

政制及內地事務局  
政府總部

香港添馬添美道2號  
政府總部東翼

YOUR REF : CB4/BC/10/20  
OUR REF : CMAB/CR/7/22/45  
TEL NO. : 2810 2681  
FAXLINE : 2523 0565



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU  
GOVERNMENT SECRETARIAT

EAST WING  
CENTRAL GOVERNMENT OFFICES  
2 TIM MEI AVENUE, TAMAR  
HONG KONG

Secretary General  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Hong Kong  
(Attn: Ms Angel Wong)

9 September 2021

Dear Ms Wong,

**Bills Committee on  
Personal Data (Privacy) (Amendment) Bill 2021  
Written Submissions from the Public**

Thank you for your letter of 26 August 2021 relaying to us the written submissions from the public on the Personal Data (Privacy) (Amendment) Bill 2021 (“the Bill”). In consultation with the Department of Justice (“DoJ”) and the Office of the Privacy Commissioner for Personal Data (“PCPD”), our consolidated response is as follows:

**Create offences to curb doxxing acts**

In order to combat doxxing acts and protect personal data privacy, we propose introducing doxxing offences under a two-tier structure in the Personal Data (Privacy) Ordinance (“PDPO”). The first-tier offence is a summary offence for disclosing personal data without the data subject’s relevant consent, where the discloser has an intent to cause any specified harm, or is being reckless as to whether

any specified harm would be, or would likely be, caused, to the data subject or his or her family member of the data subject. The second-tier offence is an offence triable upon indictment which is committed if, in addition to the elements of the first-tier offence, any specified harm is caused to the data subject or his or her family member as a result of the disclosure of personal data. Even though the personal data is disclosed in private context, a doxxing offence may be committed if the data subject's relevant consent is not obtained and the abovementioned "intent" or "recklessness" element of the offence is proved.

Any person who commits the first-tier doxxing offence is liable on summary conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for two years; any person who commits the second-tier doxxing offence is liable on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for five years. As for which one of the two-tier doxxing offences is to be prosecuted, it is determined by reference to whether the disclosure has caused any specified harm to the data subject or any family member of the data subject. This is not a rare practice and is not unique in the Bill. There are similar practices in other local legislation. For example, under the Offences against the Person Ordinance (Cap. 212), in a case involving assault, the appropriate charge to be prosecuted is also determined by reference to whether any bodily harm is occasioned, which reflects the severity of the case.

Elements of the offence including "intent" or "recklessness" are also seen in other local legislation. Take the Offences against the Person Ordinance (Cap. 212) as an example. Any person who unlawfully and maliciously, by any means whatsoever, wounds or causes any grievous bodily harm to any person with intent to do grievous bodily harm to any person, commits an offence. It is also provided in the Crimes Ordinance (Cap. 200) that any person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being

reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence; as for the adoption of “would likely be”, reference has been made to provision in relation to offence of false trading in the Securities and Futures Ordinance (Cap. 571).

The definition of “specified harm” is largely consistent with the wording used in the injunction orders obtained earlier by the Secretary for Justice from the High Court to restrain doxxing acts, including elements such as “harassment”, “molestation”, “pestering”, “threat” and “intimidation”. As for the element of “psychological harm”, the court must be satisfied that the data subject or the family member of the data subject has suffered psychological harm. Psychological report or medical certificate of that person would be relevant evidence.

In the Bill, “family member”, in relation to a person, means another person who is related to the person by blood, marriage, adoption or affinity. It shares the same definition of “family member” adopted in some other legislation such as the definition in the Electronic Health Record Sharing System Ordinance (Cap. 625).

The defences, including preventing or detecting crime and disclosure for the purpose of a news activity, are set out in section 64(4) of the PDPO. No change is introduced to those defences, and lawful news activities in the public interest are still covered by the defence under section 64(4) of the PDPO.

### **Empower the Privacy Commissioner for Personal Data (“the Commissioner”) to carry out criminal investigations and institute prosecution**

Currently, the PCPD does not have criminal investigation and prosecution powers in handling criminal cases under the PDPO. It can only refer all such cases to the Police, and to the DoJ to institute

prosecution. To step up the enforcement actions against doxxing offences, there is a need to empower the PCPD to carry out criminal investigations and to institute prosecution, so as to strengthen the protection of personal data privacy.

On criminal investigation powers, we propose that the Commissioner may require any person (including but not limited to doxxers) to provide relevant documents, information or things, or to answer relevant questions for the purposes of an investigation into doxxing-related offences. To ensure the investigation powers of the Commissioner are exercised effectively, the Commissioner's requirement for the provision of relevant information should not be restricted to only suspected doxxers. In line with the general procedures for criminal investigation, any person who can offer assistance should co-operate with the investigation. The criminal investigation powers of the Commissioner provided in the Bill are similar to the powers under other legislation such as the Securities and Futures Ordinance (Cap. 571) and the Competition Ordinance (Cap. 619). The Bill imposes limitations on the use of the relevant incriminating evidence in criminal proceedings. Generally speaking, on or before requiring persons suspected of having committed doxxing and doxxing-related offences to give an answer to a question, the Commissioner will first remind them of these limitations. The Commissioner or the Police may subsequently use the answer given by the person to collect evidence through other indirect means (e.g. requesting a certain online platform to provide information after the informant advised that a doxxing message was disseminated in the said platform) and to institute prosecution upon collection of evidence.

Any person who (a) without reasonable excuse fails to comply with the Commissioner's requirement to provide documents, information, things or to answer relevant questions; or (b) with an intent to defraud, fails to comply with such a requirement, or provides any document, information, thing, answer statement that is false or misleading in a material particular, commits an offence. We would

like to point out that a person may commit the offence mentioned in item (b) above if the person intentionally makes any false claim that the documents, information or things do not exist, thereby misleads the Commissioner's investigation. This is similar to the position in section 184 of the Securities and Futures Ordinance (Cap. 571). It is a defence for a person if he/she has a reasonable excuse for not complying with the requirement of the Commissioner.

The Commissioner or a person authorised by the Commissioner may stop, search and arrest a person without a warrant, if the person is reasonably suspected to have committed doxxing-related offences. After an arrest is made, the Commissioner or the person authorised by the Commissioner may search for and take possession of anything that may throw light on the character or activities of the arrested person. In adopting this approach, reference has been made to other local legislation, such as section 17A of the Customs and Excise Service Ordinance (Cap. 342). In addition, because the majority of doxxing cases involve electronic devices and the evidence stored inside such devices may be removed by remote means, we propose that, if Commissioner reasonably suspects that a relevant offence has been, is being or is about to be committed and reasonably suspects that relevant evidence is stored in an electronic device, and if the situation is one of emergency where an application for a warrant is not reasonably practicable, the Commissioner may access the electronic device without warrant.

The Commissioner, a person employed or engaged by the Commissioner (prescribed officer), a person authorised by the Commissioner and any person assisting the Commissioner or a prescribed officer must maintain secrecy in respect of all matters that come to their knowledge in the course of exercising their powers to carry out investigations and take enforcement actions on doxxing-related cases. Legal professional privilege is a fundamental right under the common law. Depending on the circumstances, documents, information or things requested by the Commissioner may

be protected by legal professional privilege.

**Confer on the Commissioner statutory powers to demand the cessation of disclosure of doxxing-related contents**

In respect of cessation notice, the Commissioner will only serve cessation notices on persons who are able to take cessation actions in relation to doxxing messages. As for electronic messages, depending on the circumstances of the case, the Commissioner will serve a cessation notice on the individual or entity concerned (e.g. an operator of an online service platform), including non-Hong Kong service providers. Moreover, a cessation notice will not be served on the employees of a non-Hong Kong company's subsidiary in Hong Kong if the Commissioner is satisfied that the employees are unable to take cessation actions. If an appeal is lodged with the Administrative Appeals Board against a cessation notice, it will not affect the operation of the cessation notice. This is because it is very likely that the doxxing message has already caused specified harm to the data subject or the family member of the data subject, thus making it necessary to promptly remove the message or cease the disclosure or restrict the access to the doxxing message by any person. The cessation notice targets doxxing messages. It is clear in scope, focused and target-specific, and the regime has already struck a proper balance between the protection of personal data privacy and freedom of speech.

It is worth mentioning that while it is a defence for a person who has a reasonable excuse for not complying with a cessation notice, any person who obstructs the Commissioner or a prescribed officer in exercising his/her powers in relation to entry into and search against premises, or search powers in relation to electronic devices, or the powers to stop, search and arrest persons would need to have a lawful excuse for establishing a defence. This is because there is often urgency for the Commissioner to collect evidence at the scene when exercising the second-mentioned powers to stop, search and arrest

persons. As such, a lawful excuse (rather than a reasonable excuse) is considered to be necessary for any person to establish a defence for obstructing, hindering or resisting the Commissioner.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jacky Lum', written in a cursive style.

p.p. (Jacky LUM)  
for Secretary for Constitutional  
and Mainland Affairs