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Ms Joanne Mak
Clerk to Panel on Constitutional Affairs
Legislative Council Complex
1 Legislative Council Road
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13 July 2016

Dear Ms Mak,

**Supplementary Information on Follow-up Actions to
the Survey of Public Registers Maintained by
Government and Public Bodies**

At the meeting of the Panel on Constitutional Affairs held on 15 February 2016, the Hon. Alice Mak enquired about the follow-up actions taken by the Government after the publication of the *Survey of Public Registers Maintained by Government and Public Bodies* ('the survey') by the Office of the Privacy Commissioner for Personal Data ('PCPD') on 28 July 2015. We would like to provide the requested information as follows.

Background: Public registers and privacy

2. Public registers maintained by Government bureaux and departments are established in accordance with relevant pieces of

legislation, which have been enacted where there are legitimate purposes for information to be made available for public inspection. The information provided to the public by some of the registers includes personal data such as names, identity document numbers and addresses. Such disclosure is considered necessary, in order that the purposes of the registers can be fulfilled.

3. Administrators of public registers strive to provide protection against abuse of the personal data contained in the registers where feasible, while ensuring that the registers are still serving their purposes effectively. In December 2000, the Home Affairs Bureau (which was at that time responsible for policies on personal data privacy) issued the *Guidelines on protection of privacy in relation to personal data contained in public registers* ('the Guidelines') which set out eight requirements and one recommendation (listed at Annex) to administrators of public registers. As public registers differ in various ways, including their mode of operation and the nature of data collected and disclosed, the administrators are expected to take the measures contained in the Guidelines having regard to the specific circumstances of the respective registers.

PCPD's survey

4. On 28 July 2015, PCPD published a report on the findings of the survey it conducted on public registers against the Guidelines, and made recommendations in respect of four requirements and one recommendation therein, namely –

Requirements

- (A) Inform data subjects of purposes of the registers through Personal Information Collection Statements ('PICS');
- (B) Advise persons accessing the registers of limitations on the use of information obtained;
- (C) Collect and disclose only the necessary personal data;
- (D) Specify the purposes of registers in the legislation; and

Recommendation

Consider incorporating in the legislation safeguard measures against misuse of personal data.

5. The first part of the survey was said to cover the enabling provisions of 94 registers¹ (in 82 ordinances/regulations reported as having been enacted/amended between January 2001 and March 2014) to ascertain whether Requirement (D) and the Recommendation above had been followed. The second part of the survey was an examination of the operation of 10 commonly used registers² for all the Requirements and Recommendation above. In the entire survey, the Recommendation was apparently assumed by PCPD as a mandatory requirement.

Follow up by CMAB and administrators of public registers

6. Further to PCPD's survey, the Constitutional and Mainland Affairs Bureau ('CMAB') has conducted a survey on 69 public registers which involve disclosure of personal data. These 69 registers do not include the 10 registers listed in footnote 2 below as the latter have already been covered by PCPD's survey. The 79 registers in total (69+10) cover all the public registers which involve disclosure of personal data³. The ensuing paragraphs set out the follow-up actions taken by the administrators of the 10 public registers surveyed by PCPD, and the findings of the survey conducted by CMAB.

Requirement (A) – Inform data subjects of purposes of the registers through PICS

7. Regarding PCPD's survey of 10 registers, PCPD found that all of them already provided PICS informing data subjects of the purposes of the registers. However, PCPD recommended that, in addition, the PICS of the Bankruptcy Register, Business Register and Marriage Register should inform the data subjects of the disclosure of their personal data via

¹ We note that some of the provisions surveyed by PCPD did not create any public register, and that some of the registers covered by PCPD's survey are no longer or not yet in operation, not open for public access, not maintained by Government bureaux or departments, or not disclosing personal data.

² The 10 registers examined in the second part of the survey are the Bankruptcy Register, Births Register, Business Register, Companies Register, Land Registers, Marriage Register, Registers of Electors, Register of Notices of Intended Marriage, Register of Vehicles and the Register of Licensees of the Securities and Futures Commission.

³ It should be noted that the method used by PCPD in counting the number of registers is different from that used by CMAB (e.g., whether a number of sub-registers under a register should be counted as separate registers).

the registers; and the Marriage Register should also state clearly that the supply of certain information for statistical purpose was voluntary. All the concerned registers have already implemented these recommendations.

8. PCPD made a further general recommendation that administrators of public registers should explain to the data subjects why their personal data was to be made accessible via the registers. The administrators will consider this recommendation.

9. Regarding the 69 registers surveyed by CMAB, 65 provide PICS to data subjects and remind them that personal data would be disclosed via the registers. For the remaining four registers, one collects information from legal proceedings and another contains data from aircraft owners' reports under aviation laws on the occurrence of births and deaths in aircrafts, hence it is impracticable for these two registers to provide PICS to data subjects. The remaining two registers are drafting their PICS, which is expected to be completed in 2016.

Requirement (B) – Advise persons accessing the registers of limitations on the use of information obtained

10. Regarding PCPD's survey of 10 registers, PCPD pointed out that all the registers had provided searchers with advice on the purposes of the registers, except the Register of Notices of Intended Marriage. That register has since introduced such an advice.

11. PCPD further recommended that, in addition to the requirements of the Guidelines, administrators of public registers should consider requiring searchers to acknowledge the advice on purposes or declare the intended use of search results. In deciding whether and how PCPD's suggested additional requirements should be implemented, administrators of public registers seek to strike a balance between privacy protection and accessibility of information taking into account the nature of personal data disclosed and other relevant factors. Among the registers covered in PCPD's survey, the administrators of the Companies Register and the Register of Notices of Intended Marriage have introduced the requirement for searchers to acknowledge the purposes and limitations of use of the personal data obtained from the registers subsequent to the survey. The Companies Registry has also introduced a requirement of declaration of purpose, which is drawn from the Companies Ordinance, i.e., the enabling legislation for setting up and operating the Companies Register. For the Register of Licensees of the Securities and Futures

Commission, since the personal data in search results are no more than licensing status and business address, additional requirements of acknowledgement or declaration are considered unnecessary.

12. From CMAB's survey, 65 of the 69 registers covered have been providing to searchers an advice on the purposes of the register and use of search results in accordance with the Guidelines. For the remaining four registers, drafting of such advice is expected to be completed in 2016.

Requirement (C) – Collect and disclose only the necessary personal data

13. Regarding PCPD's survey of 10 registers, PCPD found no undue collection or disclosure of personal data. Nevertheless, PCPD recommended the following additional measures –

- (a) to keep the amount of personal data collected and disclosed at the minimum, the legislation governing the operation of registers should be kept updated;
- (b) where information such as identity document numbers or residential addresses was disclosed, administrators should consider less privacy-intrusive means such as disclosing partial information instead of full disclosure;
- (c) where administrators had discretionary powers to disclose personal data, policies and practices should be devised to ensure that the personal data disclosed was not more than necessary; and
- (d) the Government should resurrect earlier proposals to limit the disclosure of identity document numbers and residential addresses of company directors filed with the Companies Registry.

14. Regarding paragraphs 13(a) and (b) above, the administrators of the 10 public registers concerned have recently reviewed the items of personal data collected and disclosed in their operations, and consider the current level of disclosure of prescribed items to be necessary for the purposes of the respective registers to be effectively fulfilled. As regards paragraph 13(c) above, though PCPD considered that the administrators of the Registers of Electors and the Marriage Register had discretionary powers on what information to disclose or withhold in response to individual requests; the administrators do not agree that they have such powers, as the relevant legislation required the provision of a copy of relevant entries in the register when there is a valid search request.

With regard to paragraph 13(d), the administrator of the Companies Register has advised that there is not yet public consensus to implement the measure due to concerns about possible hindrance to journalistic and investigatory work.

15. From CMAB's survey of 69 registers, only 28 disclose personal contact information (such as correspondence addresses) and/or identity document numbers in full. All of the respective administrators consider the current scope of disclosure necessary to fulfill the purposes of the registers.

Requirement (D) – Specify the purposes of registers in the legislation

16. PCPD recommended introducing a personal data clearance clause in the law drafting process, to ensure that consideration will be given to incorporating the purposes of registers in the law whenever a law drafting exercise is undertaken.

17. As a matter of fact, the General Regulations of the Government already provides that if a proposal of legislation may affect the privacy of individuals in relation to personal data, the Personal Data (Privacy) Ordinance (Cap. 486) and the need or otherwise to consult PCPD should be considered by the concerned Bureau or Department.

18. From CMAB's survey, among the 69 registers covered, 46 had their purposes specified in the relevant legislation already. The administrators of the remaining 23 registers have also been reminded to give consideration to incorporating the purposes of the registers in the legislation when opportunities arise in future.

Recommendation – Consider incorporating in the legislation safeguard measures against misuse of personal data

19. For providing assurance of proper use of the information obtained from public registers, the Guidelines recommend administrators to consider including provisions in the respective legislation to safeguard against misuse of personal data in the registers by, e.g., specifying the purposes for which the data may be requested, limiting the classes of persons entitled to make requests, requiring written declarations of the intended use of the data, or imposing sanctions against improper use. In deciding whether to introduce such safeguards, bureaux and departments should take into account whether the inconvenience to searchers and additional administrative costs brought by the proposed safeguards are

justified having regard to the sensitivity of the personal data concerned and the potential adverse effect of any misuse.

20. Whereas administrators of public registers are indeed required to conduct their balancing exercises with careful consideration of the specific circumstances of each register, PCPD apparently took as a mandatory requirement in its survey the introduction of safeguard measures through legislation. PCPD accordingly recommended that future legislative processes should be utilised to consider incorporating provisions to safeguard against misuse of personal data in public registers.

21. CMAB's survey found that the recommended safeguard measures had been adopted by 20 registers. For the other registers, the administrators have been reminded to take into account relevant factors and consider whether safeguard measures should be introduced through legislation when opportunities arise in future.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lam I-ching', with a long horizontal flourish extending to the right.

(LAM I-ching)

for Secretary for Constitutional and Mainland Affairs

Requirements and Recommendation Set Out in the Guidelines

Requirements

- (A) Inform data subjects of purposes of the registers through Personal Information Collection Statements;
- (B) Advise persons accessing the registers of limitations on the use of information obtained;
- (C) Collect and disclose only the necessary personal data;
- (D) Specify the purposes of registers in the legislation;
- (E) Not disclose information in bulk unless with strong reasons;
- (F) Limit search keys to those that are required to fulfil the specified purposes;
- (G) Comply with data subjects' requests for access or correction; and
- (H) Ensure the introduction of any new register serves legitimate purposes.

Recommendation

Consider incorporating in the legislation safeguard measures against misuse of personal data.