

立法會
Legislative Council

LC Paper No. CB(2)2827/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/BC/8/10

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

Minutes of the tenth meeting
held on Friday, 24 February 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 Paul TSE Wai-chun, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
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

Member absent : Hon Vincent FANG Kang, SBS, JP

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

Mr Jackie WU
Research Officer (1)2

Ms Catherina YU
Senior Council Secretary (2)6

Miss Emma CHEUNG
Legislative Assistant (2)2

Action

I. Meeting with the Administration
[LC Paper Nos. CB(2)1169/11-12(01), CB(2)1212/11-12(01) and
IN03/11-12]

Members noted the submission from the Hong Kong Federation of Insurers on the Administration's revised proposals for the use of personal data in direct marketing and the sale of personal data, which was tabled at the meeting [LC Paper No. CB(2)1212/11-12(01)].

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee requested the Administration to –
 - (a) discuss with the Privacy Commissioner for Personal Data and consider providing a standard form to facilitate data users in the presentation of the information on the intended use of the data subjects' personal data in direct marketing or sale of such personal data in an easily readable and understandable manner;
 - (b) consider allowing a data user who did not intend to use a data subject's personal data in direct marketing or sell it at the time of data collection but intended to do so subsequently to do so if a verbal confirmation of no objection was given by the data subject;
 - (c) consider specifying the meaning of "class of marketing subjects" and reviewing the definition of "marketing subject";
 - (d) consider advancing the effective date of the grandfathering arrangement; and
 - (e) consider putting in place measures to address the likelihood that data subjects' response to pre-recorded telephone messages would be taken as giving consent to the use of their personal data.

II. Any other business

Next meeting

4. Members noted that the next meeting would be held on 13 March 2012 at 10:45 am.
5. There being no other business, the meeting ended at 12:35 pm.

**Proceedings of the tenth meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Friday, 24 February 2012 at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000500-000546	Chairman	Opening remark	
000547-001948	Admin Chairman Mr WONG Kwok-hing	<p><u>Revised proposals for the use of personal data in direct marketing and the sale of personal data</u> [LC Paper No. CB(2)1169/11-12(01)]</p> <p>The Administration's briefing on its proposed changes, from a policy perspective, to the provisions in the Bill regulating the use of personal data in direct marketing and sale of personal data as detailed in its paper [LC Paper No. CB(2)1169/11-12(01)].</p> <p>Mr WONG Kwok-hing's support for the Administration's proposal to withdraw "taken not to object if no reply sent within 30 days arrangement" for direct marketing and sale of personal data.</p> <p>Mr WONG Kwok-hing's suggestion for the Privacy Commissioner of Personal Data ("PCPD") to provide a standard form to facilitate the presentation of the following information in an easily readable and understandable manner with a view to avoiding the provision of misleading information by data users –</p> <p>(a) the intention to use data subjects' personal data in direct marketing, provide the data subject's personal data to others for use in direct marketing, or sell the data subject's personal data for direct marketing purposes;</p> <p>(b) the kinds of personal data to be used, provided or sold;</p> <p>(c) the classes of persons to which the data was to be provided or sold for direct marketing purposes; and</p> <p>(d) the classes of marketing subjects in relation to which the data was to be used for direct marketing.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Administration's response that PCPD would issue guidelines and conduct workshops to facilitate the trade to comply with the new requirements under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). PCPD had been consulted on the provision of a standard form. Given the different business nature and environment of the trade, a standard form might not be able to cater for the needs of different stakeholders. PCPD would consider providing samples on how the required information should be presented for reference.</p> <p>Mr WONG Kwok-hing's reiteration of the need for a standard form as the guidelines provided by PCPD were not legally binding. The Administration was requested to discuss with PCPD in this regard.</p>	<p>Admin (paragraph 3 of the minutes)</p>
001949-002417	<p>Chairman Dr Priscilla LEUNG Admin</p>	<p>Dr Priscilla LEUNG's concurrence with the suggestion for a standard form and her view that the standard form should be simple and easily understandable. In addition to the standard form, data users should be allowed to provide supplementary information which would help them obtain data subjects' consent to the use of their personal data in direct marketing.</p> <p>The Administration's response to Dr Priscilla LEUNG's enquiry that under the proposed changes, data users who did not intend to use or provide a data subject's personal data to others for use in direct marketing at the time of data collection but intended to do so subsequently could only do so if they had received written reply from data subjects indicating that they did not object to them doing so. The new requirement would be more stringent as it would apply to the use and transfer of personal data by both the data users and their subsidiaries, irrespective of whether the services/products provided by the subsidiaries were related to those provided by the data users.</p>	
002418-003356	<p>Chairman Mr WONG Ting-kwong Admin</p>	<p>Mr WONG Ting-kwong's concern about the scope of grandfathering for the same marketing subjects might be too wide unless "same marketing subjects" was clearly defined.</p> <p>His view and suggestion that –</p> <p>(a) the personal data of the general public had already been widely disseminated due to the lack of a tight control over the use of personal data under PDPO;</p>	

Time marker	Speaker	Subject	Action required
		<p>(b) the revised proposals were far from adequate to resolve the nuisance caused by the improper use of personal data, although improvements had been made to the existing proposals; and</p> <p>(c) the Administration should further improve its proposals to mitigate the problems.</p> <p>The Administration's explanation that the grandfathering arrangement –</p> <p>(a) was proposed on the ground that data subjects could have requested data users to cease using their personal data for direct marketing activities but had not done so, and direct marketing activities for the same class of marketing subjects should fall within the data subject's reasonable expectation;</p> <p>(b) would not be applicable to the transfer of personal data, regardless of whether the personal data was transferred to the subsidiaries of data users or another company, and hence narrow the scope of the arrangement; and</p> <p>(c) would confine to personal data which a data user had used in direct marketing in compliance with the existing requirements under PDPO before the new requirements came into force and a data user intended to use in relation to the same class of marketing subjects.</p>	
003357-004803	Chairman Mr James TO Admin	<p>Mr James TO's concern that –</p> <p>(a) some data users might make calls to all data subjects before the effective date of the grandfathering in order to be eligible for the grandfathering arrangement. His view on the need to set a cut-off date, such as before the first reading of the Bill in LegCo, for data subjects to give their consent to data users to the use of their personal data in direct marketing. The grandfathering arrangement should not cover the data collected but not used by data users before the first reading of the Bill; and</p> <p>(b) some data users might classify all types of their products/services in the same class of marketing subject and hence render the scope the grandfathering too wide. It was therefore necessary to specify the meaning</p>	

Time marker	Speaker	Subject	Action required
		<p>concurrence with James TO's views and suggestions in this regard.</p> <p>Ms Cyd HO's suggestion to invite PCPD to attend a meeting of the Bills Committee to give views on the Administration's revised proposal. The Chairman's suggestion to invite PCPD to provide written views on the Administration's proposal first.</p> <p>The Administration's response to Ms Cyd HO's enquiries about the execution of the proposed changes that -</p> <p>(a) under the revised proposal, if a data user used or provided the data subject's personal data to others for use in direct marketing without receiving a written reply from the data subject indicating that he/she did not object to the data user doing so, the data user would be liable, on conviction, to a fine of \$500,000 and imprisonment for three years;</p> <p>(b) data subjects could lodge a complaint about non-compliance of the requirement under PDPO with PCPD, who would investigate into the case and take legal action if necessary; and</p> <p>(c) PCPD supported the proposal that data subjects could indicate their subsequent objection to the use or provision of their personal data verbally instead of in writing, having regard to the fact that there were successful precedents in convicting offences in this regard.</p> <p>Ms Cyd HO's concern that the response to pre-recorded telephone messages by data subjects would be taken as giving consent to the use of their personal data by data subjects. Her request for the Administration to discuss with PCPD and consider measures to plug the loophole.</p>	<p>Admin (paragraph 3 of the minutes)</p>
005657-011139	<p>Chairman Ms Emily LAU Mr CHAN Kin-por Admin SALA2</p>	<p>Ms Emily LAU's view on the need to strike a balance between protecting personal data and facilitating the operation of the direct marketing trade.</p> <p>Ms Emily LAU noted the grave concern of the Hong Kong Federation of Insurers ("HKFI") about the Administration's proposal to require data subjects to provide a written indication of no objection as detailed in its submission [LC Paper No. CB(2)1212/11-12(01)].</p>	

Time marker	Speaker	Subject	Action required
		<p>At the Chairman's request, Mr CHAN Kin-por briefed members on the concerns of HKFI about the Administration's proposal.</p> <p>Mr CHAN Kin-por's view that –</p> <p>(a) as it was a common practice of the insurance sector to conduct transactions over the phone, data subjects' verbal confirmation of no objection which were recorded should be accepted; and</p> <p>(b) audio recording of telephone communications between data subjects and data users would be digitized and kept for at least seven years. The digital records were effective safeguards for data subjects.</p> <p>Mr CHAN Kin-por's support for clear guidelines on the information to be provided by data users in obtaining data subject's consent.</p> <p>The Administration's response that while data subjects could keep a hard copy of their written consent, digital record would only be kept by data users and hence its suggestion for written consent from data subjects. The Administration's undertaking to revisit its proposal having regard to HKFI's views.</p> <p>Ms Emily LAU's view that public's views should be sought in this regard if necessary.</p> <p>SALA2's advice that there was no law requiring a person to inform the other party that their telephone conversation would be recorded.</p> <p>SALA2's enquiry on whether data subjects' consent given by an electronic means would be regarded as a written consent, and his concern that it would be difficult to ascertain the identity of a person who gave consent over the phone or by email.</p> <p>The Administration's explanation that –</p> <p>(a) the insurance sector would verify the identities of data subjects by obtaining the necessary information over the phone. Similar procedures applied to verifications of identities of internet account holders; and</p> <p>(b) according to the Electronic Transactions Ordinance (Cap. 553), electronic</p>	<p>Admin (paragraph 3 of the minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>information would be accepted as written information if the former could be accessible so as to be used for subsequent reference. For private organizations, the senders should obtain the agreement of the addressees in sending information electronically and information should be sent to an information system designated by the addressees.</p>	
011140-011738	<p>Chairman Admin Ms Cyd HO</p>	<p>Ms Cyd HO's suggestion to invite PCPD and deputations to exchange views on the Administration's proposal with the Bills Committee.</p>	
011739-015138	<p>Chairman SALA2 RO(1)2 Ms Emily LAU Mr TAM Yiu-chung Ms Cyd HO Admin Mr Paul TSE</p>	<p><u>Analysis of the long titles of bills introduced into the Legislative Council between 1998-1999 and 2011-2012 legislative years</u> [LC Paper No. IN03/11-12]</p> <p>Briefing by RO(1)2 on the analysis of the long titles of bills introduced into the Legislative Council ("LegCo") between 1998-1999 and 2011-2012 legislative years prepared by the Research Division of the LegCo Secretariat.</p> <p>Ms Emily LAU's request for the Administration to review whether the drafting of the long title of the Bill could be more concise.</p> <p>Ms Cyd HO's view that it was inappropriate for the Administration to make use of the drafting of long titles to regulate amendments of bills to be proposed by Members.</p> <p>Enquiry from Mr Paul TSE and Ms Emily LAU on the drafting convention of long titles of bills in overseas places. RO(1)2's response that the information was not available.</p> <p>SALA2's brief account of the guidelines for drafting long titles of bills in some overseas places.</p> <p>The Administration's response to SALA2's enquiry that the long title of the Bill as well as the written response to members' concern on the drafting of long title were prepared by Department of Justice and its explanation on the drafting of the long title of the Bill as detailed in its paper [LC Paper No. CB(2)761/11-12(01)].</p> <p>The Chairman's view that long titles should be short and supplemented with the objects of bills.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Administration's response to Ms Cyd HO's enquiry that the Explanatory Memorandum would only appear in the Bill and hence would not be updated to reflect subsequent amendments to the provisions. The purpose of the Explanatory Memorandum was to give users a better idea and understanding of the legislative proposals introduced by the Bill and should not be used as a reference of legislative amendments to the Bill.</p> <p>Members' concurrence with the Chairman's view that the issues relating long titles of bills were outside the purview of the Bills Committee and should be referred to the Panel on Administration of Justice and Legal Services for follow-up.</p>	
015139-015206	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
24 September 2012