

**Update on the Work
of the Office of the Privacy Commissioner for Personal Data**

Members were last briefed at the meeting of the Legislative Council Panel on Constitutional Affairs (the “Panel”) on 16 May 2011 by the Privacy Commissioner for Personal Data (“the Commissioner”) on the accomplishments of the Office of the Privacy Commissioner for Personal Data (“PCPD”). This paper serves to update Members of PCPD’s work in 2011.

Enforcement

Complaints

2. In 2011, 1,486 complaint cases were received, which represent an increase of 26% on the number of cases received in 2010 (1,179) and an increase of 48% on that of 2009 (1,001). Of these complaints, 1,101 cases were made against the private sector, 131 against the public sector/government departments and 254 against individuals. Of the complaints made against the private sector, financial institutions ranked highest in the number of complaints received (200 cases), followed by property management (137 cases) and telecommunications (122 cases).

3. With regard to the nature of complaints, the highest number of complaints related to the purpose and manner of data collection (723 cases), followed by complaints about the use of personal data without the consent of data subjects (681 cases), data security (223 cases), accuracy and duration of retention (125 cases), and use of personal data for direct marketing (119 cases). The figures of the first four items are higher than those of 2010, reflecting a rise in public awareness of personal data privacy protection. On the contrary, the number of cases on the use of personal data for direct marketing purposes has decreased from 157 in 2010 to 119 in 2011, which may represent an improvement in the practices of the relevant industry players.

Compliance checks and self-initiated investigations

4. The Commissioner carried out 154 compliance checks in 2011 to review the practices of data users suspected or alleged of contravening the Personal Data (Privacy) Ordinance (the “Ordinance”) and urged them to take

appropriate remedial measures. This represents an increase of 21% on the figure of 127 compliance checks carried out in 2010. In addition, the Commissioner conducted 11 self-initiated formal investigations in 2011, compared with eight such investigations in 2010.

Investigation results

5. In 2011, the Commissioner issued one enforcement notice, directing the data user concerned to take steps to remedy the contravention. In 224 cases, the Commissioner issued warning letters and provided advice or recommendations to data users complained against. In 15 cases, the Commissioner accepted written undertakings by data users complained against to take steps to rectify the contraventions.

6. In addition, the Commissioner published eight investigation reports in 2011. This compares with 15 investigation reports published previously since the Ordinance came into effect in 1996. More frequent publication of investigation reports, coupled with the new practice adopted since June 2011 to name the corporate data user which has contravened the legal requirements, has effectively served to invoke the sanction and discipline of public scrutiny and discouraged non-compliant behavior on the part of the data user being the subject of investigation and other data users facing similar investigation issues.

Inspection

7. In 2011, PCPD completed an inspection of the personal data system of the Trial Scheme on School Drug Testing in Tai Po District. A Report on the inspection is expected to be published by 30 April 2012.

Prosecution

8. In 2011, 12 contravention cases were referred to the Police for consideration of prosecution. In the same period, in 4 cases the data users complained against were convicted of contravening sections 34(1) and 64(10) of the Ordinance for making repeated telemarketing calls despite the complainants' opt-out request. Compared with 10 convictions in all since 1996 when the Ordinance came into effect, this is a considerable achievement.

Review of the Ordinance

9. In response to the release of the Report on Further Public Discussions on Review of the Ordinance on 18 April 2011 by the Administration, the PCPD made a submission to the Administration and the Panel on 31 May 2011. In particular, the PCPD raised its concerns on several crucial flaws in the Administration's implementation proposals regarding collection and use of personal data in direct marketing as well as unauthorized sale of personal data by data users. Details can be found in LC Paper CB(2)1949/10-11(01) at <http://www.legco.gov.hk/yr10-11/english/panels/ca/papers/ca0516cb2-1949-1-e.pdf>.

10. On 13 July 2011, the Administration introduced the Personal Data (Privacy) (Amendment) Bill (the "Amendment Bill") to the Legislative Council for its first and second reading. A Bills Committee was set up to examine the Amendment Bill.

11. The Commissioner attended the Bills Committee meeting on 26 November 2011. He has made the following submissions to the Bills Committee and met individually most members of the Committee to explain PCPD's positions:-

LC Paper No.	Paper	Bills Committee Meeting Date
CB(2)263/11-12(01)	Detailed Submission on the Bill	8 November 2011 26 November 2011
CB(2)500/11-12(02)	Commissioner's standpoint on the issues raised at the meeting of 26 November 2011	7 December 2011
CB(2)596/11-12(01)	Comments on specific clauses of the Bill	13 December 2011

He has also exchanged views with the Administration and the representatives of most of the organisations which had made submissions to the Bills Committee, namely, the Hong Kong Direct Marketing Association, the Hong Kong Federation of Insurers, the Hong Kong Association of Banks and the Hong Kong Call Centre Association.

12. The Commissioner noted that the Administration has allayed most of his concerns by proposing changes to the provisions in the Amendment Bill regulating the use of personal data in direct marketing and sale of personal data, as outlined in LC Paper No. CB(2)1169/11-12(01) (www.legco.gov.hk/yr10-11/english/bc/bc58/papers/bc580224cb2-1169-1-e.pdf) issued on 22 February 2012.

Data User Returns Scheme (“DURS”)

13. PCPD issued a consultation document in July 2011 which sets out the operational framework and implementation plan of the DURS. On this basis, briefings were made to and views collected from the industries which will be regulated when the DURS is first launched, namely, the public sector, banking, telecommunications and insurance. A consultancy study is underway to consider the feasibility of including in the initial regulatory regime organisations with a large membership database (e.g. customer loyalty schemes). The crucial issue to be resolved is to formulate a definition for this class of data users so that whether a data user belongs to this class can be decided with certainty.

Enquiries and response to consultations

14. In 2011, PCPD received a total of 18,680 enquiry cases, a rise of 4% as compared with 18,000 cases in 2010. They were mainly concerned with employment practice, data access requests, use of personal data in direct marketing, and collection of ID card numbers or copies.

15. During the same year, PCPD provided detailed comments in response to consultations from various government bureaux and departments covering a wide range of subjects, and made submissions on various proposed legislative or administrative measures that have an impact on personal data privacy. Details are set out in **Annex A**.

Regional and global data protection activities

16. PCPD is a member of the Asia Pacific Economic Cooperation (“APEC”) Cross-Border Privacy Enforcement Arrangement (“CPEA”) which comprises the major Privacy Enforcement Authorities from APEC member economies. Membership of CPEA stood at 20 by the end of December 2011. The CPEA facilitates information sharing among members and promotes cross-border co-operation in privacy law enforcement, including through referrals of matters and through parallel or joint investigation or enforcement actions.

17. In 2011, PCPD continued to participate actively in the work of the Data Privacy Subgroup of the APEC Electronic Commerce Steering Group. It helped the subgroup finalise the rules and procedures of the APEC Cross Border Privacy Rules System and prepare for the establishment of a Joint Oversight Panel to implement the system.

Operation of Section 33 of the Ordinance

18. To assist the Administration to carry out a stakeholder consultation to assess the impact of the implementation of section 33 of the Ordinance, PCPD is undertaking a tender exercise for engaging a consultant to provide the following:-

- (a) advice on whether Hong Kong’s principal trading partners have in force any law which is substantially similar to, or serves the same purposes as, the Ordinance;
- (b) recommendations on the model contract or model contract clauses to be used by data users transporting personal data outside Hong Kong, in order to comply with section 33; and
- (c) recommendations on compiling a guidance note for data users on transfer of personal data to a place outside Hong Kong and resolving the anticipated implementation issues of cross-border transfer.

19. The selected consultant is expected to deliver its work by December 2012.

Promotion and education activities

20. To promote the awareness and understanding of, and compliance with the provisions of the Ordinance, PCPD has continued to embark on a number of promotional and educational initiatives.

Seminars and workshops

21. In 2011, PCPD conducted a total of 264 seminars and workshops (with a total audience of over 21,000), representing an increase of 132% over that of the previous year. Free introductory seminars on personal data protection continued to be held for the public with the frequency increased from once to three times per month since February 2011. Seminars educating the public on data protection in the use of Internet and advanced communications products, including social networking were introduced in March 2011 and they have been held once per month.

22. During the year, PCPD launched professional workshops on data protection tailored to the needs of executives dealing with personal data in different work contexts. They cover the subject areas of marketing, property management, human resource management, I.T. management, handling data access request, banking operations, financial services and insurances. This compliance workshop series is the first of its kind in Hong Kong. 52 workshops were held in 2011. The initiative has the support of 26 professional organizations and trade associations.

Inculcating the youth with the notion of privacy and personal data protection

23. The youth is a primary target of PCPD's community engagement programme. The Liberal Studies Teaching Kit launched in October 2011 was designed to incorporate privacy and personal data protection concepts in Liberal Studies and Other Learning Experience under the New Senior Secondary curriculum. Under a student ambassadors scheme, PCPD

organized privacy awareness promotional activities in 31 secondary schools, and involved over 700 students.

24. A University Privacy Day programme has been launched since October 2011. This is a first-of-its-kind on-campus educational programme on promotion of privacy and data protection designed for staff and students of 10 universities and tertiary educational institutions in Hong Kong.

Data Protection Officers' Club

25. The Data Protection Officers Club is a forum organized by PCPD for personal data officers from a broad range of organizations to exchange views and experiences on compliance with the Ordinance. Membership stood at 386 as at 31 December 2011. PCPD continued to update members of the club of the latest developments of PCPD and privacy issues, particularly matters regarding the applications of the Ordinance.

Publications

26. PCPD stepped up its efforts to publish guidance notes, information leaflets and other publications in specialized areas and on topical issues of public interest. A list of these publications issued in 2011 is at **Annex B**.

Other promotional programmes

27. Other promotional programmes conducted in 2011 include:-

- (a) Privacy Awareness Week (May 2011) – an annual event which comprised a week's intensive promotion activities aimed to raise general awareness of privacy and data protection. One highlight was an online programme reminding people to take care with what they shared online and familiarize themselves with the social networking sites' privacy policies and settings.

- (b) Industry-specific campaign (September 2011 – March 2012) – for telecommunication practitioners with a view to raising their awareness of the importance of protecting customers’ personal data.

Highlights of the 2012 Work Plan

28. The Commissioner expects that the Legislative Council will complete the review of the Amendment Bill and implement the amendments soon to offer better protection of personal data privacy. PCPD will prepare for the implementation of the amendments, including the setting up of a new system to provide legal assistance to aggrieved parties to take civil action against data users.

29. In promoting awareness and understanding of personal data privacy, PCPD will continue its efforts through promotion programmes, public education and professional training. Special efforts will be made to engage young people and sustain their participation in a re-invigorated “Student Ambassador” programme. Additional resources will also be deployed to introduce the new provisions in the Amendment Bill.

30. In enforcement work, the PCPD will strive to enhance efficiency to cope with the increasing workload.

31. Regarding the Data User Returns Scheme, the PCPD will continue to work with the four regulated industries (i.e. banking, telecommunications, insurance, and government and public bodies) with a view to implementing the Scheme in 2013.

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Responses to Consultations/Vetting of Bills in 2011

PCPD vetted altogether 83 bills, regulations, rules and by laws published in the Government Gazette in light of their personal data privacy implications. PCPD provided comments for the following:-

- (1) Buildings Energy Efficiency (Registered Energy Assessors) Regulation;
- (2) Residential Care Homes (Persons with Disabilities) Regulation; and
- (3) Air Transport (Licensing of Air Services) (Amendment) Regulation 2011.

PCPD also provided comments in response to eight proposed legislations and government administrative measures listed as follows:-

- (1) Legislative Amendment Exercise - Automation of Benefit Transfer Process Draft Drafting Instructions (MPFA);
- (2) Companies Bill: Restriction to access to directors' and company secretaries' residential addresses and the full identification numbers of all persons on the public register;
- (3) Legislative Proposal to Underpin the Torture Claim Screening Mechanism - Provision in the Immigration (Amendment) Bill 2011 relating to the collection of photographs and fingerprints;
- (4) Review on Issue of Certificate of Particulars of Vehicles;
- (5) Comprehensive Review on the Interception of Communications and Surveillance Ordinance;
- (6) The Copyright (Amendment) Bill 2011 and the Code of Practice;
- (7) Fisheries Protection (Amendment) Bill; and
- (8) Legal Practitioners (Amendment) Ordinance 2010 – Higher Rights of Audience Rules.

Furthermore, PCPD responded to the following public consultations from the perspective of personal data protection:-

- (a) Consultation on Arrangement for Issuing Certificate of Particulars of Motor Vehicle; and
- (b) Consultation on Charities.

PCPD's Publications
January – December 2011

1. Complaint Handling Policy (Third revision)
2. Code of Practice on Consumer Credit Data (Third Revision)
3. Fact Sheet: Understanding the Code of Practice on Consumer Credit Data - Frequently Asked Questions on the Sharing of Mortgage Data for Credit Assessment Purpose
4. Leaflet: 《潮用互聯網 醒目保私隱》
5. Leaflet: “Protecting Online Privacy – Use Social Networking Sites Smartly”
6. Guidance on Property Management Practices (revised in August 2011)
7. Personal Data (Privacy) Ordinance Liberal Studies Teaching Kit
8. Guidance on Electioneering Activities (updated in October 2011)
9. Leaflet: “Making an Opt-out Request from direct marketing activities under the Personal Data (Privacy) Ordinance”
10. Guidance on the Use of Portable Storage Devices
11. Guidance on Personal Data Erasure and Anonymisation
12. Guidance for Data User on the Collection and Use of Personal Data through the Internet