



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)
3 March 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

At the Bills Committee meeting on 26 February 2015, an issue arose whether, under the Bill, a healthcare provider could access the electronic health record without consent by virtue of the exemption on emergency situations under section 63C of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).

The issue was first raised at the Bills Committee meeting on 16 June 2014. The Administration's reply on the issue was set out in its paper of 20 June 2014 (LC Paper No. CB(2)1873/13-14(03)) as follows –

"For cases where emergency access of the [electronic health record] of [a healthcare recipient] in the [electronic health record sharing system] is necessary in tandem with the carrying out of emergency treatments on the [healthcare recipient], the concerned [healthcare provider] could access the [electronic health record] without consent by virtue of section 63C of the existing [PDPO]. Our [substitute decision maker] arrangement needs not even come into play in such context. This applies to all [healthcare recipients] regardless of whether they are minors or mentally incapacitated. To safeguard these [healthcare recipients'] privacy, the concerned [healthcare providers] would need to provide justifications for such access, which will also be logged and subject to audit."

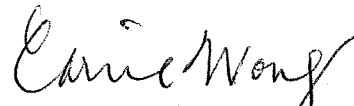
As the exemption under section 63C of the PDPO (copy attached) relates to identifying an individual who is reasonably suspected to be, or is, involved in a life-threatening situation, and the carrying out of emergency rescue operations or provision of emergency relief services, it is doubtful whether the exemption is intended to cover emergency treatments on healthcare recipients which are not necessarily related to a life-threatening situation¹ or a rescue operation.

Instead of relying on section 63C of the PDPO, please consider whether the exemption on health under section 59 of the PDPO (copy attached) would be more appropriate in relation to emergency treatments on healthcare recipients if the Administration's policy intent is that data protection principle 3 would be exempted if its application would be likely to cause serious harm to the physical or mental health of the healthcare recipient.

To avoid unnecessary arguments as to whether the exemptions under sections 59 and 63C of the PDPO could in fact cover the urgent need for obtaining electronic health record in the run of the mill, yet emergency, treatments of patients, we consider it desirable to provide for an express exemption in the Bill to cover this scenario.

As there will be a Bills Committee meeting on 13 March 2015, could the Administration please provide a reply in English and Chinese by 10 March 2015.

Yours sincerely,



(Miss Carrie WONG)
Assistant Legal Adviser

Encl.

¹ Examples of "life-threatening situation" as provided in the *Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance* issued in October 2010 include an accident, an emergency or a catastrophic situation with victims or missing persons.

Chapter:	486	Title:	Personal Data (Privacy) Ordinance	Gazette Number:	E.R. 1 of 2013
Section:	59	Heading:	Health	Version Date:	25/04/2013

(1) Personal data relating to the physical or mental health of the data subject is exempt from the provisions of either or both of- (Amended 18 of 2012 s. 32)

- (a) data protection principle 6 and section 18(1)(b);
- (b) data protection principle 3,

in any case in which the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of-

- (i) the data subject; or
- (ii) any other individual.

(2) Personal data relating to the identity or location of a data subject is exempt from the provisions of data protection principle 3 if the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of—

- (a) the data subject; or
- (b) any other individual. (Added 18 of 2012 s. 32)

(Enacted 1995)

Chapter:	486	Title:	Personal Data (Privacy) Ordinance	Gazette Number:	18 of 2012
Section:	63C	Heading:	Emergency situations	Version Date:	01/10/2012

(1) Personal data is exempt from the provisions of data protection principle 1(3) and data protection principle 3 if the application of those provisions to the data would be likely to prejudice any of the following matters—

- (a) identifying an individual who is reasonably suspected to be, or is, involved in a life-threatening situation;
- (b) informing the individual's immediate family members or relevant persons of the individual's involvement in the life-threatening situation;
- (c) the carrying out of emergency rescue operations or provision of emergency relief services.

(2) In this section—

immediate family member (家人), in relation to a person, means another person who is related to the person by blood, marriage, adoption or affinity.

(Added 18 of 2012 s. 35)