

立法會
Legislative Council

LC Paper No. CB(2)2672/11-12
(These minutes have been seen by
the Administration)

Ref : CB2/BC/8/10

Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011

Minutes of fifth meeting
held on Tuesday, 3 January 2012, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Dr Hon Philip WONG Yu-hong, GBS (Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon IP Kwok-him, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon Ronny TONG Ka-wah, SC

Public Officers attending : Item I

Constitutional and Mainland Affairs Bureau

Miss Adeline WONG
Under Secretary for Constitutional and
Mainland Affairs

Mr Arthur HO
Deputy Secretary for Constitutional and
Mainland Affairs

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Department of Justice

Ms Mabel CHEUNG
Senior Government Counsel

Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (2) 2

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Carrie WONG
Assistant Legal Adviser 4

Ms Catherina YU
Senior Council Secretary (2)6

Miss Emma CHEUNG
Legislative Assistant (2)2

Action

I. Meeting with the Administration
[LC Paper No. CB(2)237/11-12(02)]

Clause-by-clause examination of the Bill

The Bills Committee deliberated (index of proceedings at **Annex**).

2. The Bills Committee requested the Administration to -

Clause 13 (section 20(1)(c) of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"))

Action

- (a) in connection with the proposed amendment to section 20(1)(c) of PDPO under which a data user "shall refuse to comply with a data access request in any other case, if compliance with the request is for the time being prohibited under this or any other Ordinance", specify the other Ordinance(s), if any;

Clause 13 (new section 20(3)(ea) of PDPO)

- (b) in connection with the proposed new section 20(3)(ea) under which "the data user is entitled under this or any other Ordinance not to disclose the personal data which is the subject of the request", specify the other Ordinance(s), if any;

Clause 13 (new section 20(5) of PDPO)

- (c) provide justifications for the proposed new section 20(5); clarify the relevant provisions concerning discovery and inspection referred to therein and whether the High Court's inherent jurisdiction was unable to deal with the situations under section 20(5); identify the possible problems arising from the absence of section 20(5); and clarify whether or not the Magistrate Ordinance (Cap. 227) and a magistrate were covered by the definitions of "relevant Ordinance" and "specified body" under the proposed new section 20(6);

Clause 15 (new section 22(4) of PDPO)

- (d) in connection with the proposed transfer of the current section 64(2) of PDPO to the proposed new section 22(4) –
 - (i) consider whether it was too harsh to impose across the board a criminal penalty on the supplying of false or misleading information in a material particular in a data correction request and whether the penalty was necessary as there was no corresponding offence when the data was first supplied;
 - (ii) clarify whether the supplying of information in (i) had to be in writing;
 - (iii) consider specifying PDPO under which the data correction request was made; and
 - (iv) provide the precedents, if any, for the enforcement of section 64(2).

Action

Clause 18 (new section 31(4) of PDPO)

- (e) consider the Law Society of Hong Kong's suggestion to add "knowingly or recklessly" to the proposed new section 31(4) to demonstrate that there must be mens rea for the offence of supplying false or misleading information by a data user in a matching procedure request made under section 31(1) of PDPO;

Clause 19 (new section 32(5) of PDPO)

- (f) in connection with the proposed new section 32(5), consider imposing a penalty of imprisonment for contravention of any conditions specified in a notice under section 32(1)(b)(i);

Clause 24 (new sections 46 (7) to (9) of PDPO)

- (g) in connection with the proposed new sections 46(7) to (9), provide information on or consider –
 - (i) the safeguards for personal data in cross-border commercial transactions;
 - (ii) the scope of co-operation and relevant agreements between the Privacy Commissioner for Personal Data and the authorities in jurisdictions outside Hong Kong, and safeguards for personal data exchanged during the co-operation;
- (h) whether the proposed new section 46(8) under which an authority in a jurisdiction outside Hong Kong to which disclosure might be made was too broad; and
- (i) the policy justifications for the proposed new sections 46(7) to (9).

Clauses relating to the sale and use of personal data

3. Members acceded to the Administration's suggestion of deferring the scrutiny of the clauses relating to the sale and use of personal data under the Bill until after the Administration had completed its consultation with the stakeholders and review on whether to make new proposed amendments to such clauses.

Action

II. Any other business

Next meeting

4. Members noted that the next meeting would be held on 9 January 2012 at 2:30 pm.
5. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
13 August 2012

**Proceedings of the fifth meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Tuesday, 3 January 2012, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000624-001039	Chairman	Opening remarks	
001040-001535	Chairman Admin SALA2	<p><u>Clause-by-clause examination of the Bill</u> Marked-up copy of the Bill [LC Paper No. CB(2)237/11-12(02)]</p> <p><u>Clause 13</u> (section 20 of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"))</p> <p>The Administration's briefing on its response to the views of the Hong Kong Association of Banks on the proposed new sections 20(3)(ea) and 20(5) as detailed in LC Paper No. CB(2)569/11-12(02).</p> <p>SALA2 noted that under the proposed new section 20(6), the meaning of "relevant Ordinance" did not include Magistrates Ordinance (Cap. 227). Since the definition of "specified body" had the same meaning given by section 13(4), which included "a magistrate", he sought clarification on whether the Magistrates Ordinance and a magistrate were not to be covered by the respective definitions of "relevant Ordinance" and "specified body" under the proposed new section 20(6).</p> <p>The Administration's explanation that as the Magistrates Ordinance did not contain any provisions relating to discovery and inspection, it was not covered by the definition of "relevant Ordinance".</p>	
001536-002554	Mr James TO Admin Chairman	<p>Mr James TO's enquiries on –</p> <p>(a) whether the Administration had given due consideration to the legal context of the Ordinances under which a data user was entitled not to disclose the personal data of the subject of the request before deciding that such Ordinances should override PDPO;</p>	

Time marker	Speaker	Subject	Action required
		<p>(b) the justifications for the proposed new section 20(3)(ea), which provided that a data user was entitled not to disclose the personal data of the subject of the request under PDPO or any other Ordinance; and</p> <p>(c) the circumstances under which a data user was entitled not to disclose the personal data of the subject of the request.</p> <p>The Administration's response that some statutory bodies such as the Office of the Ombudsman and the Equal Opportunities Commission were required by law to preserve the confidentiality of the data they possessed in exercising their duties. The new section 20(3)(ea) was proposed having regard to such requirement in other Ordinances.</p> <p>Mr James TO's views that –</p> <p>(a) the data user referred to in the proposed new section 20(3)(ea) should be clearly defined to avoid the scope of exemption being too wide; and</p> <p>(b) a data subject should be allowed to gain access to his/her personal data in most cases and hence the proposed new section 20(3)(ea) was unnecessary.</p> <p>The Administration quoted the case of The Ombudsman as an example to illustrate the need to amend section 20 – under The Ombudsman Ordinance (Cap. 397), The Ombudsman was required to preserve the confidentiality of the data they possessed in connection with a complaint. Under the PDPO, a data user had to comply with a data access request unless the circumstances in section 20 applied. This created a dilemma for The Ombudsman when the party complained against made a data access request – if The Ombudsman acceded to the request, it would breach The Ombudsman Ordinance; if it did not accede to the request, it would breach the PDPO.</p>	
002555-003429	Chairman Mr James TO SALA2 Admin	<p>SALA2's views and enquiries regarding the proposed new section 20(3)(ea).</p> <p>The Administration's response that –</p> <p>(a) the proposed new section 20(3)(ea) would allow a data user to refuse to disclose the personal data of the subject of a complaint if he was entitled under the PDPO or any</p>	

Time marker	Speaker	Subject	Action required
		<p>other Ordinance to do so; and.</p> <p>(b) a data user might still disclose the personal data which was the subject of the request under the proposed new section 20(3)(ea), although he/she was entitled under PDPO or any other Ordinance not to disclose the relevant personal data.</p> <p>Mr James TO's concern about the classification of personal data in a complaint and his request for the Administration to specify the Ordinances under which a data user was entitled to the exemption of disclosing the personal data of the subject of the request.</p> <p>The Administration agreed to consider the matter.</p>	<p>Admin (paragraph 2(a) and (b) of the minutes)</p>
003430-004205	Ms Emily LAU Admin Chairman	<p>Ms Emily LAU's concurrence with Mr James TO's request for specifying the Ordinances in section 20(1)(c) and the proposed new section 20(3)(ea).</p> <p>Ms Emily LAU's enquiries on –</p> <p>(a) deputations' views on the proposed new section 20(3)(ea);</p> <p>(b) the provisions in the existing PDPO concerning the rights of data subjects to gain access and correct their own personal data; and</p> <p>(c) the provisions concerning the exemption of the disclosure of personal data by a data user to a data subject.</p> <p>The Administration's response that –</p> <p>(a) the proposed amendment to section 20 was generally supported by the deputations; and</p> <p>(b) under section 18 of PDPO, a data subject might make data access request. Section 19 of PDPO provided that a data user had to comply with data access request and section 20(3) stipulated the conditions under which a data user might refuse to comply with a data access request.</p>	
004206-005630	Mr James TO Chairman Admin Ms Emily LAU SALA2	<p>Mr James TO's request for the Administration to –</p> <p>(a) provide justifications for the proposed new section 20(5) and clarify the relevant</p>	<p>Admin (paragraph 2(c) of the minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>provisions concerning discovery and inspection referred to therein ;</p> <p>(b) explain whether the High Court's inherent jurisdiction was unable to deal with the situations under section 20(5) and identify the possible problems arising from the absence of section 20(5), and</p> <p>(c) confirm whether the Magistrate Ordinance and a magistrate were not to be covered by the definitions of "relevant Ordinance" and "specified body" under the proposed new section 20(6).</p> <p>The Administration's undertaking to provide the requisite information, adding that the proposed new section 20(5) was to preclude the disclosure of personal data relating to non-compliance with a data access request before the specified body had decided whether the data access request should be complied with.</p>	
005631-005640	Admin	<p><u>Clause 14</u> (section 21 of PDPO)</p> <p>The Administration's explanation on the proposed amendments to section 21.</p>	
005641-011245	Admin Ms Emily LAU Chairman Mr James TO SALA2 Ms Cyd HO	<p><u>Clause 15</u> (section 22 of PDPO)</p> <p>Mr James TO's view that there should be stringent procedure for data correction should criminal penalty on the supply of false or misleading information in a data correction request be imposed as suggested under the proposed new section 22(4).</p> <p>Mr James TO's enquiry on whether the supply of false or misleading information in data collection requests would constitute an offence under the proposed new section 22(4) if such requests were not made explicitly in accordance with PDPO.</p> <p>The Administration's response that data users had the obligation to correct the personal data of the data subjects even if no specific reference was made to PDPO, and its explanation that stringent procedure for data correction was put in place.</p> <p>SALA2's enquiry on whether the supply of false information at the time of the collection of personal data was an offence and if not, the justifications for the criminal penalty under section 22(4). The Administration's response</p>	

Time marker	Speaker	Subject	Action required
		<p>that it was not an offence under PDPO.</p> <p>The Administration was requested to –</p> <p>(a) consider whether it was too harsh to impose across the board a criminal penalty on the supplying of false or misleading information in a material particular in a data correction request and whether the penalty was necessary as there was no corresponding offence when the data was first supplied;</p> <p>(b) clarify whether the supply of information in (a) above had to be in writing; and</p> <p>(c) specify PDPO under which the data correction request under the proposed new section 20(4) was made.</p>	<p>Admin (paragraph 2(d) of the minutes)</p>
<p>011246-011455</p>	<p>Ms Cyd HO Admin Chairman Ms Emily LAU</p>	<p>The Administration was requested to provide the precedents, if any, for the enforcement of section 64(2).</p>	<p>Admin (paragraph 2(d) of the minutes)</p>
<p>011456-012453</p>	<p>Admin SALA2 Chairman Mr James TO</p>	<p><u>Clauses 16, 17 (section 25 and 26); sections 23, 24, 27 and 28 of PDPO</u></p> <p>The Administration's explanation on the proposed amendments to sections 23 to 28.</p> <p><u>Clause 18 (section 31 of PDPO)</u></p> <p>The Administration's briefing on its response to the suggestion of the Law Society of Hong Kong ("the Law Society") to add "knowingly or recklessly" to the proposed new section 31(4) as detailed in LC Paper No. CB(2)569/11-12(02).</p> <p>The Chairman's view that it would have no harm to add "knowingly or recklessly" to the proposed new section 31(4) as the plaintiff had the onus of proof.</p> <p>SALA2's comments that under the proposed section 22(4), a person who supplied false or misleading information would commit an offence, regardless of whether he/she was aware that the information was false or misleading. By adding "knowingly or recklessly", a person who was not aware of the information he/she had supplied was false or misleading would not commit an offence.</p> <p>Mr James TO's concern about the application of the proposed new section 31(4) to a person who</p>	

Time marker	Speaker	Subject	Action required
		<p>did not know the information he/she had supplied was false or misleading, and his support for the Law Society's suggestion.</p> <p>The Administration was requested to consider the Law Society's suggestion to add "knowingly or recklessly" to the proposed new section 31(4) to demonstrate that there must be mens rea for the offence of supplying false or misleading information by a data user in a matching procedure request made under section 31(1) of PDPO.</p>	<p>Admin (paragraph 2(e) of the minutes)</p>
<p>012454-012816</p>	<p>Admin Mr James TO SALA2</p>	<p><u>Clause 19</u> (section 32 of PDPO)</p> <p>Mr James TO's view that there might be a need to impose imprisonment for contravention of any conditions specified in a notice under section 32(1)(b)(i).</p> <p>The Administration's undertaking to discuss with the Department of Justice on Mr TO's suggestion.</p>	<p>Admin (paragraph 2(f) of minutes)</p>
<p>012817-015756</p>	<p>Admin Chairman Ms Cyd HO Ms Emily LAU SALA2</p>	<p><u>Clauses 22 and 23</u> (sections 39 and 44 of PDPO)</p> <p>The Administration's explanation on the proposed amendment to sections 39 and 44.</p> <p><u>Clause 24</u> (section 46 of PDPO)</p> <p>The Chairman's enquiry on whether the Privacy Commissioner for Personal Data ("PCPD") would proactively disclose matters to the jurisdictions outside Hong Kong and whether the arrangements under the proposed new sections 46(7) to (9) were reciprocated.</p> <p>The Administration's explanation that PCPD would disclose the matters in response to a request of jurisdiction outside Hong Kong and PCPD had entered into arrangements with some authorities in jurisdictions outside Hong Kong concerning the disclosure of matters.</p> <p>Ms Cyd HO's enquiry on the scope of co-operation and the relevant agreements between PCPD and the authorities in overseas jurisdictions, and her concern about the safeguards for personal data exchanged during the cooperation and in cross-border commercial transactions.</p> <p>Ms Emily LAU's enquiry on whether the personal data which might be disclosed by</p>	

Time marker	Speaker	Subject	Action required
		<p>PCPD was confined only to personal data he collected and whether the proposed new sections 46(7) to (9) would apply to the Mainland.</p> <p>The Administration's response that PCPD might disclose the personal data he collected or held under PDPO. PCPD might disclose the personal data to authorities in jurisdictions outside Hong Kong subject to the conditions in the proposed new section 46(9).</p> <p>Ms Emily LAU's view that the proposed new section 46(9)(a) should be a mandatory condition.</p> <p>The Administration's explanation that in the absence of similar law in places outside Hong Kong, PCPD might still disclose the personal data with say, the written consent of the data subject to avoid adverse action against him/her.</p> <p>SALA2's views that under the proposed new section 46(8), an authority in a jurisdiction outside Hong Kong to which disclosure might be made was too broad, and his suggestion for members to consider the policy justifications for sections 46(7) to (9), such as empowering PCPD to disclose matters to other authorities in jurisdictions outside Hong Kong in the absence of the data subject's written consent.</p> <p>The Administration was requested to provide or consider –</p> <ul style="list-style-type: none"> (a) the safeguards for personal data in cross-border commercial transactions; (b) the scope of co-operation and relevant agreements between PCPD and the authorities in jurisdictions outside Hong Kong and safeguards for personal data exchanged during the co-operation; (c) whether the proposed new section 46(8) under which an authority in a jurisdiction outside Hong Kong to which disclosure might be made was too broad; and (d) the policy justifications for the proposed new section 46(7) to (9). 	<p>Admin (paragraph 2(g) of the minutes)</p>
015757-020300	Chairman Ms Cyd HO Ms Emily LAU	The Chairman's enquiry on the responsibilities PCPD should bear for the adverse consequences caused to the data subject arising from his subjective decision to disclose the matters.	

Time marker	Speaker	Subject	Action required
		<p>The Administration's response that the data subject could lodge an appeal against PCPD's decisions made under PDPO with the Administrative Appeals Board.</p> <p>Ms Cyd HO's enquiry on the actions the Administration would take should an authority of an overseas jurisdiction breach the secrecy requirements imposed by PCPD.</p> <p>The Administration's response that it could not impose sanction against any authority which was outside the jurisdiction of Hong Kong. As the agreements between authorities in jurisdiction outside Hong Kong and PCPD were made on a mutually trust and reciprocal basis, the parties concerned would endeavour to fulfill the agreements.</p> <p>Ms Emily LAU's view that due consideration should be given to the type of data to be disclosed to authorities of places outside Hong Kong.</p>	
020301-020311	Chairman	Date of next meeting	