



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2537 7319)
27 May 2015

Ms Ida LEE
Deputy Head (eHealth Record)
Food and Health Bureau
Health Branch
eHealth Record Office
19/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Ms LEE,

Bills Committee on Electronic Health Record Sharing System Bill

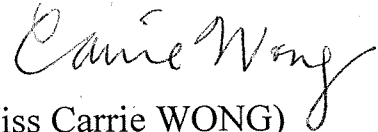
Further to the meeting of the Bills Committee on Electronic Health Record Sharing System Bill on 26 May 2015, I should be grateful if you would provide further clarification in relation to clause 58 of the Bill on the following matters –

- (a) Clause 58(3) provides that the protection from civil liability applies to a public officer and a person appointed by the Commissioner under clause 48(3). Since "public officer" is a natural person, by the same token, the person appointed under clause 48(3) should also be a natural person. Please confirm if this is the case. If, however, it is intended that the person so appointed would also cover legal persons, e.g. a limited company, what is the reason for extending the scope of protection? As you are aware, under existing Ordinances, the immunity provisions only apply to exempt the personal liability of an individual. Please refer to examples of those provisions as attached.

- (b) In the light of the immunity provisions in existing Ordinances (e.g. section 18A of The Ombudsman Ordinance (Cap. 397), section 51(1) of the Hazardous Chemicals Control Ordinance (Cap. 595) and section 51(1) of the Buildings Energy Efficiency Ordinance (Cap. 610)), will the Administration consider amending clause 58(1) from "not civilly liable for" to "not personally liable for any civil liability for"?
- (c) If, by virtue of clause 58(3), the Administration intends to confer protection to persons who have contractual relationship with the Government (independent contractor), has the Administration considered the possible difficulty in enforcing the provisions on performance of the independent contractor under the relevant contract? How will the Administration tackle this difficulty?

As the next meeting will be held on Monday, 1 June 2015, please let me have your reply in both English and Chinese by 12 noon, Friday, 29 May 2015.

Yours sincerely,



(Miss Carrie WONG)
Assistant Legal Adviser

Encl.

c.c. Clerk to the Bills Committee

Chapter:	397	Title:	THE OMBUDSMAN ORDINANCE	Gazette Number:	L.N. 273 of 2001
Section:	-18A	Heading:	Immunity	Version Date:	19/12/2001

No person acting in good faith shall be personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.

(Added 30 of 2001 s. 16)

Chapter:	595	Title:	HAZARDOUS CHEMICALS CONTROL ORDINANCE	Gazette Number:	L.N. 7 of 2008
Section:	51	Heading:	Protection of public officers	Version Date:	01/04/2008

(1) A public officer is not personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done by the officer if the officer did or omitted to do the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) The protection conferred by subsection (1) does not in any way affect the liability of the Government for the act or omission of the public officer.

Chapter:	610	Title:	Buildings Energy Efficiency Ordinance	Gazette Number:	L.N. 167 of 2010
Section:	51	Heading:	Protection of public officers	Version Date:	21/02/2011

(1) A public officer does not incur any personal civil liability for any act done or omitted to be done by the officer if the officer did or omitted to do the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) The protection conferred by subsection (1) does not in any way affect the liability of the Government for the act or omission of the public officer.

Chapter: 354 Title: **WASTE DISPOSAL** Gazette L.N. 320 of
ORDINANCE Number: 1999
Section: 32 Heading: **Protection of Crown, etc.** Version Date: 01/01/2000

(1) No liability shall rest on the Crown or upon any public officer by reason of the fact that any waste collection or waste disposal licence is issued under this Ordinance. (Amended 8 of 1986 s. 8)

(2) A public officer shall not be personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in exercise of any power, function or duty of his under this Ordinance.

(3) The protection conferred on public officers by subsection (2) in respect of any act or omission shall not in any way affect any liability of the Crown for that act or omission. (Amended 8 of 1986 s. 8)

(Amended 78 of 1999 s. 7)

Chapter: 400 Title: **NOISE CONTROL** Gazette
ORDINANCE Number:
Section: 29 Heading: **Protection of Crown and** Version Date: 30/06/1997
public officers

(1) A public officer shall not be personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the discharge of any of his functions under this Ordinance.

(2) The protection conferred on public officers by subsection (1) in respect of any act or omission shall not in any way affect any liability of the Crown in tort for that act or omission.

(Enacted 1988)

Chapter: 505 Title: **SOCIAL WORKERS** Gazette
REGISTRATION Number:
ORDINANCE
Section: 13 Heading: **Protection of members of** Version Date: 30/06/1997
Board, etc.

(1) No person to whom this subsection applies, acting in good faith, shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Board under this Ordinance.

(2) The protection conferred under subsection (1) on any person to whom that subsection applies in respect of any act or default shall not in any way affect the liability of the Board for that act or default.

(3) The persons to whom subsection (1) applies are-

(a) any member of the Board or a committee (including a disciplinary committee);

- (b) the Registrar;
- (c) any employee of the Board.

Chapter:	619	Title:	COMPETITION ORDINANCE	Gazette Number:	L.N. 177 of 2012
Section:	133	Heading:	Personal immunity of members of Commission etc.	Version Date:	18/01/2013

(1) A person to whom this subsection applies is not personally liable for anything done or omitted to be done by the person in good faith in the performance or purported performance of any function of the Commission under this Ordinance.

(2) The persons to whom subsection (1) applies are—

- (a) members of the Commission;
- (b) any person who is an officer or employee of the Commission;
- (c) any person who is a member of any committee of the Commission;
- and
- (d) any person who is performing any service for the Commission under a contract of services.

(3) The protection conferred by subsection (1) does not affect any liability of the Commission for the act or omission.

Chapter:	618	Title:	Lifts and Escalators Ordinance	Gazette Number:	L.N. 165 of 2012
Section:	127	Heading:	Protection of public officers	Version Date:	17/12/2012

(1) A public officer, or a person acting under the direction of a public officer, does not incur any personal liability for anything done or omitted to be done by the officer or the person in good faith in the execution or purported execution of this Ordinance.

(2) The protection conferred by subsection (1) does not affect any liability in tort of the Government for the thing done or omitted to be done by the public officer or the person.

Chapter:	51	Title:	GAS SAFETY ORDINANCE	Gazette Number:	61 of 2000
Section:	36	Heading:	Protection of public officers	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 61 of 2000 s. 3

(1) A public officer is not personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the exercise of any function under this Ordinance.

(2) The protection conferred on public officers by subsection (1) in respect of any act or omission shall not in any way affect any liability of the Government in tort for that act or omission. (Amended 61 of 2000 s. 3)

(3) For the purposes of this section, "public officer" (公職人員) includes a person assisting a public officer in the exercise of any function under this Ordinance.

(Enacted 1990)

Chapter:	480	Title:	Sex Discrimination Ordinance	Gazette Number:	18 of 2014
Section:	68	Heading:	Protection of members of Commission, etc.	Version Date:	05/12/2014

(1) No person to whom this subsection applies, acting in good faith, is personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Commission under this Ordinance.

(2) The protection conferred by subsection (1) on any person to whom that subsection applies in respect of any act or default does not in any way affect the liability of the Commission for that act or default.

(3) Subsection (1) applies to the following persons- (Amended 18 of 2014 s. 19)

- (a) a member of the Commission or a committee;
- (b) an employee of the Commission;
- (c) a conciliator.

(Amended 18 of 2014 s. 19)
(Enacted 1995)

Chapter:	486	Title:	Personal Data (Privacy) Ordinance	Gazette Number:	18 of 2012
Section:	11A	Heading:	Immunity	Version Date:	01/10/2012

(1) No civil liability is incurred by the person appointed to be the Commissioner under section 5 (3) or a prescribed officer in respect of anything done or omitted to be done by the person or officer in good faith in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Commissioner or officer under this Ordinance.

(2) The protection conferred under subsection (1) on any person in respect of anything done or omitted to be done does not in any way affect the civil liability of the Commissioner as a corporation sole for that thing.

(Added 18 of 2012 s. 5)

Chapter:	486	Title:	Personal Data (Privacy) Ordinance	Gazette Number:	E.R. 1 of 2013
Section:	9	Heading:	Staff of Commissioner, etc.	Version Date:	25/04/2013

(1) The Commissioner may-

- (a) employ such persons (including technical and professional persons); and
- (b) engage, other than by way of employment, such technical and professional persons,

as he thinks fit to assist him in the performance of his functions, and the exercise of his powers, under this Ordinance.

(2) The Commissioner shall determine-

- (a) the remuneration and terms and conditions of employment of any person, or any person belonging to a class of persons, who may be employed under subsection (1)(a);
- (b) the remuneration and terms and conditions of engagement of any person, or any person belonging to a class of persons, who may be engaged under subsection (1)(b).

(3) The Commissioner may-

- (a) grant, or make provision for the grant of, pensions, gratuities and retirement benefits to employees;
- (b) provide other benefits for the welfare of employees and their dependants;
- (c) authorize payments, whether or not legally due, to the personal representatives of a deceased employee or to any person who was dependent on such employee at his death.

(4) The Commissioner may-

- (a) establish, manage and control; or
- (b) enter into an arrangement with any company or association for the establishment, management and control by that company or association either alone or jointly with the Commissioner of,

any fund or scheme for the purpose of providing for the pensions, gratuities, benefits and payments referred to in subsection (3).

(5) The Commissioner may make contributions to and may require employees to make contributions to any fund or scheme referred to in subsection (4).

(6) In this section *employees* (僱員) includes any class of employee which the Commissioner specifies and in subsection (3) includes former employees.

(Enacted 1995)

Chapter:	486	Title:	Personal Data (Privacy) Ordinance	Gazette Number:	E.R. 1 of 2013
Section:	2	Heading:	Interpretation	Version Date:	25/04/2013

(1) In this Ordinance, unless the context otherwise requires-

prescribed officer (訂明人員) means a person employed or engaged under section 9(1);