

立法會
Legislative Council

Ref : CB4/BC/10/20

LC Paper No. CB(4)1708/20-21
(These minutes have been seen
by the Administration)

Bills Committee on Personal Data (Privacy) (Amendment) Bill 2021

Minutes of the second meeting
held on Friday, 13 August 2021, from 10:45 am to 12:45 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** :
- Hon Alice MAK Mei-kuen, BBS, JP (Chairman)
 - Hon YUNG Hoi-yan, JP (Deputy Chairman)
 - Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
 - Hon Mrs Regina IP LAU Suk-yeet, GBM, GBS, JP
 - Hon Paul TSE Wai-chun, JP
 - Hon MA Fung-kwok, GBS, JP
 - Hon LEUNG Che-cheung, SBS, MH, JP
 - Hon KWOK Wai-keung, JP
 - Hon Christopher CHEUNG Wah-fung, SBS, JP
 - Hon Elizabeth QUAT, BBS, JP
 - Ir Dr Hon LO Wai-kwok, GBS, MH, JP
 - Hon CHUNG Kwok-pan
 - Dr Hon Junius HO Kwan-yiu, JP
 - Hon Holden CHOW Ho-ding
 - Hon SHIU Ka-fai, JP
 - Hon LUK Chung-hung, JP
- Members absent** :
- Hon CHAN Han-pan, BBS, JP
 - Hon CHEUNG Kwok-kwan, JP
 - Dr Hon CHENG Chung-tai

Public Officers : Item I
attending

The Administration

Mr Erick TSANG, IDSM, JP
Secretary for Constitutional and Mainland Affairs

Ms Maisie CHAN, JP
Deputy Secretary for Constitutional and Mainland Affairs

Mr Jacky LUM
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Office of the Privacy Commissioner for Personal Data

Ms Ada CHUNG
Privacy Commissioner for Personal Data

Mr Dennis NG
Senior Legal Counsel (Acting)

Ms Amy CHAN
Chief Personal Data Officer

Department of Justice

Mr Henry CHAN
Senior Assistant Law Draftsman

Mr Michael WONG
Senior Assistant Director of Public Prosecutions

Ms Florence LING
Senior Assistant Law Officer (Civil Law) (Advisory) I
(Acting)

Mr Michael CHOI
Senior Government Counsel (Acting)

Clerk in : Ms Angel WONG
attendance : Chief Council Secretary (4)4

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Miss Wincy LO
Senior Council Secretary (4)4

Ms Rachel WONG
Council Secretary (4)4

Ms Sandy HAU
Legislative Assistant (4)4

Action

I. Meeting with the Administration

[Legislative Council Brief issued by the Constitutional and Mainland Affairs Bureau on 14 July 2021 (CMAB/CR/7/22/45), LC Paper Nos. CB(3)798/20-21, LS100/20-21 and CB(4)1317/20-21(01) to (03)]

Discussion

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

2. The Bills Committee requested the Administration to:

- (a) consider amending the definition of "family member" in the Personal Data (Privacy) (Amendment) Bill 2021 ("the Bill") to cover cohabiting partners;
- (b) consider adding a provision to enable the Hong Kong Police Force ("the Police") to exercise the powers of the Privacy Commissioner for Personal Data ("the Commissioner") specified under the proposed new section 66D to carry out a specified investigation;
- (c) provide case law on the meanings of "harassment, molestation, pestering, threat and intimidation" in the proposed new section 64(6)(a);
- (d) provide examples of provisions in existing legislation which are similar to the proposed new section 64(5)(b), which seeks to provide that a person is taken to have established a matter that needs to be established for the purpose of a defence if the contrary is not proved by the prosecution beyond reasonable doubt; and

Action

- (e) provide case law on the meaning of "reckless" in the proposed new sections 64(3A) and (3C).

(At about 12:42 pm, the Chairman proposed and members agreed to extend the meeting.)

II. Any other business

3. The Chairman said that members would be informed of the arrangement of the next meeting in due course.
4. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 4
Legislative Council Secretariat
2 November 2021

**Proceedings of the second meeting of the
Bills Committee on Personal Data (Privacy) (Amendment) Bill 2021
held on Friday, 13 August 2021, from 10:45 am to 12:45 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
<i>Agenda item 1 – Meeting with the Administration</i>			
000618-000759	Chairman	Opening remarks	
000800-001015	Chairman Administration	<u>Examination of clauses 1 and 2</u> Members raised no question	
001016-003022	Chairman Administration Mrs Regina IP Ir Dr LO Wai-kwok Deputy Chairman Assistant Legal Adviser 1 ("ALA1")	<u>Examination of clauses 3 to 5</u> Definition of "family member" under section 2(1) of the Bill and other legislation; and whether working partner(s) of a data subject would be protected under the Bill The Administration was requested to consider amending the definition of "family member" in the Bill to cover cohabiting partners English and Chinese texts of the definition of "family member" under the proposed section 2(1) of the Bill and the existing section 63C of the Personal Data (Privacy) Ordinance (Cap. 486)	Paragraph 2(a) of the minutes refers
003023-004015	Chairman Administration Mr Christopher CHEUNG	<u>Examination of clause 6(1) to 6(4)</u> Factors determining whether the discloser had an intent to cause specified harm to the data subject or his/her family members; and whether a person who reposted electronic messages containing personal data would contravene the proposed sections 64(3A) and 64(3C) of the Bill Suggestion of launching adequate publicity to raise public awareness and understanding of the Bill Penalties for doxxing offences in overseas jurisdictions	

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
004016-004327	Chairman Mrs Regina IP Administration	Whether a person who reposted doxxing contents containing personal data obtained from the public domain on online platforms would commit an offence under the Bill The Administration was requested to provide case law on the meaning of "reckless" in the proposed sections 64(3A) and (3C)	Paragraph 2(e) of the minutes refers
004328-004526	Chairman Deputy Chairman Administration	Suggestion of amending the definition of "family member" in the Bill to cover cohabiting partners Factors determining whether the discloser had an intent to cause specified harm to the data subject or his/her family members	
004527-005034	Chairman Administration	Whether a defendant who was convicted of a summary offence under the Bill would be prosecuted for an indictable offence under the Bill Whether specified harm was caused to the victims of doxxing cases if they had to move to a new place of residence as a result of the disclosure of personal data	
005035-005254	Chairman Mrs Regina IP Administration	Summary offence and indictable offence under the Bill	
005255-005614	Chairman ALA1 Administration	Suggestion of providing for the meanings of the terms "harassment", "molestation", "pestering", "threat" or "intimidation" in the definition of "specified harm" in the proposed section 64(6)	Paragraph 2(c) of the minutes refers
005615-005718	Chairman Mrs Regina IP Administration	Whether specified harm was caused to the victims of doxxing cases if they had to find a new school place as a result of the disclosure of personal data	
005719-005807	Chairman Administration	<u>Examination of clauses 6(5) and 6(6)</u> Members raised no question	

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
005808-010301	Chairman Administration Mr Paul TSE	<u>Examination of clauses 6(7) and 6(8)</u> Meaning(s) of lawful and unlawful news activity under the Bill	
010302-010946	Chairman Deputy Chairman Administration Mr Paul TSE	Reasons for adding the proposed section 64(5)(b), which provided that "a person is taken to have established a matter that needs to be established for the purpose of a defence if the contrary is not proved by the prosecution beyond reasonable doubt" The Administration was requested to provide examples of provisions in existing legislation which were similar to the proposed new section 64(5)(b)	Paragraph 2(d) of the minutes refers
010947-011025	Chairman Administration	<u>Examination of clause 7</u> Members raised no question	
011026-011210	Chairman Administration Mr Paul TSE	<u>Examination of clause 8</u> Reasons for amending section 64B	
011211-011304	Chairman Administration	<u>Examination of clause 9</u> Members raised no question	
011305-011821	Chairman Administration Dr Junius HO	<u>Examination of clause 10 (proposed sections 66C to 66G)</u> <i>Proposed section 66C</i> Members raised no question <i>Proposed section 66D</i> Division of work and delineation of responsibilities between the Police and the Office of the Privacy Commissioner for Personal Data over handling of doxxing acts under the proposed section 66D The Administration was requested to consider adding a provision to enable the Police to exercise the powers of the Commissioner specified under the proposed section 66D to carry out a specified investigation	Paragraph 2(b) of the minutes refers

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
011822-012335	Chairman Mr CHUNG Kwok-pan Administration	Circumstances that the Commissioner may, by written notice given to the person, require a person to answer any written question (proposed section 66D(2))	
012336-013049	Chairman Dr Priscilla LEUNG Administration	Whether the Commissioner would be given discretionary power to speed up investigation process; and whether private prosecution could be pursued if Secretary for Justice decided not to initiate a prosecution under the Bill	
013050-013455	Chairman Mr Paul TSE Administration	Reasons for the detailed approach in drafting the proposed section 66D	
013456-014250	Chairman Administration Mr CHUNG Kwok-pan ALA1 Mr Paul TSE	Clarification on the way and form of providing the material required by the Commissioner under the proposed section 66D(4)(b) Whether the person who had been given the notice under the proposed section 66D(2) would be liable under the proposed section 66E(1) if another person (i.e. not the person being given the notice) failed to give an explanation of or further particulars about the material in question, and whether the failure of the other person to give an explanation of or further particulars about the material would constitute a reasonable excuse for failure to comply under the proposed section 66E(3)	
014251-014708	Chairman Administration	<i>Proposed sections 66E to 66G(7)</i> Members raised no question	
014709-015705	Chairman Administration ALA1	<i>Proposed sections 66G(8) and 66G(9)</i> Whether "prescribed officer" include non-public officers and if so, whether the power to enter and search, and the power to access electronic devices would be given to such non-public officers, and the meaning of "access"	
015706-020052	Chairman Mr CHUNG Kwok-pan Administration	Definition of "prescribed officer"; whether the Police fell within the scope of the definition of "prescribed officer"; and whether all prescribed officers would be capable of handling suspects who refused to	

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
		cooperate with them Application of the proposed section 66G(8) in case a suspect refused to cooperate or applied for an injunction to restrict access to the device	
020053-020118	Chairman	Extension of meeting	
020119-020252	Chairman Administration	Interpretation of "reasonably suspects" under the proposed section 66G(8)	
020253-020358	Chairman Administration	<i>Proposed sections 66G(10) and (11)</i> Members raised no question	
020359-020605	Chairman Deputy Chairman Administration	Briefing by the Deputy Chairman on her letter dated 9 August 2021 [LC Paper No. CB(4)1363/20-21(03)]	
<i>Agenda Item II - Any other business</i>			
020606-020640	Chairman	Closing remarks	