

立法會
Legislative Council

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by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 17 May 2021, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon Holden CHOW Ho-ding (Chairman)
Hon Kenneth LAU Ip-keung, BBS, MH, JP (Deputy Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-yeet, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS
Hon MA Fung-kwok, GBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung, JP
Dr Hon CHENG Chung-tai
- Member absent** : Hon CHUNG Kwok-pan

Public Officers : Item III
attending

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

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

Mr Jacky LUM Kwok-keung
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Office of the Privacy Commissioner for Personal Data

Ms Ada CHUNG Lai-ling
Privacy Commissioner for Personal Data

Mr Dennis NG Hoi-fung
Senior Legal Counsel (Acting)

Ms Amy CHAN Mei-yee
Chief Personal Data Officer

Clerk in : Mr Colin CHUI
attendance Chief Council Secretary (4)3

Staff in : Mr Bonny LOO
attendance Senior Assistant Legal Adviser 3

Ms Clara WONG
Assistant Legal Adviser 4

Ms Macy NG
Senior Council Secretary (4)3

Miss Natalie YEUNG
Council Secretary (4)3

Miss Ariel SHUM
Legislative Assistant (4)3

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I. Information paper(s) issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

[LC Paper Nos. CB(4)974/20-21(01) and (02)]

2. Members agreed to discuss the following items proposed by the Administration at the next meeting on 21 June 2021 at 2:30 pm:

- (a) Practical arrangements for the 2021 Election Committee Subsector Elections; and
- (b) Guidelines on Election-related Activities in respect of the Election Committee Subsector Elections to be issued by the Electoral Affairs Commission.

III. Proposed amendments to the Personal Data (Privacy) Ordinance (Cap. 486)

[LC Paper Nos. CB(4)974/20-21(03) and (04), and CB(4)992/20-21(01)]

3. At the invitation of the Chairman, Secretary for Constitutional and Mainland Affairs ("SCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(4)974/20-21(03)].

Adding a proposed offence to curb doxxing acts

General views

4. Given the great harm caused to the victims by doxxing acts in the society in recent years, the Chairman, Mr LUK Chung-hung, Ms Elizabeth QUAT, Ms Alice MAK, Mr Jimmy NG, Mr MA Fung-kwok, Dr Priscilla LEUNG, Dr Junius HO, Mr Jeffrey LAM and Mr WONG Ting-kwong indicated support to the Administration's legislative proposal which aimed to introduce an offence under section 64 of the Personal Data (Privacy) Ordinance (Cap.486) ("PDPO") to curb doxxing acts. Dr Junius HO considered that a definition on doxxing acts should be given in the legislation. SCMA agreed to study Dr HO's view.

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5. Noting that the proposed penalties for conviction on indictment and for summary conviction were different, Mr MA Fung-kwok asked about the differences between the two kinds of prosecution.

6. Privacy Commissioner for Personal Data ("Privacy Commissioner") advised that according to the Prosecution Code of the Department of Justice ("DoJ"), the prosecution would consider a basket of factors, including but not limited to the severity and the nature and circumstances of the offence, in deciding whether the case should be triable on indictment, mostly in the District Court, or summarily in the Magistrates' Court.

7. Dr CHENG Chung-tai raised concern that the legislative amendments proposed by the Administration might hamper the revelation of information in the public interest and the work of journalists. The effect was, in his view, protecting the revelation of the unlawful acts of the rich and powerful group of persons.

8. Disagreeing with Dr CHENG's view, SCMA explained that the intent of the legislative proposal was to combat doxxing acts in order to protect the personal data privacy of all Hong Kong people. Any person who committed the proposed doxxing offence would be subject to prosecution.

9. Dr Priscilla LEUNG asked whether 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 still apply after enactment of the Administration's proposed legislative amendments. SCMA advised that the current statutory defences provided under section 64(4) of PDPO would remain unchanged and the defence in relation to the disclosure of personal data for the purpose of news activity provided under section 64(4)(d) of PDPO would still be effective. SCMA also confirmed that no amendment would be made to section 61.

Threshold to convict doxxers

10. Ms Elizabeth QUAT considered that the threshold to convict doxxers as set out in paragraph 10 of the Administration's paper was too high. As a result, it would be difficult to convict a person who had performed doxxing acts and the legislative intent to combat the acts could not be established. She opined that the requirement of proving that the doxxing acts had caused psychological harm to the data subject or any

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immediate family member was onerous and unnecessary. She elaborated that politicians and police officers might demonstrate a higher degree of resilience with no apparent psychological harm caused to them. Despite the fact that they might be threatened or intimidated, given their training and background, they might still be able to cope with the situation. Concurring with Ms QUAT, the Chairman considered that the threshold for convicting doxxers should be relatively low in order to achieve a deterrent effect.

11. In response, SCMA said that the Constitutional and Mainland Affairs Bureau had discussed the elements of the proposed doxxing offence with DoJ and the Office of the Privacy Commissioner for Personal Data ("PCPD"). He explained that doxxing was a serious offence. Given that the proposed maximum penalty would be five years' imprisonment and a \$1,000,000 fine, the elements of the offence should require both malicious intent and actual harm to be proportionate to the gravity of the penalty. He added that whilst aiming at curbing doxxing, the Administration also needed to consider the possible impact on the general public as sharing information on social media was very common in the society.

12. The Privacy Commissioner supplemented that according to the experience of PCPD, when there were quarrels between couples or family members, some people might disclose the personal data of the other party without his/her consent. If there was no requirement of causing psychological harm to the data subject, the scope of the offence might be too wide and people might be caught by the new offence inadvertently.

13. Ms Elizabeth QUAT and Ms Alice MAK were not convinced by the above explanation. They considered that irrespective of whether psychological harm was caused to the victim, disclosing personal data without the consent of the data subject was illegal, though a lighter penalty might be imposed for less serious cases.

14. Mr Jimmy NG suggested imposing a two-tier penalty to address the concerns over the high conviction threshold. He proposed that those who disclosed 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 meet the requirements set out in paragraph 10 of the Administration's paper, such as having an intent to threaten, intimidate or harass the data subject or causing 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.

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15. The Chairman made a similar suggestion. He suggested that those who were proved to have an intent to threaten, intimidate or harass, or have an intent to cause psychological harm to the data subject or any immediate family member in committing the doxxing act would be liable to a lighter penalty, say imprisonment for two years; and that those who were also proved to have actually caused psychological harm to the data subject or any immediate family member would be subject to a heavier penalty, say imprisonment for five years.

16. SCMA noted the above views and undertook to study the relevant suggestions.

17. Mr LUK Chung-hung asked whether people would be liable for reposting doxxing contents. SCMA advised that forwarding or sharing messages containing personal data without the data subject's consent might constitute unlawful disclosure of personal data and the person concerned would be criminally liable under the legislative proposal. The Privacy Commissioner supplemented that the person concerned might be liable for being reckless as to the consequences of forwarding or reposting doxxing contents.

18. Dr CHENG Chung-tai considered 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. Whilst agreeing to setting a conviction threshold, he was concerned that the requirements contained in paragraph 10 of the Administration's paper were nearly the same as those for criminal intimidation under the Crimes Ordinance (Cap. 200). In other words, the person who had committed the doxxing acts might be subject to double penalties under different legislation, and might be subject to political prosecution easily.

19. SCMA responded 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 liable on conviction to a fine of \$1,000,000 and imprisonment for five years. He added that the offences under PDPO and Cap. 200 were totally different and could not be compared. He reiterated that any person who committed the proposed doxxing offence would be subject to prosecution under the law, and the enforcement action had nothing to do with politics.

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20. The Privacy Commissioner supplemented that the elements of the proposed offence to curb doxing were different from those of criminal intimidation under Cap. 200. PCPD would only consider instituting a prosecution if all the elements of the offence contained in paragraph 10 of the Administration's paper were met.

Proof of malicious intent

21. Mr LUK Chung-hung, Ms Elizabeth QUAT and Mr Jeffrey LAM enquired how the legislation, if amended, would be enforced if the disclosure was made in an ironic way without obvious intent, or without inciting other people to threaten or harass the data subject. Dr Priscilla LEUNG considered that it might be difficult to prove that the person performing doxing acts had malicious intent in the aforesaid circumstances. She asked whether the Administration would consider handling those cases under the common law.

22. In response, SCMA said that the prosecutor and the court would consider the actual circumstances and evidence to judge whether there was a malicious intent for the doxing acts. He added that apart from having a malicious intent, being reckless as to the consequences caused by doxing acts was also an element of the offence under the legislative proposal.

Empowering the Privacy Commissioner to carry out criminal investigation and prosecution

23. Dr CHENG Chung-tai was concerned about the proposed legislative amendment to empower the Privacy Commissioner to carry out criminal investigation and prosecution. He considered that the legislative intent was to enable PCPD to protect personal data privacy through monitoring the compliance situation of financial institutions or the Government with a view to preventing their leakage of personal data but not prosecuting individuals.

24. Ms Alice MAK and Mr Jimmy NG asked whether additional resources would be allocated to PCPD for carrying out the additional duties, including criminal investigation and prosecution, after the relevant Bill had been passed by the Legislative Council ("LegCo").

25. SCMA and the Privacy Commissioner replied that funding would be sought through the established mechanism for carrying out the

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additional work. The Privacy Commissioner added that before the availability of funding, PCPD would set up a team through internal redeployment to carry out the work on criminal investigation and prosecution. As part of the preparatory work, the team would also liaise closely with the Police for provision of suitable training for PCPD staff.

26. Dr Priscilla LEUNG asked whether PCPD would carry out criminal investigation and prosecution proactively without receiving a complaint, and whether a complainant could lodge a complaint easily by filling out a form. The Privacy Commissioner advised that a complainant could fill out a complaint form supplied by PCPD or write to PCPD to lodge a complaint. The Privacy Commissioner also confirmed that enforcement actions would be taken proactively whenever necessary.

Empowering Privacy Commissioner to demand rectification of doxxing contents

Feasibility of requesting overseas online platforms to remove doxxing contents

27. Mr LUK Chung-hung noted that upon receipt of doxxing-related complaints or discovery of doxxing contents, PCPD would write to the online platforms to request them to remove the relevant hyperlinks, but there were about 30% non-compliance cases. He asked about the reasons for the non-compliance. He and Ms Elizabeth QUAT were also concerned about how PCPD would request those online platforms to remove the hyperlinks if the platforms were registered overseas.

28. The Privacy Commissioner admitted that sometimes it took time for online platforms to remove the doxxing web links. In some cases, even though the web links had been removed, the doxxing contents were published again and PCPD had to write to the online platforms again. Over the past couple of months, most of the online platforms were cooperative in acceding to PCPD's requests for removal of doxxing contents. In case some online platforms had not responded to PCPD's request, PCPD would try other means to remove the doxxing web links, such as writing to the host service providers of the websites concerned, the registration companies of the relevant domain names, or the overseas data protection authorities. In the PCPD's experience, the overseas data protection authorities were always cooperative and some had even advised PCPD that they would continue to monitor the matter for PCPD.

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29. SCMA supplemented that under the current legislative proposal, 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. Further, if the overseas online platforms had operational or management staff in Hong Kong, the Privacy Commissioner could also request removal of the doxxing web links.

30. Dr Priscilla LEUNG pointed out that at present, law firms could issue a letter to the host of the relevant overseas website requesting it to remove offensive contents such as defamatory materials under the common law. She supported the proposal to hold the host of a website responsible for the website's publication of doxxing contents.

31. The Chairman shared the concerns of other members 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. He considered that the legislative amendments should address the above concerns. SCMA undertook to study members' views in this regard.

Proposal to block a website or online platform with doxxing contents

32. Ms Alice MAK, Ms Elizabeth QUAT and Dr Priscilla LEUNG 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 doxxing purposes. Mr Jeffrey LAM considered that the above power could apply to serious doxxing cases and not limited to repeated offences. Ms Alice MAK further suggested that the Privacy Commissioner should also block the website if the operator of the relevant overseas registered online platform could not be reached, and the legislation should also specify the procedures required for blocking the relevant website.

33. Mr MA Fung-kwok 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.

34. Mr LUK Chung-hung, Ms Elizabeth QUAT and Mr CHEUNG Kwok-kwan were concerned about whether the legislative proposal could effectively deal with doxxing acts performed through

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individual instant messaging platforms, as doxxing contents could be spread and reposted in a click. Ms QUAT pointed out that there had been communication groups established solely for the purpose of doxxing. She considered that PCPD 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, and the last resort was to disallow such platforms to operate in Hong Kong.

35. Mr WONG Ting-kwong considered that the proposed legislative amendments could not fully address the need to promptly remove the personal data being disclosed and hoped that the Administration would improve the proposal so as to better protect the victims. He also hoped that the duration allowed for compliance with the Rectification Notice should be as short as possible.

36. In response, SCMA said that the 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. He added 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 at \$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.

37. The Privacy Commissioner supplemented that currently, the PCPD encountered difficulties in requesting overseas platforms to remove web links related to doxxing contents. She 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. She added that the Amendment Bill was being drafted by DoJ, and the rectification powers to be given to the PCPD could be drafted in broad terms.

38. Dr Junius HO considered that the maximum penalty for non-compliance with the Rectification Notice should be on par with that for the offence of doxxing so as to give a deterrent effect. SCMA undertook to study Dr HO's view.

Improving other aspects of the Personal Data (Privacy) Ordinance (Cap. 486)

39. Whilst agreeing that combating doxxing acts took precedence, Ms Alice MAK considered that other aspects of PDPO should also be amended. To solve the problem of spreading or forwarding personal data through Whatsapp, she considered that any changes to PDPO to target doxxing should also be made in tandem with amendments that would require users of pre-paid SIM cards to register, so that perpetrators could be more easily identified. In addition, she considered that PDPO should be amended such that organizations would be liable for personal data breaches so as to address the previous personal data leakage incidents of the Hospital Authority and airlines. She also considered that every organization should be required to assign a designated person to ensure full compliance with PDPO, and not every staff member of an organization could have unrestricted access to the personal data of clients.

40. SCMA advised that the current legislative amendments were only part of the overall review of PDPO. PDPO had been enacted for years and there was a need to bring the relevant provisions up-to-date. However, in view of the significant number of doxxing incidents since mid-2019, the Administration would first tackle the more imminent problem of doxxing which intruded into personal data privacy. The Administration would consult relevant stakeholders on other amendments to PDPO, which would be submitted for consideration by LegCo as soon as possible, though it might not be within the current term of LegCo. The suggestion that a designated person should be assigned for protecting personal data privacy in an organization would be included in the review.

41. As for the proposal on the registration of users of pre-paid SIM cards, SCMA advised that the relevant policy bureau was studying the proposal. It was hoped that the proposal would be submitted to LegCo for examination as soon as possible. He also undertook to forward Ms MAK's view to the relevant policy bureau for consideration.

42. Dr Priscilla LEUNG considered that in line with the international practice, the Privacy Commissioner should be conferred the power to impose administrative penalties to cater for the less serious offences. The Privacy Commissioner said that the possible imposition of administrative fines would be included in the overall review of PDPO.

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IV. Any other business

43. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 4
Legislative Council Secretariat
6 August 2021