

立法會
Legislative Council

LC Paper No. CB(2)2626/11-12
(These minutes have been seen by
the Administration)

Ref : CB2/BC/8/10

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

Minutes of eleventh meeting
held on Tuesday, 13 March 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 WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, 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 Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC
Hon IP Kwok-him, GBS, JP

Public Officers attending : Item I

Constitutional and Mainland Affairs

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
Department of Justice

Clerk in attendance : Ms Elyssa WONG
Chief Council Secretary (2) 5

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

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)1310/11-12(01) and CB(2)1347/11-12(01)]

Members noted the submission from Hong Kong Association of Banks on specific clauses of the Bill [LC Paper No. CB(2)1310/11-12(01)] and the Administration's responses to issues raised by the Bills Committee [LC Paper No. 1347/11-12(01)].

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

3. The Bills Committee requested the Administration to –

Clauses 8 and 13 (sections 14A and 20 of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"))

Action

- (a) in connection with the provisions under "if the person is entitled or obliged under this or any other Ordinance" in new section 14A(3); 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"; and 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", consider whether to remove "any other Ordinance" or list out the ordinances which, in the Administration's view, should override PDPO having regard to members' views and concern;
- (b) provide a few examples of provisions other than those with monetary implication which required certain information to be kept secret to facilitate members' consideration of the aforesaid sections; and
- (c) provide some cases where data users had refused to disclose the required information to the Privacy Commissioner for Personal Data because of their entitlement not to do so under other ordinances.

II. Any other business

Next meeting

- 4. Members agreed that the meeting originally scheduled for 20 March 2012 at 10:45 am be cancelled and the next meeting would be held on 26 March 2012 at 2:30 pm.
- 5. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 2
Legislative Council Secretariat
18 July 2012

**Proceedings of the eleventh meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Tuesday, 13 March 2012, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000-000433	Chairman	Opening remark	
000434-000554	Chairman Ms Emily LAU	Ms Emily LAU's suggestion of inviting the Privacy Commissioner for Personal Data ("PCPD") to attend a meeting of the Bills Committee to give views on the Bill.	
000555-001532	Chairman Ms Cyd HO SALA2 Admin	<p>Ms Cyd HO's suggestion of examining the appropriateness of using the collective uncountable form for the word "data" in the Persona Data (Privacy) Ordinance (Cap. 486) ("PDPO") as proposed by the Administration.</p> <p>SALA2's explanation on the meaning of the word "data" provided in "A Dictionary of Modern Legal Usage" and his view that there were practical difficulties in determining whether "personal data" should be singular or plural in some cases.</p> <p>The Administration's explanation that it was appropriate to change "data" in PDPO to the singular form in order to reflect the increasingly dominant contemporary use of "data" as an uncountable noun.</p>	
001533-002750	Chairman Admin Ms Emily LAU Mr WONG Ting-kwong	<p><u>The Administration's responses to issues raised at previous meetings</u> <u>[LC Paper CB(2)1347/11-12(01)]</u></p> <p><u>Clause 4 (section 8(2A) of PDPO)</u></p> <p>Ms Emily LAU's concern about whether it was a right approach for PCPD to levy a charge for promoting the protection of personal data as some organizations might be discouraged to use the services of the Office of PCPD because of the fees incurred.</p> <p>Mr WONG Ting-kwong's view that promotional and educational activities targeted at the general public should be provided free of charge whereas a charge could be levied on those tailor-made activities provided by the Office of PCPD.</p>	

Time marker	Speaker	Subject	Action required
002751-003012	Chairman Ms Cyd HO Admin	Ms Cyd HO's view that the Office of PCPD should use the income generated from the promotional and educational activities to enhance public awareness of protecting personal data privacy.	
003013-012145	Chairman Admin Mr James TO Dr Priscilla LEUNG SALA2 Ms Cyd HO Ms Emily LAU	<p><u>Clause 8 (section 14A of PDPO)</u></p> <p>Mr James TO's enquiry on the justifications for the proposed new section 14A(3) which allowed a data user to refuse to provide any document, record, information or thing or any response to any question as required by PCPD if he was entitled or obliged under any other Ordinance to do so.</p> <p>The Administration's view that the power for PCPD to require a person to provide any document, record, information in order to assist him in verifying the accuracy of the information in a data user return should not override the secrecy provisions in other ordinances which had already been subject to careful legislative scrutiny before enactment.</p> <p>Mr James TO's suggestion of removing "any other Ordinance" or listing out the ordinances which, in the Administration's view, should override PDPO.</p> <p>Dr Priscilla LEUNG's disagreement with Mr TO's suggestion and her view that it was impractical to list out all ordinances which, in the Administration's view, should override PDPO. It would also impose a risk to the enactment and execution of the ordinances concerned.</p> <p>SALA2's response to Ms Cyd HO's enquiry that the proposed new section 14A(3) would have no impact on the existing secrecy provisions in other ordinances.</p> <p>Ms Emily LAU's view that the Administration should aim to facilitate the verification of the accuracy of the information on a data user return by PCPD.</p> <p>Mr James TO's reiteration of his disagreement to the proposed new section 14A(3) given its implications on the protection of human rights.</p> <p>The Administration's explanation that when formulating the secrecy provisions in other relevant ordinances, all relevant factors would have been taken into account. Those secrecy provisions did not put an absolute ban on the</p>	Admin (paragraph 3 of the minutes)

Time marker	Speaker	Subject	Action required
		<p>disclosure of information but invariably allow the disclosure under specified circumstances.</p> <p>Dr Priscilla LEUNG's view that the Bills Committee should not attempt to resolve the conflicts, if any, between the requirement to comply with a data access request under PDPO and the requirement to comply with secrecy provisions in other ordinances.</p> <p>Ms Cyd HO's concern that the proposed new section 14A(3) would provide a leeway for the Administration not to cooperate with PCPD. Ms HO's suggestion of including some general principles in PDPO under which data access provisions of PDPO should take precedence over the secrecy provisions in other ordinances.</p> <p>The Chairman's request for the Administration to consider whether improvements could be made to the proposed new section 14A(3) having regard to members' views and concern.</p> <p>SALA2's suggestion for the Administration to provide some examples of provisions other than those with monetary implication which required certain information to be kept secret to facilitate members' consideration of the proposed new section 14A(3).</p>	<p>Admin (paragraph 3 of the minutes)</p>
<p>012146-014945</p>	<p>Chairman Admin Ms Cyd HO SALA2 Ms Emily LAU Dr Priscilla LEUNG</p>	<p><u>Clause 13 (section 20 of PDPO)</u></p> <p>In connection with the proposed amendment to section 20(1)(c) 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"; and 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 was the subject of the request", Ms Cyd HO's concern that there might be obsolete ordinances. Ms HO's request for the Administration to review the aforesaid sections having regard to members' views and concern expressed earlier about the proposed new section 14A(3).</p> <p>SALA2's remarks that the scope of section 20 was narrower than section 14A and it was uncommon to have dedicated secrecy provisions governing the disclosure of personal data.</p> <p>Ms Emily LAU's enquiry on whether the proposed amendment to section 20(1)(c) and the proposed new section 20(3)(ea) would bring about policy changes.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Administration's response that the aforesaid sections sought to save the data user from the dilemma of either contravening the provisions of PDPO on data access or the relevant secrecy provisions in another ordinance.</p> <p>Ms Emily LAU's suggestion for the Administration to consider other ways to prevent data users from facing the dilemma.</p> <p>Dr Priscilla LEUNG's request for the Administration to provide some cases where data users had refused to disclose the required information to PCPD because of their entitlement not to do so under other ordinances.</p> <p>Ms Cyd HO's view that the drafting of sections 14A(3), 20(1)(c) and 20(3)(ea) had not provided room for the parties concerned to bring the matter to court in case of disputes over whether a data user should comply with the relevant secrecy provisions in other ordinances or the data access provision in PDPO.</p> <p>The Administration's response to Ms Emily LAU's enquiry that the proposed new section 20(5) sought to forestall the disclosure of document containing the data in dispute to the data subject and other parties bound by the decision of the Administrative Appeals Board ("AAB") or the court by way of discovery or otherwise before AAB or the court determined in favour of the appellant.</p>	Admin (paragraph 3 of the minutes)
014946-015049	Chairman Ms Emily LAU Dr Priscilla LEUNG	Cancellation of the meeting originally scheduled for 20 March 2012. Date of next meeting.	