

立法會
Legislative Council

LC Paper No. CB(2)2651/11-12
(These minutes have been seen by
the Administration)

Ref : CB2/BC/8/10

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

Minutes of thirteenth meeting
held on Tuesday, 17 April 2012, at 4:30 pm
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 Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
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

Members absent : Hon WONG Ting-kwong, BBS, JP

Public Officers attending : Item I
Constitutional and Mainland Affairs
Miss Adeline WONG
Under Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG
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

Miss Liza LAM
Clerical Assistant (2) 5

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)1701/11-12(01) to (03), CB(2)1717/11-12(01),
CB(2)1754/11-12(01) and CB(2)1754/11-12(02)]

Members noted the following papers issued to the Bills Committee
which were tabled at the meeting –

- (a) list of follow-up actions for the Administration (position as at
12 April 2012) [LC Paper No. CB(2)1701/11-12(01)];
- (b) the Administration's response to issues raised by the Bills
Committee [LC paper No. CB(2)1701/11-12(02)];

Action

- (c) the Administration's paper on revised proposal on use of personal data in direct marketing [LC Paper No. CB(2)1701/11-12(03)];
 - (d) submission from a member of the public [LC Paper No. CB(2)1717/11-12(01)];
 - (e) the Administration's response to issues on section 46 of the Personal Data (Privacy) Ordinance (Cap. 486) raised by the Bills Committee [LC Paper No. CB(2)1754/11-12(01)]; and
 - (f) submission from The Hong Kong Association of Banks [LC Paper No. CB(2)1754/11-12(02)].
2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee requested the Administration to –
- (a) in connection with the proposal to allow data subjects to give either verbal or written consent in both the sale and use of personal data in direct marketing, consider adopting different safeguards for the sale and use of personal data in direct marketing;
 - (b) consider requiring data users to alert data subjects that the telephone communication between data users and data subjects in relation to obtaining data subjects' verbal consent for the use of their personal data in direct marketing or the provision of their personal data to another person for use in direct marketing would be recorded;
 - (c) consider including in the provision (i) a prescribed period within which data users should send written confirmation to data subjects confirming the date of receipt of the consent and the particulars of the consent; and (ii) a cooling-off period to allow data subjects to revoke their consent if they so wish;
 - (d) request the Privacy Commissioner for Personal Data to provide standard scripts for data users in obtaining verbal consent from data subjects for the use of their personal data in direct marketing or the provision of their personal data to another person for use in direct marketing;

Action

- (e) consider improving the drafting of the proposed new section 35E(1)(b) to stipulate the kinds of personal data to be used and the classes of marketing subjects in relation to which the data would be used by making reference to the proposed new section 35C(2)(b); and
- (f) encourage the direct marketing trade to adopt good practices including presenting the contents of written confirmation in an easily readable manner, recording the complete telephone communication between data users and data subjects, etc.

II. Any other business

Next meeting

- 4. Members noted that the next meeting would be held on 23 April 2012 at 2:30 pm.
- 5. There being no other business, the meeting ended at 7:03 pm.

Council Business Division 2
Legislative Council Secretariat
31 July 2012

**Proceedings of the thirteenth meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Tuesday, 17 April 2012, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000-000640	Chairman	Opening remark	
000641-001942	Chairman Admin Mr WONG Kwok-hing	<p><u>Revised proposal on use of personal data in direct marketing</u> [LC Paper No. CB(2)1701/11-12(03)]</p> <p><u>Verbal communication between data users and data subjects and grandfathering</u></p> <p>Mr WONG Kwok-hing's concern that data subjects might not receive the written confirmation sent by data users confirming the particulars of the consent and hence might not have the opportunity to raise objection to the contents of the written confirmation.</p> <p>The Administration's response that data users would be able to obtain the updated contact particulars of data subjects during their verbal communication.</p> <p>Mr WONG's suggestion of stipulating in the provision that audio recording would be required if data subjects' consent for the use of their personal data in direct marketing or the provision of their personal data to another person for use in direct marketing was given orally and data users had to alert data subjects that the telephone communication between them would be recorded.</p> <p>The Administration's undertaking to convey Mr WONG's suggestion to the direct marketing trade.</p> <p>Mr WONG Kwok-hing's enquiry and the Administration's explanation on the revised grandfathering arrangement.</p>	Admin (paragraph 3 of the minutes)
001943-003052	Chairman Mr James TO Admin Mr CHAN Kin-por	Mr James TO's strong objection to the acceptance of oral consent of data subjects in relation to the provision of personal data (whether for gain or not) to others for use in direct marketing.	

Time marker	Speaker	Subject	Action required
		<p>Mr CHAN Kin-por's remarks that it was a common practice of the direct marketing trade to record the transactions concluded over telephone. Mr CHAN's view that audio recording was a more effective safeguard for data subjects and the provision of specific guidelines to data users in obtaining data subjects' verbal consent could help enhance the protection to data subjects.</p>	
003053-003458	<p>Chairman Mr TAM Yiu-chung Admin</p>	<p>The Administration's response to Mr TAM Yiu-chung's enquiry that written confirmation could be sent to data subjects by post, fax or email. In case of disputes over whether data users had actually sent the written confirmation, due consideration would be given to the evidence provided by the parties concerned, the Police or the Privacy Commissioner for Personal Data ("PCPD"), where appropriate.</p>	
003459-004501	<p>Chairman Mr Vincent FANG Mr James TO Admin Mr CHAN Kin-por</p>	<p>Mr Vincent FANG's view that while some large organizations in the direct marketing trade would record telephone communications with data subjects, it might not be the case for smaller companies. The direct marketing trade should be reminded of the requirement to record the telephone communication between data users and data subjects.</p> <p>Mr James TO's view that unlike written consent which was self-contained, audio recording might not be a complete record as it might not capture the complete telephone communication between a data subject and a data user. His reiteration of the need for data users to obtain written consent from data subjects.</p> <p>The Administration's response that the majority of the operators in the direct marketing trade would record the telephone communication between data subjects and data users. The Administration's undertaking to discuss with the trade the suggestion of making audio recording a statutory requirement.</p> <p>Mr CHAN Kin-por's view that given the vast majority of the operators in the direct marketing trade could provide audio recording for checking, if necessary, and data subjects could, at any time, require data users to cease to use the personal data, data subjects' consent in written form should not be mandatory.</p> <p>Mr Vincent FANG's concern that requiring the small companies to send written confirmation to data subjects might impair their business.</p>	

Time marker	Speaker	Subject	Action required
004502-004837	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's concern that audio recording might be incomplete and hence could not protect personal data privacy.</p> <p>The Administration's explanation on the scope of written confirmation to data subjects and its reiteration that data subjects could revoke their consent previously given to data users for the use of their personal data.</p>	
004838-005117	Chairman Mr James TO Admin	<p>Mr James TO's grave concern that data subjects were unable to stop the use of their personal data as they were unable to identify the transferees of such data. Mr TO's strong objection to allow verbal consent for the sale of personal data to a third party.</p> <p>In connection with the proposal to allow data subjects to give either verbal or written consent in both the sale and use of personal data in direct marketing, the Administration was requested to consider adopting different safeguards for the sale and use of personal data in direct marketing.</p>	Admin (paragraph 3 of the minutes)
005118-010801	Chairman Admin Ms Emily LAU Mr James TO Mr CHAN Kin-por SALA2	<p><u>Revised provisions relating to direct marketing (Clause 21 - Part VIA)</u></p> <p>The Administration's response to Mr CHAN Kin-por's enquiry on the meaning of "sale of personal data".</p> <p><u>Section 35A</u></p> <p>SALA2's enquiry and the Administration's response on the meaning of "direct marketing".</p>	
010802-011021	Chairman Admin	<p><u>Section 35B</u></p> <p>The Administration's briefing on the revised section 35B.</p>	
011022-012336	Chairman Admin Mr CHAN Kin-por Ms Emily LAU Dr Priscilla LEUNG Ms Cyd HO	<p><u>Sections 35C(2)(a)(ii) and (c)</u></p> <p>The Administration's response to Mr CHAN Kin-por and Ms Emily LAU's enquiry that the word "consent" included an indication of no objection to the use of personal data in direct marketing or the provision of personal data for use in direct marketing and the consent could either be verbal or written.</p> <p>Ms Emily LAU's view that it would be more appropriate for data subjects to give written consent for the use of their personal data in direct marketing.</p>	

Time marker	Speaker	Subject	Action required
		<p>Dr Priscilla LEUNG's suggestion for including in the provision a prescribed period within which data users should send written confirmation to data subjects.</p> <p>Ms Cyd HO's concern that data subjects might not be adequately protected if the audio recording was incomplete.</p> <p>Mr CHAN Kin-por's remarks that most of the recording devices did not allow disruption to the recording.</p> <p>The Administration's explanation that data users should comply with the requirements under section 35C(2) when obtaining consent from data subjects for the use of their personal data in direct marketing.</p>	Admin (paragraph 3 of the minutes)
012337-013640	Chairman Admin Ms Emily LAU Mr CHAN Kin-por Ms Cyd HO	<p><u>Section 35D</u></p> <p>Ms Cyd HO's suggestion for PCPD to provide standard scripts for data users in obtaining verbal consent from data subjects to facilitate the adoption of the practice of recording the entire telephone communication.</p> <p>The Administration's response that PCPD would draw up guidance notes for the direct marketing trade having considered the views of the trade. The Administration's undertaking to convey members' suggestion to PCPD and revert to the Panel on Constitutional Affairs on the preparation of the guidance notes and the related publicity and public education work.</p>	Admin (paragraph 3 of the minutes)
013641-020614	Chairman Admin Ms Emily LAU Mr CHAN Kin-por Dr Priscilla LEUNG SALA2 Ms Cyd HO	<p><u>Section 35E</u></p> <p>Mr CHAN Kin-por's view that audio recording was the most effective safeguard for data subjects and there should not be a lot of disputes between data users and data subjects on the verbal consent as they could always refer to the audio recording when in doubt.</p> <p>Dr Priscilla LEUNG's suggestion of encouraging the direct marketing trade to adopt good practices including presenting the contents of written confirmation in an easily readable manner and recording the complete telephone communication between data users and data subjects.</p>	Admin (paragraph 3 of the minutes)

Time marker	Speaker	Subject	Action required
		<p>SALA2's suggestion of –</p> <ul style="list-style-type: none"> (a) specifying the particulars of consent in the written confirmation; (b) including in the provision a cooling-off period to allow data subjects to revoke their consent if they so wished; and (c) improving the drafting of the proposed new section 35E(1)(b) to stipulate the kinds of personal data to be used and the classes of marketing subjects in relation to which the data would be used by making reference to the proposed new section 35C(2)(b). <p>SALA2's enquiry and the Administration's response that written confirmation was a record of the particulars of the consent and it would be an offence if the use of personal data was inconsistent with the data subject's consent.</p> <p>Ms Cyd HO's view that the standard scripts for data users in obtaining data subjects' verbal consent should aim to assist data users in giving precise and accurate information in an easily understood manner.</p>	<p>Admin (paragraph 3 of the minutes)</p>
<p>020615-020927</p>	<p>Chairman Admin Ms Cyd HO SALA2 Ms Emily LAU</p>	<p><u>Section 35F</u></p> <p>The Administration's response to Ms Cyd HO's enquiry that under section 35C(4), the information provided by data users must be presented in a manner that was easily understandable. The meaning of "easily understandable" had been provided in the relevant guidelines provided by PCPD.</p> <p>SALA2's view that section 35F(1) could be incorporated in sections 35C or 35E instead of being a separate clause.</p> <p>The Administration's response that section 35F(1) would apply to situations where a data user who obtained the personal data of a data subject from another data user and used the personal data the first time.</p>	
<p>020928-022551</p>	<p>Chairman Admin Ms Emily LAU SALA2 Ms Cyd HO Mr CHAN Kin-por</p>	<p><u>Section 35G</u></p> <p>Ms Cyd HO and SALA2's concern that data subjects might not be able to contact the relevant data users and request them to stop using their personal data because the data users had moved or become another company.</p>	

Time marker	Speaker	Subject	Action required
		The Administration's response that under the proposal, if required by a data subject, the data user had to cease to use the personal data of the data subject in direct marketing and notify any person to whom the data had been so provided to cease to use the data in direct marketing.	
022552-023404	Chairman Admin Ms Emily LAU	Meeting with PCPD and deputations at the next meeting.	

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