

立法會
Legislative Council

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LC Paper No. CB(2)1240/15-16
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 15 February 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon CHAN Hak-kan, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP

Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

**Members
absent**

: Hon LEE Cheuk-yan
Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon James TIEN Pei-chun, GBS, JP
Hon CHAN Han-pan, JP

**Public Officers
attending**

: Item II

Mr Gordon LEUNG Chung-tai, JP
Deputy Secretary for Constitutional and Mainland Affairs

Item III

Mr Stephen WONG Kai-yi
Privacy Commissioner for Personal Data

Ms Fanny WONG Kam-hing
Deputy Privacy Commissioner for Personal Data

Mr Gordon LEUNG Chung-tai, JP
Deputy Secretary for Constitutional and Mainland Affairs

Item IV

Mr Ronald CHAN Ngok-pang, JP
Under Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai, JP
Deputy Secretary for Constitutional and Mainland Affairs

Advisory Group on Eliminating Discrimination against
Sexual Minorities

Professor Fanny CHEUNG Mui-ching, JP
Chairperson

Miss Phidias TAM Kwok-ching
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Equal Opportunities Commission

Dr York CHOW Yat-ngok
Chairperson

Dr Ferrick CHU
Director (Policy, Research and Training)

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Mr Kelvin LEE
Senior Assistant Legal Adviser 3

Miss Cindy HO
Senior Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

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I. Information paper(s) issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)822/15-16(01) and (02)]

2. Members agreed to discuss the following items proposed by the Administration at the next regular meeting on 21 March 2016 at 2:30 pm -

(a) Electoral Affairs Commission ("EAC") Report on the 2015 District Council Ordinary Election; and

(b) Proposed Guidelines on Election-related Activities in respect of the Legislative Council Election issued by EAC.

III. Briefing by the Privacy Commissioner for Personal Data

[LC Paper Nos. CB(2)808/15-16(01) and CB(2)822/15-16(03)]

3. With the aid of PowerPoint, the Privacy Commissioner for Personal Data ("the Privacy Commissioner") presented the salient points of the paper on the work of his office ("PCPD") in 2015 [LC Paper No. CB(2)808/15-16(01)].

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Discussion

4. Mr WONG Kwok-hing said that much work done by PCPD in privacy protection was commendable. Noting that most of the complaints received by PCPD in 2015 were related to the financial industry, mainly involving unauthorized use of personal data by money lenders or other intermediaries for fraudulent activities, Mr WONG Kwok-hing and Miss CHAN Yuen-han enquired about the follow-up actions taken by PCPD to deal with such complaints and measures to protect the data subjects. The Privacy Commissioner said that PCPD had conducted preliminary investigations in respect of all these complaints. He said that the financial institutions concerned had already taken the necessary remedial and/or improvement measures, and no further complaints were received from the complainants concerned. The Privacy Commissioner further said that the preliminary investigations were about to be completed, and he did not see the need to conduct formal investigations. He informed members that PCPD had enhanced public education and publicity including conducting talks, seminars and workshops as well as publication of information leaflets to raise public awareness of personal data protection. He added that PCPD had also strengthened liaison and collaboration with the Police with a view to facilitating the investigations of fraudulent activities involving unauthorized use of personal data.

5. In response to Miss CHAN Yuen-han's enquiry about whether PCPD had made any progress with the Administration on extending the coverage of Do-Not-Call Register for person-to-person telemarketing calls, the Privacy Commissioner said that PCPD had already made recommendations to the Administration on enhancing the regulation of person-to-person telemarketing calls. According to his understanding, the Administration was in the course of conducting research and analysis on the subject. He had nothing further to add at this stage.

6. Dr CHIANG Lai-wan expressed concern about the increase in the number of complaints related to direct marketing in 2015 as compared with that in 2014. She enquired about PCPD's work plan on protection of the use of personal data for direct marketing purposes. The Privacy Commissioner said that the regulatory regime for direct marketing activities had been substantially revamped by the Personal Data (Privacy) (Amendment) Bill 2012. More stringent requirements were introduced in relation to the use of personal data and provision of personal data for use in direct marketing. Since 2013, PCPD had referred cases related to suspected contraventions involving the use of personal data in direct marketing to the Police for criminal investigation and

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consideration of prosecution. The Privacy Commissioner said that PCPD would make sustained efforts in facilitating data users' compliance with the new requirements under the new direct marketing regime.

7. Dr CHIANG Lai-wan said that with the increasingly popular use of smartphones and mobile Apps among the elderly, there was a growing concern about data security in the use of mobile Apps by the elderly. She enquired about the efforts made by PCPD to disseminate information on the precautionary measures to the elderly. The Privacy Commissioner said that PCPD had approached voluntary organizations and government departments to discuss if PCPD could send representatives to attend activities organized for the elderly so as to explain to the elderly the precautionary measures. Moreover, PCPD had requested Apps developers to provide special alerts to users, particularly the youth and the elderly, regarding the collection and use of personal data.

8. Miss Alice MAK said that one of the strategic focuses of PCPD in 2015 was to conduct a survey on the protection of personal data contained in public registers. Noting that PCPD had published a report on a survey of the administration of 10 commonly-used public registers maintained by the Government, Miss MAK asked why the relevant work was not included in the current update on the work of PCPD. She also enquired about the Administration's response to the findings of the survey.

9. The Privacy Commissioner said that the survey report had been submitted to the Government for follow-up and no new initiative in this work area was proposed this year. The Deputy Secretary for Constitutional and Mainland Affairs said that the Administration had been following up PCPD's recommendations. He agreed to provide information in writing on the follow-up actions taken by the Administration.

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10. Mr CHUNG Kwok-pan said that he had received complaints about a bank informing its clients that if they failed to update their personal data with the bank, their bank accounts would be frozen after the deadline specified in the bank's letter. He enquired whether it was in breach of the law for the bank to require clients to update their personal data in such a way. The Privacy Commissioner said that he had followed up the complaint with the Hong Kong Association of Banks, the Hong Kong Monetary Authority and the bank concerned upon receipt of relevant details from Mr CHUNG. The Privacy Commissioner further said that response had been received from the bank confirming that it accepted PCPD's recommendations to allow greater flexibility and have more regard to clients' feeling in handling such issues. The Privacy Commissioner added that PCPD would provide a report on the case to Mr CHUNG shortly.

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11. Mr Jeffrey LAM said that following the overnight clashes in Mong Kok on 8 February 2016, some people suggested introducing legislation to prohibit wearing of masks by demonstrators so that the Police could identify those who had caused riots and broken the law during their demonstration. He sought PCPD's views in this regard. The Privacy Commissioner advised that the use of masks was basically to meet personal needs. He added that while the objective of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") was to protect the privacy rights of a person in relation to personal data which identified a person, there were, nevertheless, "exemptions" from the provisions of certain data protection principles, such as collection and use of data for the purposes of security, public interest and crime prevention, etc.

12. Ms Claudia MO asked whether the Privacy Commissioner would request the Administration to consider the need to confer him criminal investigation and prosecution powers as suggested by some people earlier, so that he was able to deal with serious contraventions of PDPO. The Privacy Commissioner said that his functions and powers were clearly spelt out in section 8 of PDPO. He further said that since he had assumed office in August 2015, his work largely concerned investigations and not many cases required to be referred to the Police for investigation and prosecution. At present, he did not see a pressing need to pursue the above suggestion.

13. Ms Claudia MO expressed concern about the excessive collection of personal data online (e.g. age, sex, occupation and income) by some websites, and enquired about the regulation of online data collection. In response, the Privacy Commissioner explained that Data Protection Principle 1 on collection purpose and means had to be observed in conducting online data collection. PCPD had offered views to relevant business organizations to promote compliance. The Privacy Commissioner stressed that according to PDPO, organizations should ensure the proper handling and disposal of personal data collected, and to take all practicable steps to safeguard personal data from unauthorized or accidental access, processing, erasure, loss or use.

14. Miss CHAN Yuen-han expressed concern about regulation of the collection of visitors' Hong Kong Identity Card numbers by security staff of some commercial buildings. The Privacy Commissioner responded that PCPD had published information leaflets for distribution to property management companies to remind them to refrain from excessive collection of personal data.

15. Dr Kenneth CHAN enquired about PCPD's work in the development and implementation of the Privacy Management Programme ("PMP"), which was a

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major strategic focus of PCPD. The Privacy Commissioner briefed members on the benefits of implementing PMP and informed members that the Government had pledged to implement PMP in all bureaux and departments. He further briefed members on his work plan in advocating the implementation of PMP in the private sector.

16. Noting that 11% of the complaints received by PCPD in 2015 were made against the public sector/government departments, Dr Kenneth CHAN asked whether PCPD had met any difficulties in dealing with such complaints. Deputy Privacy Commissioner for Personal Data said that complaints received by PCPD were dealt with in accordance with the established mechanism. After investigation, if the Privacy Commissioner was of the opinion that the relevant data user had contravened a requirement under PDPO, the Privacy Commissioner might serve on the data user an enforcement notice directing him to take necessary steps and/or measures to remedy and prevent recurrence of the contravention. If the Privacy Commissioner opined that an offence might have been committed, the complaint would be referred to the Police for criminal investigation.

IV. Report of the Advisory Group on Eliminating Discrimination against Sexual Minorities ("the Advisory Group"), and Report of the Feasibility Study commissioned by the Equal Opportunities Commission ("EOC") on "Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status"
[LC Paper Nos. CB(2)822/15-16(04) to (06) and Report of Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status]

17. The Under Secretary for Constitutional and Mainland Affairs ("USCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)822/15-16(04)]. He said that the Administration would study both the Advisory Group's report and the EOC's report, and would map out the way forward in consultation with different stakeholders. The Chairperson of the Advisory Group and the Chairperson of EOC then briefed members on the findings of the two reports respectively.

(Post-meeting note: The speaking notes of the Chairperson of EOC and Chairperson of the Advisory Group were issued vide LC Paper Nos. CB(2)889/15-16(01) and CB(2)1179/15-16(01) on 17 February 2016 and 29 March 2016 respectively.)

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Discussion

Legislating against discrimination on the grounds of sexual orientation, gender identity, and intersex status

18. Mr Martin LIAO said that while he was open as to whether legislation should be introduced to prohibit discrimination on the grounds of sexual orientation, gender identity, and intersex status, he noted that stakeholder groups had expressed divergent views and concerns on the issue. He enquired whether EOC had assessed the readiness of the community as a whole for enactment of such legislation and its possible implications on the protection of rights to freedom of expression and religion, the marriage system, family value, etc.

19. The Chairperson of EOC said that the study commissioned by EOC indicated that the Hong Kong society and the general public were more supportive than before of legislating against discrimination on the grounds of sexual orientation and gender identity. In particular, it was found that people aged 18-39 were more supportive than those aged 40 or above. He reckoned this had to do with the fact that the latter group was brought up before the 1990s when homosexuality was still criminal. The Chairperson of EOC further said that Taiwan and Thailand already had enacted such legislation, and the employment legislation of Macau also had provisions to protect sexual minorities against discrimination.

20. Ms Claudia MO and Dr Helena WONG urged the Administration to introduce legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, taking into account the findings of the EOC's study that there was a significant increase of public support for legislating against discrimination on such grounds in the past 10 years from 28.7% to 55.7%. They requested the Administration to provide a timetable for introducing the legislation. Mr CHAN Chi-chuen and Ms Cyd HO agreed to the EOC's recommendation that the Administration should conduct public consultation with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. Ms HO said that the exemptions that could potentially be considered should be amongst the issues to be discussed in the consultation. She believed that concerns about protection of the right to freedom of religion could be addressed by exemptions, as many catholic countries in Europe had also been able to resolve such issues and introduced anti-discrimination legislation to protect sexual minorities. She further said that as pointed out by Ms Anna WU, the former EOC Chairperson, legislation and public education were complementary in educating the public. Besides, the Government had a responsibility to enact anti-discrimination

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legislation under the relevant international human rights treaties to protect the sexual minorities. Mr CHAN Chi-chuen considered that the Administration should not resort to delaying tactics any more in handling the issue as the findings of the EOC's study showed that a clear majority of the public was in favour of legislation on this front.

21. Mr WONG Yuk-man also criticized the Administration for making little progress of tackling discrimination on the grounds of sexual orientation and gender identity, and for failing to provide any timetable for launching a public consultation. He said that according to the study commissioned by EOC, respondents aged 18-24 were especially supportive of legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status, with 91.8% agreeing with legislation. Mr LEUNG Kwok-hung urged the Administration to introduce legislation and conduct public consultation as recommended by EOC.

22. Dr Priscilla LEUNG expressed the view that it was equally important to safeguard the freedom of parental choice of children's religious and moral education under Article 18(3) and (4) of the International Covenant on Civil and Political Rights, as well as the freedom of religious belief under Article 32 of the Basic Law. She said that according to overseas experience, legislating against discrimination on the ground of sexual orientation might result in "reverse discrimination". She considered it impracticable to provide for exemptions only in specific contexts. Agreeing that the Administration should tackle discrimination by strengthening various administrative measures, Dr LEUNG considered that the use of legislative means was inappropriate.

23. Mr Steven HO said that the two cases mentioned in paragraph 4.2.1.6 of the EOC's report did not appear to be related to discrimination on the grounds of sexual orientation and gender identity. As regards the report of the Advisory Group, Mr HO expressed concern that the open disputes between some organizations and a member of the Advisory Group over the report shortly after its release might have adverse impact on its credibility.

24. USCMA acknowledged that more and more people in Hong Kong had expressed support for enacting anti-discrimination legislation to protect sexual minorities in recent years. He noted also that both the Advisory Group's report and the EOC's report acknowledged there were divergent views on whether legislation should be introduced to prohibit discrimination on the grounds of sexual orientation and gender identity. The Administration noted the Advisory Group's recommendations that an in-depth study on the experience of legislative and non-legislative measures in other jurisdictions should be

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conducted and one of the issues to be covered was the implications of legislation on the freedom of religion. Meanwhile, EOC mentioned in its paper that "It is crucially important for the consultation exercise to contain as many concrete details as possible to minimize misunderstandings and unnecessary anxieties" and recommended that "The Government should give further consideration to explore claims about possible discrimination on the grounds of religion or belief". USCMA considered that similar concern was raised in both reports and conducting the in-depth study as recommended by the Advisory Group would provide useful reference for further discussion in the community on the appropriate measures to eliminate discrimination on grounds of sexual orientation and gender identity.

Related issues

25. Mr CHAN Chi-chuen declared that he was one of the members of the Advisory Group. He expressed dissatisfaction that the report of the Advisory Group had not yet been endorsed by its members when it was published and uploaded to the website of the Constitutional and Mainland Affairs Bureau on 31 December 2015. He said that he did not support the report of the Advisory Group as he considered that its recommendations were aimed to procrastinate enacting the anti-discrimination legislation. He further requested to have his name removed from the report.

26. Regarding the limitations of the qualitative study conducted by the Advisory Group as set out in paragraph 8 of the Administration's paper, Ms Cyd HO considered that the Administration should have advised the Advisory Group to take that into consideration before it decided to conduct the qualitative study so as to avoid waste of time and efforts.

27. Dr Priscilla LEUNG declared that she was also one of the members of the Advisory Group and expressed dissatisfaction that the report of the Advisory Group had been published before she had the chance to express opposition to some of its recommendations or provide a minority view for the record. She said that, for example, she disagreed with the recommendation that a charter on non-discrimination of sexual minorities should be drawn up by the Administration. In her view, such a charter should be drawn up by community organizations for voluntary adoption by stakeholders.

28. The Chairperson of the Advisory Group said that the Advisory Group had agreed on the outline of recommendations in the report in April 2015 and then further discussed details of the recommendations at five subsequent meetings. She said that at the last meeting on 14 December 2015, the content

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of the report was finalized and it was agreed that the amended report would be circulated to members for review after the meeting and would be submitted to the Government before the expiry of the term of the Advisory Group on 31 December 2015. The content of the report and the deadline for its conclusion had been clear to members of the Advisory Group, and some members including Mr CHAN Chi-chuen had proposed amendments before the deadline.

V. Any other business

29. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 2
Legislative Council Secretariat
8 April 2016