

立法會
Legislative Council

LC Paper No. CB(2)2830/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/BC/8/10

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

Minutes of sixteenth meeting
held on Monday, 7 May 2012, at 2:30 pm
in Conference Room 2A 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
Hon IP Kwok-him, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
- Public Officers attending** : Constitutional and Mainland Affairs Bureau

Miss Adeline WONG
Under 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 : 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)1788/11-12(01), CB(2)1864/11-12(01), CB(2)1921/11-12(01) and CB(2)1941/11-12(01)]

Members noted the submission from the Privacy Commissioner for Personal Data on specific clauses of the Bill [LC Paper No. CB(2)1921/11-12(01)].

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

3. The Bills Committee agreed to the Administration's proposed Committee Stage amendments. The Administration suggested and members agreed that the Second Reading debate on the Bill be resumed on 6 June 2012. Members also agreed that a report on the deliberations of the Bills Committee would be submitted to the House Committee on 25 May 2012.

Action

II. Any other business

4. There being no other business, the meeting ended at 3:40 pm.

Council Business Division 2
Legislative Council Secretariat
24 September 2012

**Proceedings of the sixteenth meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Monday, 7 May 2012, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000-000520	Chairman	Opening remark	
000521-001216	Admin	<u>The Administration's response to issues raised at the meeting of 2 May 2012</u> Members noted that the drafting of sections 35D(1) and 35D(2) would be amended as suggested by SALA2 and no amendment would be made to the drafting of section 35H.	
001217-001300	Chairman Admin	Briefing by the Administration on its proposed Committee Stage amendments ("CSA") (other than new Part VIA) [LC Paper No. CB(2)1788/11-12(01)].	
001301-002412	Chairman SALA2 Admin Ms Emily LAU	The Administration's response to SALA2's enquiry that while section 46(7) applied to situations where the Privacy Commissioner for Personal Data ("PCPD") might disclose matters at the request of an authority of a place outside Hong Kong, section 46(8) applied when PCPD wished to obtain information from jurisdictions outside Hong Kong for the proper performance of his function or the proper exercise of his powers under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). More flexibility was therefore allowed under section 46(8) to enable PCPD to seek assistance from jurisdictions outside Hong Kong.	
002413-002635	Chairman Clerk Ms Emily LAU Admin	Members noted the submission from PCPD on his major disagreements with the Administration on specific clauses of the Bill. [LC Paper No. CB(2)1921/11-12(01)].	
002636-005626	Chairman Ms Cyd HO Admin Mr Paul TSE Mr Ronny TONG Ms Emily LAU	Draft CSA to the proposed new section 63D to be moved by Ms Cyd HO [LC Paper No. CB(2)1941/11-12(01)] along the following lines –	

Time marker	Speaker	Subject	Action required
		<p>(a) to extend the exemption from the provisions of data protection principle ("DPP") 3 to include the records of the public bodies such as the Judiciary, the Legislative Council ("LegCo") and other statutory bodies; and</p> <p>(b) to give due regard to the right of the public to access public records.</p> <p>The Administration's explanation and view that –</p> <p>(a) under PDPO, each government department was an independent data user and records being transferred to the repository of that government department remained in the custody of that government department (i.e. same data user) and hence not a transfer per se; and</p> <p>(b) personal data contained in records which were transferred to the Government Records Service ("GRS") should not be made available for public access unless that was the intended purpose when the data was collected or with the consent of the data subject. Ms Cyd HO's proposal concerning public access to the records was contrary to the policy intent.</p> <p>Ms Cyd HO's response to Mr Ronny TONG and Ms Emily LAU's enquiry on the reasons of her proposal to extend the exemption from the provisions of DPP 3 to include records of public bodies.</p> <p>The Administration's explanation that –</p> <p>(a) under the proposed section 63D, only the personal data being transferred to GRS for archive purposes would be exempted and the chance of transferring records to public bodies or government departments other than GRS was slim; and</p> <p>(b) public access to and transfer of personal data in government records were subject to the intended purpose when the data was collected or with the consent of the data subject.</p>	
005627-005917	Ms Emily LAU Admin	The Administration's response to Ms Emily LAU's enquiry that inactive government	

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		<p>records which were used for archive purposes would be transferred to GRS but not other government departments.</p> <p>Ms Cyd HO's view that records such as submissions collected during public consultations should also be transferred to the LegCo Archives.</p> <p>The Administration's remarks that some members of the public might have reservations to express views should their submissions be made public. The Administration would make known to the public the intended use of the submissions received and it would be up to an individual to decide whether he wished or would not wish to disclose his submission.</p>	
005918-010011	Chairman Admin	<p>The Chairman's enquiry on whether there was an expiry date for an individual's request for non-disclosure of his personal data.</p> <p>The Administration's response that –</p> <p>(a) an individual's request for non-disclosure of his personal data would be respected; such personal data would be disclosed only if the individual so consented; and</p> <p>(b) under PDPO, "personal data" meant any data relating directly or indirectly to a living individual. The disclosure of the personal data of a deceased person was not subject to PDPO.</p>	
010012-010307	Ms Cyd HO Admin	<p>Ms Cyd HO's reiteration of the purposes of the CSA she proposed to section 63D.</p> <p>The Administration's view that it was important to adhere to the intended use of the personal data when the data were collected.</p>	
010308-010839	Ms Emily LAU Chairman Admin Mr CHAN Kin-por	<p>Ms Emily LAU's view that the public should be encouraged to express their views openly.</p> <p>Mr CHAN Kin-por's view that the decision of an individual on whether to make his view public should be respected.</p>	
010840-010901	Chairman Ms Cyd HO	<p>Ms Cyd HO's indication that she would liaise with the Administration with a view to reaching a consensus on the CSA to section 63D.</p>	

Time marker	Speaker	Subject	Action required
010902-011152	Chairman Admin Ms Emily LAU Ms Cyd HO Clerk	Date of reporting the deliberations of the Bills Committee to the House Committee and date of resumption of Second Reading debate on the Bill.	

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Legislative Council Secretariat
24 September 2012