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Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 19 March 2010

Briefing by the Privacy Commissioner for Personal Data

Purpose

This paper provides background information on the work of the Privacy Commissioner for Personal Data (the Privacy Commissioner) and summarizes the relevant issues raised by Members since the First Legislative Council (LegCo).

Background

2. The Office of the Privacy Commissioner for Personal Data (PCPD) is a statutory body responsible for overseeing the enforcement of the Personal Data (Privacy) Ordinance (Cap. 486) (the Ordinance). PCPD is headed by the Privacy Commissioner appointed by the Chief Executive (CE). The incumbent Privacy Commissioner was appointed on 1 August 2005 for a five-year term. Section 8 of the Ordinance prescribes the functions and powers of the Privacy Commissioner as set out in **Appendix I**.

3. Since July 2007, the Constitutional and Mainland Affairs Bureau (CMAB) has taken over from the Home Affairs Bureau (HAB) as the housekeeping bureau of PCPD. PCPD is funded mainly by recurrent subvention from the Government. According to Report No. 53 of the Director of Audit on PCPD, it had 55 staff as at 1 July 2009.

4. Section 11(1) of the Ordinance provides for the establishment of the Personal Data (Privacy) Advisory Committee (the Advisory Committee) to advise the Privacy Commissioner 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).

Relevant issues raised by Members

5. The Panel on Home Affairs (the HA Panel) received a briefing by the Privacy Commissioner on the work plan of PCPD at its meeting on 8 November 2005. The

HA Panel also discussed the proposed approval procedure for overseas duty visits of the Privacy Commissioner and the Chairperson of the Equal Opportunities Commission (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 PCPD was also raised. The Panel on Constitutional Affairs (the CA Panel) followed up on the financial provision for PCPD at its meeting on 15 December 2008. The relevant issues raised at these meetings are summarized in paragraphs 6 to 24 below.

Financial provisions for PCPD

6. During his briefing for the HA Panel on the work plan of PCPD 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.

7. Some members of the HA Panel expressed the view that the relevant housekeeping 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. The Privacy Commissioner assured members that PCPD would maintain the same level of services and did not have any plan to streamline its manpower.

8. 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 Privacy Commissioner the progress of the review of the Ordinance and the actions taken by PCPD in following up on these incidents at a special meeting held on 4 July 2008.

9. Members of the HA Panel noted with concern the statements made by the Privacy Commissioner that PCPD had not been given adequate resources for handling its heavy caseload, and 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 incidents. They urged the Administration to address the problem promptly.

10. The Administration advised 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. CMAB would further explore the allocation of additional funding to PCPD from the financial provision allocated to CMAB upon receipt of such requests from PCPD.

11. When the CA Panel followed up on the financial provisions for PCPD at its meeting on 15 December 2008, the Privacy Commissioner informed members that the level 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 PCPD to discharge its statutory functions. They considered that the lack of resources had constrained the work of PCPD on protection of personal data privacy and the Administration should enhance the financial provision for PCPD in the 2009-2010 Budget.

12. The Administration advised that it would strive to provide the resources required by PCPD for the effective enforcement of the Ordinance. 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 PCPD and would provide from the CMAB's operating expenditure envelope for 2008-2009 an additional allocation of \$2.4 million to PCPD for strengthening its enforcement work. The Administration was discussing with PCPD its financial provision for 2009-2010 and would positively consider whether more resources should be provided to PCPD to address its operational needs, including the need to strengthen its manpower and in-house information technology expertise to support its enforcement work.

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

14. The Administration explained that under the existing mechanism, there were various channels through which PCPD could get supplementary resources for coping with ad hoc tasks not budgeted for. PCPD's reserve could be used for such purpose. The total additional allocation to PCPD in 2008-2009 amounted to \$6.62 million and the additional provision of \$2.4 million from the operating expenditure envelope of CMAB for 2008-2009 would provide PCPD with flexibility in resource deployment by maintaining its reserve at a healthier level. Furthermore, consideration could be given to allocating additional funding to PCPD from the operating expenditure envelope of CMAB upon receipt of such requests from PCPD. One of the main purposes for setting up PCPD's reserve was to provide a funding source for litigation. The Administration recognized that PCPD's reserve was limited and would consider providing financial support to PCPD to undertake legal proceedings on a case-by-case basis upon the request of PCPD.

15. Members may wish to note that at the Special Finance Committee meeting on 24 March 2009, SCMA advised that CMAB had allocated in 2008-2009 an additional \$6.6 million to PCPD, which represented an increase of 19% over the revised estimate in 2007-2008. In 2009-2010, CMAB would continue to allocate more resources to

PCPD, with the total provision of \$44.5 million. The additional provision represented an increase of about 4% over the revised estimates of the year before to cater for strengthening the enforcement team of the Office and enhancing professional support on information technology.

Promotion and public education on protection of personal data

16. Some members of the HA Panel considered it pivotal for PCPD to strengthen its work on the preventive front by stepping up promotion and public education on protection of personal data. 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 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.

17. The Privacy Commissioner explained that PCPD also recognized the importance of its educational role in enhancing protection of personal data privacy. However, there was only one training officer in PCPD to organize seminars on the Ordinance and other educational work. PCPD would like to recruit at least two more staff to handle promotion and educational work but lacked the resources to do so. 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.

18. 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 PCPD's work, and had allocated an extra provision of \$1 million to PCPD in 2008-2009 to strengthen its work in this regard. To the Administration's understanding, the \$1 million would be used by 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 PCPD's in-house promotion and education staff.

Corporate governance of PCPD

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

20. Arising from public concern about false claims of allowances by the former Deputy Privacy Commissioner 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 the Privacy Commissioner and the Chairperson of EOC -

- (a) to issue a Code of Conduct to the Privacy Commissioner 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 the Privacy Commissioner and the Chairperson of EOC;
- (b) to ask the Privacy Commissioner 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 PCPD and the MAA between the Government and EOC to set out the proposed approval procedure.

21. A majority of the members of the HA Panel expressed objection to the Administration's proposal to ask the Privacy Commissioner 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 the Privacy Commissioner 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 PCPD as follows -

- (a) the Advisory Committee could be given the responsibility to consider or to approve any duty visits proposed by the Privacy Commissioner, 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 PCPD;
- (b) the Administration could engage the Audit Commission to examine the cost-effectiveness of any overseas duty visits conducted by the Privacy Commissioner whenever there was any doubt about the usefulness of a visit or about the use of resources in connection with a visit;
- (c) 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 PCPD.

22. The Privacy Commissioner 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. PCPD was of the position that an effective mechanism had already been put in place providing sufficient safeguards against misuse of public funds by the Privacy Commissioner in conducting overseas duty visits. The Privacy Commissioner considered that the proposed approval procedure would undermine his independence.

23. 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 PCPD or EOC, but the Bureau had the responsibility to monitor the expenditures of these two bodies. Moreover, PCPD did not have an executive governing board and the Privacy Commissioner 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.

24. The Administration subsequently informed the HA Panel that it would continue to identify room for improvement to the existing monitoring system of PCPD through regular meetings with the Office. As 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.

Recent development

25. At the Council meeting on 3 February 2010, the Public Accounts Committee (PAC) tabled its report on PCPD in which a number of conclusions and recommendations have been made. The relevant extract from the PAC's report is in **Appendix II**.

Relevant papers

26. A list of relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix III**.

~~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——
 - (a) 就遵守本條例條文作出監察及監管；
 - (b) 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；
 - (c) 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；
 - (d) 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；
 - (e) 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；
 - (f) 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；
 - (g) 與——
 - (i) 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—
 - (a) monitor and supervise compliance with the provisions of this Ordinance;
 - (b) 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;
 - (c) promote awareness and understanding of, and compliance with, the provisions of this Ordinance, in particular the data protection principles;
 - (d) 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;
 - (e) carry out inspections, including inspections of any personal data systems used by data users which are departments of the Government or statutory corporations;
 - (f) 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;
 - (g) liaise and co-operate with any person in any place outside Hong Kong—
 - (i) 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.

~~75. The **Secretary for Constitutional and Mainland Affairs** said that:~~

- ~~- Audit recommended that the CMAB should consider whether to require the PCPD to return to the Government the fund of \$5 million earmarked for the installation of computer system to implement the DURS if it had no firm plan to implement the scheme in the near future, or to allow the PCPD to keep the fund and take measures to ensure that it was not used for other purposes without the CMAB's prior consent; and~~
- ~~- as the PCPD did not indicate earlier any firm plan to implement the DURS, the CMAB was originally inclined to require the PCPD to return the earmarked fund to the Government. However, according to the latest information provided by the PCPD, it wished to implement the DURS in the foreseeable future. Hence, the CMAB would follow up with the PCPD on the implementation details before deciding whether the PCPD should be allowed to keep the fund.~~

H. Performance reporting in COR

76. The Committee noted Audit's concern in paragraph 8.4 of the Audit Report that in the 2009-2010 COR of the CMAB, there were no indicators to measure the outcome and productivity of the PCPD's work. There were also no indicators on the PCPD's promotional activities, and on its performance in approving and issuing codes of practice for the practical guidance of data users.

77. The **Secretary for Constitutional and Mainland Affairs** informed the Committee that the CMAB was working with the PCPD to develop appropriate outcome and productivity indicators, including indicators on the PCPD's promotional activities and the number of codes of practice or guidelines approved/issued by the PCPD. These would ~~be included in the CMAB's COR in the following year.~~

I. Conclusions and recommendations

78. The Committee:

- notes that the key findings of the Director of Audit's Report ("Audit Report") mostly concern the inadequacies in the governance and administration of the Office of the Privacy Commissioner for Personal Data ("PCPD"), and not its performance in securing the protection of privacy of individuals with respect to personal data and in overseeing the enforcement of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO");

- considers that whilst the amounts of money involved in individual cases identified by the Audit Commission ("Audit") may not be very large, the inadequacies identified have revealed that the PCPD has not shown a standard of corporate governance and a corporate culture of prudent use of public funds expected of a publicly-funded organisation;
- affirms the efforts made by the Privacy Commissioner for Personal Data ("Commissioner") to reduce the expenditure of the PCPD;

Corporate governance

- notes that the PCPD, being an organisation with only 55 staff, may not have sufficient resources, manpower and expertise at its disposal to adequately develop and implement the necessary systems and processes to meet the expected standard of corporate governance;
- finds it unacceptable that the PCPD, as a publicly-funded organisation, has not adequately emphasised the importance of institutionalising an effective and formal corporate governance structure and systems, as illustrated by the following examples:
 - (a) the PCPD has not provided for systemic oversight of compliance and internal control matters;
 - (b) the PCPD did not have a structured strategic planning process;
 - (c) there were no formal rules to govern the meetings of the Personal Data (Privacy) Advisory Committee ("Advisory Committee"), such as their frequency, quorum and the need for prompt issuance of minutes of meetings; and
 - (d) meetings of the Advisory Committee were held much less frequently during the tenure of the incumbent Commissioner. The need for meetings appears to depend on the Commissioner's own perception instead of objective criteria;
- acknowledges that:
 - (a) the Government and the Commissioner entered into a new Memorandum of Administrative Arrangements on 4 September 2009, which supersedes the previous one signed on 18 November 1997; and
 - (b) the PCPD has accepted the audit recommendations in paragraphs 2.8 and 2.14 of the Audit Report. The PCPD will set up a formal strategic planning group to drive the strategic planning process, and has prepared a formal long-term strategic plan (2010-2014) and a formal annual

business plan for 2010. The formal meeting rules of the Advisory Committee are expected to be in place by February 2010;

- urges:
 - (a) the Secretary for Constitutional and Mainland Affairs and the Commissioner to discuss as soon as possible the establishment of standing arrangements to oversee compliance and internal control matters of the PCPD; and
 - (b) the Commissioner to make strategic planning a standing agenda item of the Advisory Committee meetings;

Complaint management

- notes that:
 - (a) the PCPD detected, at a very early stage after the commencement of the operation of the PDPO in December 1996, practical difficulties in meeting the requirement under section 39(3) of the PDPO, which provides that where the Commissioner refuses to carry out or continue an investigation initiated by a complaint, he shall serve a refusal notice on the complainant "as soon as practicable but, in any case, not later than 45 days after receiving the complaint"; and
 - (b) in July 1998, the PCPD proposed to the Home Affairs Bureau ("HAB"), the then responsible policy bureau, to amend the PDPO to relax the 45-day requirement;
- expresses dismay and serious concern that:
 - (a) the statutory requirement that a refusal notice must be served within 45 days was not met in many cases, one of the reasons being shortage of manpower within the PCPD;
 - (b) despite being alerted in July 1998 to the potential difficulties caused by the 45-day requirement, the Administration (particularly the HAB which was the responsible policy bureau before 1 July 2007) has allowed the problem of non-compliance to persist for over a decade;
 - (c) the non-compliance with the 45-day requirement could have undermined the credibility of the PCPD as a law enforcement agency, and indirectly that of the Administration;

- (d) the PCPD's interpretation of section 39(3) of the PDPO to give itself up to 75 days for serving refusal notices is, prima facie, contrary to the express requirement of the PDPO that such notices must be served "not later than 45 days after receiving the complaint". In any event, even with the PCPD's interpretation, the number of non-compliance cases was still significant, totalling 868 cases in the five years from 2004 to 2008;
 - (e) the PCPD suspended the planning procedures for handling complaint cases in September 2008; and
 - (f) both the number and the ages of long outstanding cases (i.e. those aged beyond 180 days) have increased since 2004;
- acknowledges that:
- (a) the Constitutional and Mainland Affairs Bureau ("CMAB") has included the proposal to amend the 45-day requirement in the public consultation document on the review of the PDPO issued in August 2009 and will decide how to address the problem having regard to the results of the consultation;
 - (b) to alleviate the manpower shortage of the PCPD, the CMAB had increased the annual budgetary allocation to the PCPD by 23% since 2007 and will grant it additional allocation in 2010-2011. The CMAB will also consider raising the ceiling of the PCPD's reserve from \$5 million to 20% of the annual subventions from the Government, i.e. about \$9 million for the subvention of \$44.5 million for 2009-2010;
 - (c) in response to the audit observations, in September 2009, the PCPD revisited the issue of the suspension of planning procedures, and decided to streamline the procedures; and
 - (d) the PCPD has accepted the audit recommendations in paragraph 3.24 of the Audit Report;
- strongly urges:
- (a) the Secretary for Constitutional and Mainland Affairs and the Commissioner to work out a feasible solution to address the problem of non-compliance with the 45-day requirement, taking into consideration the consultation results and complainants' legitimate expectation that they should be informed as soon as practicable when the PCPD refuses to carry out or continue an investigation initiated by their complaints;

- (b) the Secretary for Constitutional and Mainland Affairs, in consultation with the Commissioner, to clarify the proper construction of the 45-day requirement under section 39(3) of the PDPO and, pending the outcome of the public consultation, to take immediate and effective measures to ensure compliance with the 45-day requirement as properly construed; and
- (c) the Commissioner to make effective use of the additional resources allocated by the CMAB and explore effective ways to resolve the manpower shortage of the PCPD;

Promotional activities

- expresses serious concern that:
 - (a) there were deficiencies in the PCPD's budgetary control process for promotional events; and
 - (b) some promotional expenditure items can be costly and discretionary in nature, but there were no clear guidelines to guide decisions on these expenditure items and to ensure the prudent use of public funds;
- acknowledges that the PCPD has accepted the audit recommendations in paragraphs 4.12, 4.30, 4.35 and 4.38 of the Audit Report, and compiled a Promotional Events Manual in September 2009;
- urges the Commissioner to take effective measures to ensure that the PCPD staff will comply with the guidelines and requirements set out in the Promotional Events Manual;

Overseas duty trips

- expresses serious concern that:
 - (a) there were insufficient checks and balances on the overseas duty trips of the Commissioner;
 - (b) the PCPD did not have a policy on the acceptance of free offers by the organisers of the events attended by the PCPD staff on overseas duty trips;
 - (c) for the trip to Cambridge, the PCPD did not act expeditiously to secure free accommodation for the Commissioner who attended the event as a guest speaker, despite being urged repeatedly by the event organiser to do so, and the delay cost the PCPD \$9,900 in hotel charges. Neither

did the PCPD document the reasons for not accepting the offer promptly;
and

- (d) there were weaknesses in the PCPD's internal control systems:
 - (i) due to the use of a wrong rate for calculating the "40% allowance", the Commissioner was overpaid an amount of \$670 for his trip to Cambridge; and
 - (ii) regarding the trip to Canada, the Commissioner was given time off, part of which he had not earned;
- acknowledges that:
 - (a) after Audit brought the matter to his attention, the Commissioner immediately refunded to the PCPD the amount of \$670 overpaid;
 - (b) in September 2009, the Commissioner issued a directive on time off, directing that, with immediate effect, any person holding (including in an acting capacity) the office of the Commissioner shall not be granted time off for whatever reason. He also instructed his staff to deduct from the balance of his annual leave the days of time off he had taken and to rectify the records accordingly;
 - (c) the PCPD has accepted the audit recommendations in paragraphs 5.5, 5.13, 5.21 and 5.26 of the Audit Report; and
 - (d) the new Memorandum of Administrative Arrangements of 2009 has enhanced the checks and balances on the Commissioner's overseas duty trips as follows:
 - (i) the Commissioner will consult the Advisory Committee on his intended overseas duty trips and confirm to the Advisory Committee that such duty visits are consistent with the discharge of his functions under the PDPO;
 - (ii) the Commissioner will not proceed with the duty visits if the majority of the Members of the Advisory Committee advise that such duty visits are inconsistent with the discharge of his functions under the PDPO; and
 - (iii) the Commissioner will then inform the Secretary for Constitutional and Mainland Affairs of the Advisory Committee's advice, and confirm that the operation of the PCPD will not be adversely affected during such visits;

- urges the Commissioner to:
 - (a) formulate a policy on the acceptance of free offers by organisers 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; and
 - (b) take measures to strengthen the PCPD's internal control systems;

Other administrative issues

Office accommodation

- expresses concern that:
 - (a) there was no documentation indicating that the PCPD had carried out a comprehensive assessment of its needs for office space, before taking up the existing leases to rent a total office space of 1,154 m². There was also no documentation of the basis/criteria on which the PCPD arrived at a total space need of 1,154 m²;
 - (b) the PCPD's rented area exceeded Audit's assessed needs, using the government accommodation standards as a benchmark, by 422 m² (or 58%) which cost about \$143,500 per month in rental;
 - (c) the PCPD's practice regarding the provision of cellular offices for its staff was more generous than the government standards;
 - (d) the PCPD took up a supplemental lease to provide for additional office space of 126 m² in anticipation of creating 16 posts, without first securing funding for the posts. As a result, additional office space was rented for posts either not created at all, or created only many months after the commencement of the supplemental lease; and
 - (e) the HAB had not informed the PCPD of the government accommodation standards;

Office car

- expresses dissatisfaction and finds it unacceptable that the procurement of the office car in 2003-2004 by the then Commissioner was in clear breach of the relevant requirements of the Memorandum of Administrative Arrangements;

- expresses concern that:
 - (a) the vehicle log books of the PCPD were not properly maintained, contrary to the instructions relating to vehicle log books;
 - (b) many journeys of the office car were questionable as to whether they complied with the PCPD's guidelines on the use of the office car; and
 - (c) there were some instances where PCPD staff used taxi for duty journeys while the office car was idle;

Other issues

- expresses concern that:
 - (a) the PCPD had used \$1.23 million of the fund earmarked for implementing the Data User Registration Scheme ("DURS"), for purposes other than the DURS; and
 - (b) there were instances of delays by the PCPD in completing staff performance appraisals, with undesirable consequences such as delays in granting salary increments to the staff concerned;
- acknowledges that:
 - (a) the PCPD has returned \$1.23 million to the fund earmarked for implementing the DURS, by transferring an equivalent amount from its general reserve;
 - (b) the Financial Services and the Treasury Bureau, in collaboration with the Efficiency Unit, is compiling a comprehensive set of government standards and guidelines on various subjects, including office accommodation, overseas duty trips, procurement, overtime and entertainment expenses, for reference by publicly-funded non-governmental organisations;
 - (c) the PCPD has accepted the audit recommendations in paragraphs 7.11, 7.27, 7.35 and 7.45 of the Audit Report; and
 - (d) the Secretary for Constitutional and Mainland Affairs has accepted the audit recommendations in paragraphs 7.28 and 7.41 of the Audit Report;

- urges:
 - (a) the Commissioner to take appropriate actions to:
 - (i) foster a culture of observing the "moderate and conservative" principle among the PCPD staff when making expenditure decisions;
 - (ii) foster a compliance culture within the PCPD, in the light of the various administrative non-compliance issues revealed by Audit; and
 - (iii) familiarise the PCPD staff with the requirements of the new Memorandum of Administrative Arrangements and ensure compliance;
 - (b) the Financial Services and the Treasury Bureau to expeditiously complete compilation of a set of government standards and guidelines on various subjects for reference by publicly-funded non-governmental organisations, and arrange suitable training on the standards and guidelines for staff of the organisations; and
 - (c) the Administration to require the government representatives in publicly-funded non-governmental organisations to proactively inform the organisations of applicable government standards and guidelines;

Performance reporting in Controlling Officer's Report

- expresses concern that in the Controlling Officer's Report:
 - (a) there are no performance indicators to measure the outcome and productivity of the PCPD's work;
 - (b) there are no indicators on the PCPD's promotional activities, although the PCPD has a statutory duty to promote awareness and understanding of the provisions of the PDPO; and
 - (c) there are no indicators on the PCPD's performance in approving and issuing codes of practice for the practical guidance of data users, although the PCPD has a statutory duty to promote and assist bodies representing data users to prepare codes of practice;
- acknowledges that the Secretary for Constitutional and Mainland Affairs has accepted the audit recommendations in paragraph 8.5 of the Audit Report;

- urges the Secretary for Constitutional and Mainland Affairs to expeditiously implement the above audit recommendations; and

Follow-up actions

- wishes to be kept informed of:
 - (a) the progress made in establishing standing arrangements to oversee compliance and internal control matters of the PCPD;
 - (b) the PCPD's decision regarding the proposal to make strategic planning a standing agenda item of the Advisory Committee meetings;
 - (c) the solution to address the problem of non-compliance with the 45-day requirement;
 - (d) the progress made in clarifying the proper construction of the 45-day requirement under section 39(3) of the PDPO and the immediate and effective measures to ensure compliance with the 45-day requirement as properly construed, pending the outcome of the public consultation;
 - (e) the progress made in resolving the manpower shortage of the PCPD;
 - (f) the measures taken to ensure that the PCPD staff will comply with the guidelines and requirements set out in the Promotional Events Manual;
 - (g) the progress made in formulating a policy on the acceptance of free offers by organisers of the events attended by the PCPD staff on overseas duty trips;
 - (h) the measures taken to strengthen the PCPD's internal control systems;
 - (i) the actions taken to foster a culture of observing the "moderate and conservative" principle among the PCPD staff when making expenditure decisions;
 - (j) the actions taken to foster a compliance culture within the PCPD and familiarise the PCPD staff with the requirements of the new Memorandum of Administrative Arrangements;
 - (k) the progress made by the Financial Services and the Treasury Bureau in compiling a set of government standards and guidelines on various subjects for reference by publicly-funded non-governmental organisations, and arranging suitable training on the standards and guidelines for staff of the organisations; and
 - (l) the progress made in implementing the various audit recommendations.

Briefing by the Privacy Commissioner for Personal Data

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Home Affairs Panel	8 November 2005	<p>Submission on "Privacy Commissioner's briefing on the work plan (Calendar Year 2006) for the Office of Privacy Commissioner for Personal Data (PCPD)" from PCPD [LC Paper No. CB(2)269/05-06(05)] http://www.legco.gov.hk/yr05-06/english/panels/ha/papers/ha1108cb2-269-5e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(2)577/05-06] http://www.legco.gov.hk/yr05-06/english/panels/ha/minutes/ha051108.pdf</p>
	9 December 2005	<p>Administration's paper on "Proposed approval procedure for overseas duty visits of the Privacy Commissioner for Personal Data and the Chairperson of the Equal Opportunities Commission (EOC)" [LC Paper No. CB(2)576/05-06(03)] http://www.legco.gov.hk/yr05-06/english/panels/ha/papers/ha1209cb2-576-3e.pdf</p> <p>Submission on "Proposed guidelines for conducting duty visits outside Hong Kong issued to EOC and PCPD " from PCPD [LC Paper No. CB(2)576/05-06(05)] http://www.legco.gov.hk/yr05-06/english/panels/ha/papers/ha1209cb2-576-5e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(2)787/05-06] http://www.legco.gov.hk/yr05-06/english/panels/ha/minutes/ha051209.pdf</p>
	4 July 2008	<p>Administration's letter dated 18 July 2008 regarding the manpower and resource requirements of PCPD [LC Paper No. CB(2)2657/07-08(01)] http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha0704cb2-2657-1-e.pdf</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
		Minutes of meeting [LC Paper No. CB(2)2850/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ha/minutes/ha080704.pdf
Constitutional Affairs Panel	15 December 2008	Administration's paper on "Financial provision for PCPD in 2008-2009" [LC Paper No. CB(2)437/08-09(05)] http://www.legco.gov.hk/yr08-09/english/panels/ca/papers/ca1215cb2-437-5-e.pdf Submission on "Financial provision for PCPD in 2008-2009" from PCPD [LC Paper No. CB(2)437/08-09(06)] http://www.legco.gov.hk/yr08-09/english/panels/ca/papers/ca1215cb2-437-6-e.pdf Background brief on "Financial provision for PCPD" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)437/08-09(07)] http://www.legco.gov.hk/yr08-09/english/panels/ca/papers/ca1215cb2-437-7-e.pdf Minutes of meeting [LC Paper No. CB(2)1255/08-09] http://www.legco.gov.hk/yr08-09/english/panels/ca/minutes/ca20081215.pdf
Finance Committee	24 March 2009	Speaking notes of the Secretary for Constitutional and Mainland Affairs http://www.legco.gov.hk/yr08-09/english/fc/fc/sp_note/session8-cmab-e.pdf