

# 立法會 *Legislative Council*

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

### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper provides background information on the Personal Data (Privacy) (Amendment) Bill 2021. It also summarizes the major views and concerns expressed by the Panel on Constitutional Affairs ("the Panel") on the proposed amendments to the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO").

#### **Background**

2. According to the Administration, a large number of doxxing incidents have taken place since June 2019. As informed by the Administration in May 2021, between June 2019 and April 2021, the Office of the Privacy Commissioner for Personal Data ("PCPD") had received and proactively uncovered over 5 700 doxxing-related complaints. PCPD had also actively approached and written for over 297 times to operators of 18 websites, online social media platforms or discussion forums concerned, urging them to remove over 5 905 hyperlinks, of which 4 328 hyperlinks (about 70%) had been removed.

3. During the same period, PCPD had referred over 1 460 cases which involved suspected contravention of section 64(2) of PDPO to the Police for criminal investigation and consideration of prosecution. For those cases related to doxxing, a total of 17 suspects had been arrested by the Police for suspected contravention of section 64(2) of PDPO, and two of the suspects had been convicted. In November 2020, one of the defendants was sentenced to imprisonment for 18 months for contravention of section 64(2) of PDPO, with a total term of imprisonment of two years on combined convictions for other offences. Moreover, between November 2019 and April 2021, PCPD had referred 60 doxxing cases on suspicion of breaching the court's injunction orders to the Department of Justice ("DoJ") for follow up action. Among these cases, four defendants were convicted, and one of them was convicted in December 2020 of civil contempt of court for posting the personal data of a police officer and his

family members on a social media platform. The defendant was sentenced to 21 days' immediate imprisonment.

4. Members of the Panel have urged the Administration on a number of occasions to step up efforts in combating the acts of doxxing to protect personal data privacy, and expressed their support for curbing doxxing through amending PDPO. At the Question and Answer Session held at the Legislative Council ("LegCo") meeting of 4 February 2021, the Chief Executive said that the Government would tackle the more imminent problem of doxxing which intruded into personal data privacy, with an aim to complete the drafting of the legislative amendment proposals related to doxxing and submit a Bill for scrutiny by LegCo within the current legislative session.

### **The Personal Data (Privacy) (Amendment) Bill 2021 ("the Bill")**

5. The Bill was published in the Gazette on 16 July 2021. It was introduced into LegCo on 21 July 2021. According to the LegCo Brief (File Ref. CMAB/CR/7/22/45), the Bill seeks to (a) criminalize doxxing acts as an offence under PDPO; (b) empower the Privacy Commissioner for Personal Data ("Privacy Commissioner") to carry out criminal investigations and institute prosecution; (c) confer on the Privacy Commissioner statutory powers to serve notices to demand actions to cease or restrict disclosure of doxxing contents ("cessation notices") and apply for injunctions; and (d) make a consequential amendment to the Administrative Appeals Board Ordinance (Cap. 442) to allow for appeals against the Privacy Commissioner's decision to serve a cessation notice.

6. The major aspects of the Bill are set out in paragraphs 7 to 17 of the LegCo Brief under reference.

### **Major views and concerns expressed by the Panel**

7. On 17 May 2021, the Panel was consulted on the proposed amendments to PDPO. The major views and concerns expressed by members are set out in the ensuing paragraphs.

#### Threshold to convict doxxers and proposed penalty for doxxing offence

8. A number of members considered that the proposed threshold relating to psychological harm caused by disclosure was too high, thus rendering conviction

for doxxing acts difficult.<sup>1</sup> They suggested that the threshold for convicting doxxers should be lowered in order to achieve a deterrent effect. In this connection, they suggested imposing a two-tier penalty such that those who disclosed any personal data of a data subject without the data subject's consent should be liable to a lighter penalty, say \$50,000 and imprisonment for two years; and that those who had been proved to have an intent to threaten, intimidate or harass the data subject or cause psychological harm to the data subject, and with psychological harm caused to the data subject, might be subject to a heavier penalty, such as a fine of \$1,000,000 and imprisonment for five years.

9. The Administration explained that doxxing was a serious offence and the elements of the offence should require both malicious intent and actual harm to be proportionate to the gravity of the penalty. Nevertheless, the Administration agreed to consider members' suggestions.

10. Members enquired how to prove that the person performing doxxing acts had malicious intent. The Administration explained that the prosecutor and the court would consider the actual circumstances and evidence to judge whether there was a malicious intent for the doxxing acts. Apart from having a malicious intent, being reckless as to the consequences caused by doxxing acts was also an element of the offence under the legislative proposal.

11. There was a view that imposing a fine of \$1,000,000 for doxxing acts had already served a deterrent effect, but imposing a penalty of five years' imprisonment was not proportionate in the context of a doxxing offence. The Administration advised that the proposed penalty for doxxing acts was in line with that of section 64(2) of PDPO, which provided that a person committed an offence if the person disclosed any personal data of a data subject which was obtained from a data user without the data user's consent; and if the disclosure caused psychological harm to the data subject. A person who committed an offence under section 64(2) of PDPO was also liable on conviction to a fine of \$1,000,000 and imprisonment for five years.

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<sup>1</sup> At the abovementioned Panel meeting, the Administration proposed that an offence should be introduced under section 64 of PDPO to curb doxxing acts. The scope of the proposed provision is set out below:

"A person commits an offence if the person discloses any personal data of a data subject without the data subject's consent,

- (a) with an intent to threaten, intimidate or harass the data subject or any immediate family member, or being reckless as to whether the data subject or any immediate family member would be threatened, intimidated or harassed; or
- (b) with an intent to cause psychological harm to the data subject or any immediate family member, or being reckless as to whether psychological harm would be caused to the data subject or any immediate family member;

*and the disclosure causes psychological harm to the data subject or any immediate family member.*"

## Empowering the Privacy Commissioner to carry out criminal investigation and prosecution

12. Noting the Administration's proposal to empower the Privacy Commissioner to carry out criminal investigation and prosecution, members asked whether additional resources would be allocated to PCPD for carrying out the additional duties, including criminal investigation and prosecution, after the Bill had been passed by LegCo.

13. The Administration and the Privacy Commissioner advised that funding would be sought through the established mechanism for carrying out the additional work. The Privacy Commissioner advised that before the availability of funding, PCPD would set up a team through internal redeployment to carry out the work. The team would liaise closely with the Police for provision of suitable training for PCPD staff.

14. Members also asked whether PCPD would carry out criminal investigation and prosecution proactively without receiving a complaint. The Privacy Commissioner advised that enforcement actions would be taken proactively whenever necessary, and that complainants could simply fill out complaint forms supplied by PCPD or write to PCPD to lodge complaints.

## Empowering the Privacy Commissioner to demand rectification of doxxing contents

15. The Administration proposed that the Privacy Commissioner could serve a Rectification Notice on any person who provided services in Hong Kong to Hong Kong residents to direct the relevant online platform to rectify the doxxing content. Members expressed concern about the ability of the Privacy Commissioner to request removal of web links containing personal data in case where the online platform was registered overseas. Members further asked whether the Privacy Commissioner would be given the power to block a website instead of just demanding the removal of doxxing contents therefrom, if it was repeatedly used for serious doxxing purposes. They asked whether the Administration or PCPD had the technical capability to block websites containing doxxing contents from being accessible in Hong Kong to protect the victims given that it took time for the recipient(s) of the Rectification Notice to comply with the requirements specified in the Notice. Besides, members considered that the duration allowed for compliance with the Rectification Notice should be as short as possible.

16. Some members were also concerned about whether the legislative proposal could effectively deal with doxxing acts performed through individual instant

messaging platforms, as doxxing contents could be spread and reposted in a click. These members considered that the Privacy Commissioner should be empowered to order the removal of the whole communication group and impose a penalty with deterrent effect for non-compliance with the order.

17. The Administration advised that its legislative proposal would expedite PCPD's processing of doxxing cases, as the Privacy Commissioner would be empowered to serve a Rectification Notice on any person to rectify the offensive contents by a deadline when it had reasonable grounds to believe a doxxing offence had been committed without going through court proceedings. The Administration further advised that it would be an offence to contravene a Rectification Notice, and the proposed penalty was a fine of \$50,000 and imprisonment for two years on a first conviction; and a fine of \$100,000 and imprisonment for two years on the second or subsequent conviction. The recipients of the Rectification Notice could lodge an appeal to the Administrative Appeals Board against the Rectification Notice under the proposed appeal mechanism.

18. The Privacy Commissioner acknowledged that PCPD had encountered difficulties in requesting overseas platforms to remove web links related to doxxing contents. The Privacy Commissioner believed that with the legislative amendments, overseas online platforms would be more cooperative with PCPD, as most of them had a policy that the contents of the platforms should comply with the requirements of local legislation. The Privacy Commissioner informed members that the Bill was being drafted by DoJ, and the rectification powers to be given to the Privacy Commissioner could be drafted in broad terms. The Administration undertook to study the views and concerns expressed by members.

#### Impact on news activities

19. Concern was raised as to whether the legislative amendments proposed by the Administration might hamper the revelation of information in the public interest and the work of journalists. The Administration advised that the current statutory defences provided under section 64(4) of PDPO would remain unchanged in essence, and the defence in relation to the disclosure of personal data for the purpose of news activities provided under section 64(4)(d) of PDPO would still be effective. The Administration also confirmed that the exemptions under section 61 of PDPO, namely, publishing or broadcasting personal data for the purposes of news activities which were in the public interest, would remain unchanged.

**Relevant papers**

20. A list of the relevant papers available on the LegCo website is in the **Appendix**.

Council Business Division 4  
Legislative Council Secretariat  
5 August 2021

**Relevant documents on  
Bills Committee on Personal Data (Privacy) (Amendment) Bill 2021**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	17.5.2021 (Item III)	<a href="#">Agenda</a>

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