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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 20 March 2017**

Work of the Office of the Privacy Commissioner for Personal Data

Purpose

This paper summarizes previous discussions held by the Panel on Constitutional Affairs¹ ("the Panel") regarding the work of the Office of the Privacy Commissioner for Personal Data ("PCPD").

Background

2. The Office of PCPD is a statutory body responsible for overseeing the enforcement of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") which protects the privacy of individuals in relation to personal data. The Office of PCPD is headed by PCPD appointed by the Chief Executive. According to section 5(4) of PDPO, PCPD shall hold office for a period of five years and shall be eligible for reappointment for not more than one further period of five years. Section 8 of PDPO prescribes the functions and powers of PCPD as set out in **Appendix I**. The Office of PCPD is funded mainly by recurrent subvention from the Government. The incumbent PCPD, Mr Stephen WONG Kai-yi, was appointed on 4 August 2015.

3. Section 11(1) of PDPO provides for the establishment of the Personal Data (Privacy) Advisory Committee ("the Advisory Committee") to advise PCPD on matters relevant to the privacy of individuals in relation to personal data or implementation of PDPO. Chaired by PCPD, the Advisory Committee comprises members appointed by the Secretary for Constitutional and Mainland Affairs.

Review and amendment of the Personal Data (Privacy) Ordinance

4. In the light of social development and technology advancement over the past decade or so, as well as the community's increasing concern about personal

¹ With effect from the 2008-2009 legislative session, the policy area of personal data protection has been transferred from the Panel on Home Affairs to be placed under the purview of the Panel on Constitutional Affairs.

data privacy protection, the Constitutional and Mainland Affairs Bureau, with the support of the Office of PCPD, had conducted a comprehensive review of PDPO.

5. In June 2012, the Personal Data (Privacy) (Amendment) Ordinance 2012 ("the Amendment Ordinance") was passed by the Legislative Council ("LegCo"). The Amendment Ordinance introduced amendments to PDPO, inter alia, to provide for regulation over the use of personal data in direct marketing and provision of personal data for use in direct marketing; to create a new offence for disclosure of personal data obtained without consent from data users; to empower PCPD to provide legal assistance to aggrieved data subjects in bringing proceedings to seek compensation from data users under PDPO; to impose a heavier penalty for repeated contravention of enforcement notices ("ENs"); and to create a new offence for repeated contravention of the requirements under PDPO for which ENs have been served. Some of the provisions therein came into operation since 1 October 2012. The remaining provisions relating to the use and provision of personal data for use in direct marketing as well as the new legal assistance scheme were also brought into force on 1 April 2013.

Major issues discussed at Panel meetings

6. It is the usual practice of the Panel to receive a briefing by PCPD on the work of the Office of PCPD in each legislative session. The major issues raised at the relevant meetings are summarized below.

Financial provisions for the Office of the Privacy Commissioner for Personal Data

7. Members expressed concern about the adequacy of the financial provisions for the Office of PCPD at various meetings. At the Panel meeting on 16 February 2015, members noted that while the Administration had provided additional resources in the past few years, the funding still fell short of the Office of PCPD's needs to cope with the increasing workload. In particular, only 69 posts of the Office of PCPD out of a total of more than 80 staff members were provided with recurrent funding by the Government. Besides, there had been no increase in subvention despite the rent of the Office of PCPD had increased from \$11/sq ft in the past decade to \$33/sq ft in 2015. Some members urged the Administration to provide more resources to the Office of PCPD to strengthen protection of personal data privacy and to cope with the increased workload.

8. Some members suggested that the Office of PCPD should publish more investigation reports. The former PCPD advised that the number of published investigation reports had increased since 2010, and six such reports had been

published in 2013. However, due to manpower and resource constraints, investigation reports would be published only on selected topics which were of wide public concern or would serve useful educational and promotional purposes.

Promotion and public education on protection of personal data

9. Some members expressed concern about the large increase in the number of complaints concerning cyber-bullying from six in 2013 to 34 in 2014. The former PCPD advised that the increase was principally attributable to the increasing popularity of social network platform and the prevalent use of the Internet. The Office of PCPD had published an information leaflet called "What you need to know about cyber-bullying" in 2014 to raise public awareness of the precautionary measures to protect privacy on social network platforms and the remedies that victims of cyber-bullying might consider. Where there was contravention of Data Protection Principles ("DPPs")² of PDPO, PCPD could serve an EN on the data user to remedy the contravention. However, for cases involving criminal offence like criminal intimidation, they should more appropriately be handled by the Police.

10. Some members also raised concern about data security in the use of mobile Apps by the elderly. The incumbent PCPD advised that his Office had approached voluntary organizations and Government departments to discuss if the Office of PCPD could send representatives to attend activities organized for the elderly so as to explain to the elderly the precautionary measures. Moreover, the Office of 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.

Enforcement power of the Privacy Commissioner for Personal Data

11. During discussion on review of PDPO, members had expressed diverse views at its various meetings on PCPD's proposals of granting criminal investigation and prosecution power to PCPD, empowering PCPD to award compensation to aggrieved data subjects, and requiring data user to pay monetary penalty for serious contravention of DPPs. Nevertheless, members in

² Data users must follow the fair information practices stipulated in the six DPPs in Schedule 1 to PDPO in relation to the purpose and manner of data collection, accuracy and duration of data retention, use of personal data, security of personal data, availability of data information, and access to personal data. PCPD is empowered to direct the data user concerned to take corrective actions for non-compliance with the provisions of DPPs by issuing an EN. With effect from 1 October 2012, if a data user fails to take corrective actions for his contravention by the date specified in an EN, he will be liable to a fine at Level 5 (at present \$50,000) and imprisonment for two years. The data user is liable to a daily penalty of \$1,000 if the offence continues. On a second or subsequent conviction, the maximum penalty is a fine at Level 6 (at present \$100,000) and imprisonment for two years.

general expressed concern that PCPD had inadequate powers for the effective enforcement of PDPO.

12. At the Panel meetings on 15 and 20 November 2010, the former PCPD pointed out that the recent serious contraventions of PDPO and unauthorized sale of personal data had reflected the inadequacy of the enforcement power of PCPD. The proposal of granting PCPD criminal investigation and prosecution powers could meet the public expectations for enhancing deterrent measures against serious contravention of PDPO. The former PCPD advised that his team had the knowledge and experience to perform those roles efficiently and effectively. However, the discretion to prosecute or not still vested in the Secretary of Justice.

13. The Administration was of the view that in order to maintain checks and balances, PCPD should not be provided with the power to carry out criminal investigations and prosecutions, and the existing arrangement under which criminal investigation and prosecution were vested respectively in the Police and Department of Justice should be retained. The Government announced in April 2011 that proposals of granting criminal investigation and prosecution power to PCPD, empowering PCPD to award compensation to aggrieved data subjects and requiring data user to pay monetary penalty for serious contravention of DPPs under PDPO would not be implemented.

Enforcement of the Personal Data (Privacy) Ordinance

14. At the Panel meeting on 21 January 2013, some members asked whether the increase in the number of ENs issued by PCPD from one in 2011 to 11 in 2012 indicated a deterioration of the protection of personal data privacy in Hong Kong. The former PCPD explained that the increase was largely due to the implementation of the relevant provisions of the Amendment Ordinance on 1 October 2012, which had provided PCPD with enhanced power to serve ENs. Under the relevant new provisions, an EN could be issued in situations where the data user had contravened a requirement under PDPO irrespective of whether there was evidence to show that the contravention would likely be repeated, whereas in the past, ENs could be issued only if PCPD was in the opinion that the contravention would continue or be repeated.

15. Some members 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. The incumbent PCPD advised that DPP 1 on collection purpose and means had to be observed in conducting online data collection. The Office of PCPD had also offered advice to relevant business organizations to promote compliance. PDPO stressed that organizations should ensure the proper handling and disposal of personal data collected, and should take all practicable steps to safeguard personal data against unauthorized or accidental access, processing, erasure, loss or use.

16. Some members expressed concern that most of the complaints received by the Office of PCPD in 2015 were related to the financial industry which involved unauthorized use of personal data by money lenders or other intermediaries for fraudulent activities, and enquired about the follow-up actions taken by the Office of PCPD in this regard. The incumbent PCPD advised that preliminary investigations had been conducted in respect of all these complaints. The Office of PCPD noted that the financial institutions concerned had already taken the necessary remedial and/or improvement measures. The Office of PCPD had enhanced public education and publicity to raise public awareness of personal data protection. Besides, it had strengthened liaison and collaboration with the Police with a view to facilitating the investigations of fraudulent activities involving unauthorized use of personal data.

Implementation of section 33 of the Personal Data (Privacy) Ordinance

17. Some members expressed grave concern about the slow progress in bringing section 33 of PDPO into operation to regulate the transfer of data outside Hong Kong. They pointed out that many banks, insurance companies and telecommunication organizations in Hong Kong had transferred their clients' personal data to their back offices and agencies in places outside Hong Kong for storage and processing. The former PCPD considered that section 33, which provided a very stringent and comprehensive regulation of the transfer of data outside Hong Kong, should be implemented as soon as practicable.

18. The former PCPD advised that the transfer of personal data to places outside Hong Kong was regulated in some respects under the relevant DPP of PDPO. However, breaches of DPPs were not criminal offences unless the data users refused to comply with the relevant ENs issued to them for taking remedial and preventive actions. Hence the current protection for personal data transferred overseas was weak and far from comprehensive. The former PCPD advised that his Office stood ready to assist the Administration to prepare for the implementation of section 33. The Office of PCPD had compiled a "white list" of places with privacy laws comparable to Hong Kong and to which data transfer could be made legitimately. In addition, a guidance containing a set of recommended model data transfer clauses on cross-border data transfer agreement with the overseas recipients was available to assist organizations to prepare for the eventual implementation of section 33.

19. The Administration advised that it had been in close liaison with the Office of PCPD on the work pertaining to the implementation of section 33, and would consider engaging a consultant to conduct a business impact study to look at the possible impact on the relevant sectors and ensure their readiness for the implementation of section 33.

Regulation of person-to-person telemarketing calls

20. At the meeting on 16 February 2015, some members expressed concern about the need to step up regulation of person-to-person telemarketing calls ("P2P calls"). The former PCPD advised that his Office had proposed expanding the Do-not-call registers administered by the office of the Communications Authority to include P2P calls. The Administration informed members that the Commerce and Economic Development Bureau was about to commission a consultant to conduct a survey with a view to soliciting views from the public, the business sector and the industry on the regulation of P2P calls, as well as the employment and business situations of the industry. It was expected that the survey would be completed in the first half of 2015.

Protection of personal data contained in public registers

21. At the meeting on 15 February 2016, some members considered that sufficient protection measures should be taken against abuse of the personal data (including names, identity document numbers and addresses) contained in public registers maintained by Government bureaux and departments. Noting that the Office of PCPD had published a report on the "Survey of Public Registers Maintained by Government and Public Bodies" ("the Survey Report") in July 2015, some members requested the Administration to give an account of the follow-up actions taken in response to the findings and recommendations of the Survey Report. The Administration provided an information paper in July 2016 on its follow-up actions taken (**Appendix II**).

Recent developments

22. PCPD will brief the Panel on an update of the work of the Office of PCPD at the next meeting on 20 March 2017.

Relevant papers

23. A list of the relevant papers on the LegCo website is in **Appendix III**.

~~則行政長官可藉書面通知委任一人署理專員職位，直至(視情況所需)——(由 1999 年第 34 號第 3 條修訂)~~

- ~~(i) 新的專員根據第 5(3) 條獲委任為止；或~~
~~(ii) 專員回任為止。~~
 (2) 根據第(1)款獲委任署理專員職位的人，在他獲委任的期間——
 (a) 須執行專員在本條例下的職能；及
 (b) 可行使專員在本條例下的權力。
 (3) 第 6 條須適用於根據第(1)款獲委任署理專員職位的人，猶如該人是專員一樣。

8. 專員的職能及權力

- (1) 專員須——
- 就遵守本條例條文作出監察及監管；
 - 促進及協助代表資料使用者的團體為第 12 條的施行擬備實務守則，以在遵守本條例條文(尤其是各保障資料原則)方面提供指引；
 - 促進對本條例的條文(尤其是各保障資料原則)的認識及理解以及遵守；
 - 對他認為可影響在個人資料方面的個人私隱的建議制定的法例(包括附屬法例)加以審核，並向建議制定該法例的人報告其審核結果；
 - 進行視察，包括對屬政府部門或法定法團的資料使用者所使用的任何個人資料系統的視察；
 - 為更佳地執行他的其他職能而對資料處理及電腦科技進行研究及監察其發展，以顧及該等發展在個人資料方面對個人私隱相當可能有的不利影響；
 - 與——
 - 在香港以外任何地方執行專員認為與其在本條例下的任何職能相似(不論全部或部分相似)的職能的人，進行聯絡及合作；及

~~then the Chief Executive may, by notice in writing, appoint a person to act as the Commissioner until, as the case requires— (Amended 34 of 1999 s. 3)~~

- ~~(i) a new Commissioner is appointed under section 5(3); or~~
~~(ii) the Commissioner resumes his office.~~
 (2) A person appointed under subsection (1) to act as the Commissioner, whilst he is so appointed—
 (a) shall perform the functions; and
 (b) may exercise the powers,
 of the Commissioner under this Ordinance.
 (3) Section 6 shall apply to a person appointed under subsection (1) to act as the Commissioner as if that person were the Commissioner.

8. Functions and powers of Commissioner

- (1) The Commissioner shall—
- monitor and supervise compliance with the provisions of this Ordinance;
 - promote and assist bodies representing data users to prepare, for the purposes of section 12, codes of practice for guidance in complying with the provisions of this Ordinance, in particular the data protection principles;
 - promote awareness and understanding of, and compliance with, the provisions of this Ordinance, in particular the data protection principles;
 - examine any proposed legislation (including subsidiary legislation) that the Commissioner considers may affect the privacy of individuals in relation to personal data and report the results of the examination to the person proposing the legislation;
 - carry out inspections, including inspections of any personal data systems used by data users which are departments of the Government or statutory corporations;
 - for the better performance of his other functions, undertake research into, and monitor developments in, the processing of data and computer technology in order to take account of any likely adverse effects such developments may have on the privacy of individuals in relation to personal data;
 - liaise and co-operate with any person in any place outside Hong Kong—
 - performing in that place any functions which, in the opinion of the Commissioner, are similar (whether in whole or in part) to any of the Commissioner's functions under this Ordinance; and

(ii) 該等人士在某些相互關注的並涉及在個人資料方面的個人私隱的事項方面進行聯絡及合作；及

(h) 執行根據本條例或其他成文法則委予他的其他職能。

(2) 專員可作出所有為更佳地執行其職能而需要作出的或對此有助的所有事情，或為更佳地執行其職能而連帶須作出的所有事情，而在不影響前文的概括性原則下，專員尤可——

(a) 在認為任何類別的財產對——

(i) 為專員或任何訂明人員供給地方；或

(ii) 專員可執行的任何職能的執行，屬必要時，取得及持有該財產，並可在持有該財產所按的條款及條件的規限下，處置該財產；

(b) 訂立、履行、轉讓、更改或撤銷任何合約、協議或其他義務，或接受他人所轉讓的合約、協議或其他義務；

(c) 承辦及執行合法信託，但限於以推動專員在本條例下須予執行或准予執行的職能為宗旨的信託或具有其他類似宗旨的信託；

(d) 接受饋贈及捐贈，不論是否受信託所規限的饋贈或捐贈；

(e) 在獲得行政長官事先批准下，成為任何關注 (不論是全部或部分) 在個人資料方面的個人私隱的國際組織的正式成員或附屬成員； (由 1999 年第 34 號第 3 條修訂)

(f) 行使本條例或其他成文法則賦予他的其他權力。

(3) 專員在執行其職能或行使其權力時，可製備及簽立任何文件；凡任何與他執行職能或行使權力所合理附帶或相應引起的事宜，專員亦可在與該等事宜有關連的情況下，製備及簽立任何文件。

(4) 任何文件如看來是以專員的印章簽立的，須予接納為證據，在沒有相反證據的情況下須當作已妥為簽立。

(5) 為向資料使用者提供指引，專員可不時安排擬備不抵觸本條例的指引以顯示他擬執行其在本條例下任何職能或行使其在本條例下任何權力的方式，並安排將該指引藉憲報公告刊登。

(ii) in respect of matters of mutual interest concerning the privacy of individuals in relation to personal data; and

(h) perform such other functions as are imposed on him under this Ordinance or any other enactment.

(2) The Commissioner may do all such things as are necessary for, or incidental or conducive to, the better performance of his functions and in particular but without prejudice to the generality of the foregoing, may—

(a) acquire and hold property of any description if in the opinion of the Commissioner such property is necessary for—

(i) the accommodation of the Commissioner or of any prescribed officer; or

(ii) the performance of any function which the Commissioner may perform,

and, subject to the terms and conditions upon which such property is held, dispose of it;

(b) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation;

(c) undertake and execute any lawful trust which has as an object the furtherance of any function which the Commissioner is required or is permitted by this Ordinance to perform or any other similar object;

(d) accept gifts and donations, whether subject to any trust or not;

(e) with the prior approval of the Chief Executive, become a member of or affiliate to any international body concerned with (whether in whole or in part) the privacy of individuals in relation to personal data; (Amended 34 of 1999 s. 3)

(f) exercise such other powers as are conferred on him under this Ordinance or any other enactment.

(3) The Commissioner may make and execute any document in the performance of his functions or the exercise of his powers or in connection with any matter reasonably incidental to or consequential upon the performance of his functions or the exercise of his powers.

(4) Any document purporting to be executed under the seal of the Commissioner shall be admitted in evidence and shall, in the absence of evidence to the contrary, be deemed to have been duly executed.

(5) The Commissioner may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of data users, guidelines not inconsistent with this Ordinance, indicating the manner in which he proposes to perform any of his functions, or exercise any of his powers, under this Ordinance.

Appendix II

政制及內地事務局
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政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT
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Ms Joanne Mak
Clerk to Panel on Constitutional Affairs
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

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,



(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.

**Relevant documents on the Work of
the Office of the Privacy Commissioner for Personal Data**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	15.12.2008 (Item IV)	Agenda Minutes
	19.3.2010 (Item V)	Agenda Minutes CB(2)1146/09-10(01)
Legislative Council ("LegCo")	20.10.2010	Official Record of Proceedings Page 145 - 248 (Motion)
CA Panel	15.11.2010 (Item IV)	Agenda Minutes
	20.11.2010 (Item I)	Agenda Minutes
LegCo	12.1.2011	Official Record of Proceedings Page 126 - 209 (Motion)
	6.4.2011	Official Record of Proceedings Page 13 - 15 (Written question)
CA Panel	16.5.2011 (Item III)	Agenda Minutes
LegCo	22.6.2011	Official Record of Proceedings Page 139 - 141 (Written question)
	6.7.2011	Official Record of Proceedings Page 115 - 118 (Written question)
	13.7.2011	Official Record of Proceedings Page 138 - 143 (Written question)
	31.10.2012	Official Record of Proceedings Page 96 - 100 (Written question)

Committee	Date of meeting	Paper
CA Panel	21.1.2013 (Item IV)	Agenda Minutes
	17.3.2014 (Item IV)	Agenda Minutes
LegCo	18.6.2014	Official Record of Proceedings Page 180 - 184 (Written question)
	22.10.2014	Official Record of Proceedings Pages 107 – 111 (Written question)
	20.11.2014	Official Record of Proceedings Pages 61 – 69 (Oral question) and Pages 287 - 312
CA Panel	16.2.2015 (Item IV)	Agenda Minutes
LegCo	29.4.2015	Official Record of Proceedings Pages 74 – 76 (Written question)
CA Panel	15.2.2016 (Item III)	Agenda Minutes
LegCo	8.6.2016	Official Record of Proceedings Pages 34 – 45 (Oral question)
	22.6.2016	Official Record of Proceedings Pages 124 – 128 (Written question)

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