities

The PCPD expects to organize 2 to 3 industry-specific educational activities in the next five years.

In-house seminars

To strengthen data users’ understanding of the requirements of the PDPO, and remind them of the importance of privacy protection in relation to personal data, the PCPD will continue to conduct seminars to employees of private and public organizations.

Publications and educational tools

The PCPD will produce a wide collection of comprehensive publications, including trainer's kit, newsletters, annual reports, introductory/explanatory booklets and leaflets, to assist data users to have a better understanding on the requirements of the PDPO.

6. Section 33 of the PDPO

The PCPD has commenced preparatory works for the implementation of section 33 of the PDPO and will make extra effort in working with the Administration with a view to putting it into operation as soon as possible.

Section 33 prohibits the transfer of personal data to places outside Hong Kong unless one of a number of conditions is met. One of these conditions is that the data user has taken all reasonable precautions and exercised all due diligence to ensure that the personal data concerned are given equivalent protection to that provided for by the PDPO. The Commissioner, though being ready to do so, has not yet specified under section 33(3) a "white list" of the overseas countries or regions that afford comparable personal data privacy protection as Hong Kong. The difficulty is manifested by the increasing trend of data users out-sourcing personal data processing to servicing agents outside Hong Kong. The realities are that many of these places do not have any privacy legislation in place for protection of personal data privacy. To comply with section 33, an alternative is for data users to impose contractual obligations on the transferees for proper handling of personal data. For the purpose of providing practical guidance on data users, the PCPD has issued a Fact Sheet and a Model Contract. Comparing with the environment when the PDPO was enacted 13 years ago, privacy protection is now seen by businesses as an enhancement rather than a burden and it is not uncommon for businesses to enter contractual terms with data processing agents on the proper handling of personal data. The PCPD does not see it objectionable for businesses to take extra steps to enhance privacy protection which in turn is beneficial to them in boosting corporate image and reputation.

7. Administration and Management

The PCPD has many functions to perform but its workforce is small. Our staff are specialists and keen to improve their skills and the manner in which they perform their duties.

A high priority is to improve the quality of our senior leadership and management, ensuring that the organisation is well led and managed and our human, financial and organisational resources are used efficiently and effectively.

The essential requirements

(i) Senior Leadership

We will aim to ensure that all senior officers are encouraged, and equipped with the skills to communicate effectively with and inspire their subordinates.

(ii) Business Planning

We will ensure that our annual business plans clearly link with this strategic plan. They should contain challenging but realistic targets. Sufficient flexibility has to be built in to accommodate emerging demands.

(iii) Performance management

We will aim to improve the documentation of policies and procedures and risk management.

(iv) Information services

We will devise an information services strategy to provide our staff with a solid IT platform and core applications that meet the needs of the PCPD in a cost-effective manner.

Staff's remuneration and incentives

We will give high priority to pay and reward issues, aiming to provide our staff with the right incentives.

Modernising Human Resources

Circumstances permitting, we will try to give our staff good training, job-satisfaction, diversity of work and fair treatment.

We will:

- (a) ensure that we offer the right levels of information. We will listen to feedback and give timely responses with targeted information. We will continue to develop our intranet and help our staff to get the information and advice they need.
- (b) Developing a culture of communications -
We will continue to develop internal communications and encourage the greater involvement of the staff. We will ensure that the PCPD values remain an intrinsic part of how we work.

Financial management and internal controls

We will ensure that the public funds entrusted to us shall be used in a proper and efficient manner in accordance with the law and audit requirements. We will endeavour to make the most efficient use of all PCPD accommodation.

**The Office of the Privacy Commissioner for Personal Data
January 2010**

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