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Hon Yung Hoi-yan, JP
Room 805, Legislative Council Complex
1 Legislative Council Road
Hong Kong

23 August 2021

Dear Hon Yung Hoi-yan,

**Request the Government to consider amending the proposed
Division 4 of Part 9A of the Personal Data (Privacy)
(Amendment) Bill 2021 – defence in relation to cessation
notice under section 66O(2)(b)(iv)**

I refer to your letter dated 9 August 2021 to Hon Alice MAK, Chairperson of the Bills Committee on Personal Data (Privacy) (Amendment) Bill 2021 (“**the Bill**”). Having consulted the opinion of the Department of Justice (“**DoJ**”) and the Office of the Privacy Commissioner for Personal Data, our reply is as follows:

The proposed cessation notice mechanism under the Bill aims at removing doxxing messages expeditiously, so as to reduce the harm caused to data subjects and their family members. Under the proposed section 66M of the Bill, if the Privacy

Commissioner for Personal Data (“**the Commissioner**”) has reasonable ground to believe that (i) there is a “subject message” as defined in the proposed section 66J; and (ii) a person (i.e. a Hong Kong person or (for an electronic message) a non-Hong Kong service provider (e.g. an operator of an online service platform)) is able to take a cessation action in relation to the message, the Commissioner may serve a cessation notice on the person. The person who received the notice must comply with the requests of the notice. On the other hand, the Bill has provided proportionate defences for the person on whom the cessation notice is served, including the “reasonable excuse” under the proposed section 66O(2)(a) and the four specified circumstances under the proposed section 66O(2)(b).

It is pointed out in your letter that the scope of the defence provided under the proposed section 66O(2)(b)(iv)¹ is too wide which apparently undermines the Commissioner’s power to issue, and capability to enforce, the cessation notice. In this regard, we note that a defence similar to the one provided under the proposed section 66O(2)(b)(iv) cannot be found in other legislation in Hong Kong. On the contrary, similar provisions provide for immunity applicable in specified circumstances, which include:

(i) **Section 380(3) of the Securities and Futures Ordinance (Cap. 571) – Immunity**

“(3) A person who complies with a requirement made under any provision of this Ordinance shall not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, to any person by reason only of that compliance.”

¹ The proposed section 66O(2)(b)(iv) provides that it is a defence for a person charged with an offence under the proposed section 66O(1) in respect of a cessation notice to establish that it was not reasonable to expect the person to comply with the cessation notice because there was a risk of incurring a civil liability arising in contract, tort, equity or otherwise.

(ii) Sections 54(1) & (2) of the **Financial Reporting Council Ordinance** (Cap. 588) – Immunity

“(1) A person who complies with a specified requirement does not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, by reason only of the compliance.

(2) A person does not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of anything done, or omitted to be done, by the person in good faith in the performance, or purported performance, of any function under this Ordinance.”

Having examined the above legal provisions, we note that if a similar immunity is introduced to the Bill, it can offer protection to the person on whom the cessation notice is served, that is to exempt the person from incurring potential civil liability to third parties arising from compliance with that notice.

The proposed cessation notice aims at removing doxxing messages expeditiously so as to reduce any harm caused to the data subjects and their family members. We agree, after consideration, with your views on the defence under the proposed section 66O(2)(b)(iv). By making reference to the other legal provisions which provide immunity from civil liability, we believe this would ensure the doxxing message be removed in an expeditious manner while protecting the recipient of the cessation notice from potential civil liability arising from compliance with the cessation notice. This approach is preferred to the defence originally provided under the proposed section 66O(2)(b)(iv) of the Bill.

We will further study the proposed draft amendments to the Bill with the DoJ, such that the Bill can more effectively protect the personal data privacy of the public.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jacky Lum', with a long horizontal stroke extending to the right.

(Jacky LUM)

for Secretary for Constitutional
and Mainland Affairs