

## 公署對建議中的法例所作的評論 COMMENTS ON PROPOSED LEGISLATION BY THE PCPD

### 2005年建築物管理(修訂)條例草案

公署在審閱草案的過程中，發現根據現行的《建築物管理條例》(下稱「該條例」)第12條，土地註冊處處長備存了法團登記冊(公眾支付費用後可以查閱)。根據該條例第(2)(d)及(2)(e)款，登記冊包含「管理委員會主席、副主席(如有的話)、秘書和司庫的姓名及地址」及「管理人姓名及地址」的資料。由於所述的「主席」、「副主席」、「秘書」、「司庫」及「管理人」可以指個人，有關資料可能構成「個人資料」。

同樣，管理委員會秘書根據該條例第38條備存的登記冊(第(4)款所載的人士可以查閱)內的資料包括「業主姓名及地址」和「已登記承按人姓名及地址」，亦構成「個人資料」。

公署因此向民政事務局局長建議，在條文中指明備存登記冊的目的及許可用途。民政事務總署署長回覆，他們會指明根據第12條備存登記冊的目的及使用內裏資料的限制。不過，他們認為根據第38條備存的登記冊則無須修訂，因為它不是公開給公眾查閱的。就此，公署進一步建議民政事務總署署長在法例中併入所需措施，以加強保障資料私隱。在檢討期間，草案並無進展。



### Building Management (Amendment) Bill 2005

In the course of discharging the duty to examine the Bill, the PCPD discovered that under the contemporary Building Management Ordinance ("BMO"), the Land Registrar was maintaining a register of corporations (which was available to public for inspection upon payment of fees) under section 12 of BMO. According to its sub-sections (2)(d) and (2)(e), the register included information of "the name and address of the chairman, vice-chairman (if any), secretary and treasurer of the management committee" and "the name and address of any administrator". For the mentioned "chairman", "vice-chairman", "secretary", "treasurer" and "administrator" could mean individuals, the information as such might constitute "personal data".

By the same token, the information contained in the register being maintained by the secretary of a management committee pursuant to section 38 of BMO (which was open to inspection by the persons named in sub-section (4)) constituted also "personal data" by including "the name and address of the owner" and "the name and address of the registered mortgagee".

The Secretary for Home Affairs was therefore advised of the necessity to specify in the provisions the purposes of maintaining the register and its permitted uses. The Director of Home Affairs replied that they would specify the purposes of maintaining the register under section 12 and the restrictions on the use of the information therein. However, they considered that no amendment was necessary for the register under section 38, as it was not open to public inspection. As a result, the PCPD further advised the Director of Home Affairs to incorporate necessary measures in the legislation to strengthen data privacy protection. There was no further development in the matter during the period under review.

## 2005 年航空運輸(修訂)條例草案

草案建議賦予有關承運人權力，要求合資格人士或其代表因某一運輸意外導致乘客死亡或傷害而索償時，提供承運人作出決定所需的申索資料或詳情。由於很可能涉及個人資料，公署提醒經濟發展及勞工局，注意保障資料第 1

(1) 原則的要求：收集資料是必需的及不超乎適度，以及注意根據保障資料第 1 (3) 原則提供收集個人資料聲明的規定。



在公署發出上述通知後，草案獲進一步修訂，原本載有有關條文的部分被刪除。該局確認有關部分原本涵蓋的事宜將納入另一附屬法例中，並會對公署的意見加以考慮。

## Carriage by Air (Amendment) Bill 2005

The Bill sought to, inter alia, empower the relevant carrier to require the eligible person or the person applying on his behalf for payment of money in case of an accident in a specific carriage resulting from death or injury of its passengers to furnish information or particulars relating to the application as the carrier may consider necessary to make a determination. As personal data might well be involved, the Economic Development and Labour Bureau was reminded of the requirement of Data Protection Principle 1(1) about the necessity and non-excessiveness of data that may be collected. The Bureau was also reminded of the requirement of giving Personal Information Collection Statement under Data Protection Principle 1(3).

Subsequent to our reminder, the Bill was further revised so that the original section containing the concerned provision was removed. The Bureau confirmed that the matter originally covered in the relevant section would be put into a separate subsidiary legislation and that comment of the PCPD would be taken into account.

## 2006 年行政長官選舉及立法會選舉(綜合修訂)條例草案

草案對《行政長官選舉條例》作出修訂，其中包括在現行的正式委員登記冊之外，引入「選舉委員會暫行委員登記冊」。與正式委員登記冊一樣，暫行委員登記冊會由選舉登記主任編製及發表。在這方面，公署建議政制事務局長：(i) 指明備存登記冊的目的及其許可的引伸用途；(ii) 考慮對濫用登記冊內的個人資料施以制裁；以及(iii) 避免過度收集個人資料及/或在登記冊披露個人資料。

政制事務局長解釋，備存暫行委員登記冊的目的是為針對選舉委員會委員的登記而提出的上訴提供法律基



## Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006

The Bill was to amend Chief Executive Election Ordinance to introduce, inter alia, "an interim register of members of the Election Committee", in addition to the existing final register. Alike the case of the final register, the interim register would be compiled and published by the Electoral Registration Officer. In this regard, the Constitutional Affairs Bureau was advised by the PCPD to (i) specify the purposes of maintaining the register and its permissible secondary uses; (ii) to consider imposing sanctions against improper use of the personal data contained the Register; and (iii) to avoid excessive collection of personal data for and/or disclosure of personal data in the register.

The Secretary for Constitutional Affairs explained that the purpose of maintaining the interim register was to provide a legal basis for appeals to be made

礎，他表示會作出修訂，以反映有關目的。局長亦清楚表示會修訂《選舉管理委員會(登記)(立法會功能界別選民)(選舉委員會界別分組投票人)(選舉委員會委員)規例》，對制裁濫用登記冊內的個人資料的條款，伸延至包括暫行委員登記冊。最後，他們會作出修訂，確保暫行委員登記冊只載有選舉委員會委員的姓名及主要住址。

### 財務匯報局條例草案

在草擬階段，財經事務及庫務局局長向各方徵詢意見。私隱專員強調要根據條例適當地收集及使用個人資料。草案刊憲時已併入「相關」及「有關」的概念，以限制財務匯報局在進行調查或查詢時收集資料及轉介個案的範圍。法案委員會成員邀請私隱專員對草案進一步評論。

草案第 12 條賦予財務匯報局廣泛的權力，在不「違反公眾利益」的前提下，將投訴個案轉交指明當局，並提供協助。鑑於「公眾利益」的概念難以釐清，以及披露的資料很可能會包含個人資料，私隱專員建議採取較高的要求標準，令個人資料私隱獲得較佳保障；他亦就第 51 條有關保密責任及許可的披露情況作出評論。私隱專員亦要求重新考慮第 54 條的適合程度，該條文建議，核數師向財務匯報局真誠地傳達指明事宜的任何資料或意見，可豁免承擔民事法律責任。授予建議的豁免會影響條例第 66 條有關民事補償的運作，私隱專員認為現時條例第 58 (2) 條的豁免條文已讓資料使用者在披露載有個人資料的訊息時可引伸依據，授予有關豁免承擔民事責任並無充分理由支持。至於草案建

against the registration of a member of the Election Committee, and stated that amendments would be made to reflect such purpose. The Secretary also made clear that amendments would be made to the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsector) (Members of Election Committee) Regulation to extend the sanctions against improper use of personal data contained in the Election Committee register to cover the interim register. Lastly, amendments would be made to ensure that the interim register contained only the names of the Election Committee members and the principle residential address.

### Financial Reporting Council Bill

During the drafting stage, comments were sought by the Secretary for Financial Services and the Treasury. The Privacy Commissioner emphasized the proper collection and use of personal data under the Ordinance. The Bill when gazetted had incorporated the concept of "relatedness" and "relevancy" to limit the extent of collection of information and referral of cases by the Financial Reporting Council ("FRC") in relation to conducting investigation or enquiry. Members of the Bills Committee invited the Privacy Commissioner for further comments on the Bill.

Clause 12 of the Bill conferred a wide power on FRC to render assistance by referring cases of complaint to a specified authority if it would not be "contrary to the public interest" to do so. Given the elusive concept of "public interest" and information disclosed would likely contain personal data, the Privacy Commissioner suggested that a higher standard of requirement was preferred for better protection of personal data privacy. Comments were also given in respect of the adequacy of Clause 51 in relation to duty of secrecy and the permitted circumstances for disclosure. The Privacy Commissioner also requested reconsideration of the appropriateness of the proposed granting of immunity under Clause 54 to an auditor from civil liability who communicated in good faith to the FRC of any information or opinion on a specified matter. The granting of the proposed

議在條例第 2(1) 條「財經規管者」的定義下加入財務匯報局的相應修訂，只要行政長官信納財務匯報局的職能與條例第 58(3) 條所述的事宜有關，專員原則上不反對修訂。

局長回應時表示，財務匯報局的運作會符合條例的要求，而草案包含的條文是可以根據法律或法律下的規定披露資料。局長引述過去幾年在其他地方發生有關核數師不當行為及不實財務報告的公司醜聞，作為支持加入豁免條文的理由，並謂該條文是參考其他包含有關豁免的條例而草擬的。截至本年報期結束，草案並無進展。

immunity would affect the operation of section 66 of the Ordinance which provided for civil remedy and the Privacy Commissioner took the view that the existing exemption provision under section 58(2) of the Ordinance already afforded the data user proper ground to rely upon when disclosing information containing personal data, the granting of such immunity was not seen to be justified. In respect of the proposed consequential amendments to the Ordinance by adding FRC under the definition of "financial regulator" under section 2(1), insofar as the functions of the FRC could satisfy the Chief Executive to be concerned with the matters under section 58(3) of the Ordinance, the Commissioner had in principle no objection to the amendment.

The Secretary responded to the concerns raised and reinstated that the FRC would operate in a manner consistent with the requirements enshrined in the Ordinance and that the Bill contained provision allowing disclosure of information in accordance with law or a requirement made under the law. The Secretary quoted the aftermath of the corporate scandals happened elsewhere over the past few years which revealed the auditors' irregularities and questionable financial reporting as reason justifying the putting in place of the immunity provision which was modeled on other pieces of legislation containing such immunity. There was no further development on the Bill at the end of the reporting period.

### 截取通訊及監察條例草案

保安局於 2006 年 2 月向立法會呈交《截取通訊及秘密監察的建議法律架構》的文件(立法會文件編號：CB(2)997/05-06(01))，以規管執法機構進行有關活動。

私隱專員對建議法律架構中提出的問題表達的意見摘錄於下表：



### Interception of Communications and Surveillance Bill

The Security Bureau submitted a paper to the Legislative Council in February 2006 (LC Paper No. CB(2)997/05-06(01)) on "Proposed Legislative Framework on Interception of Communications and Covert Surveillance" to regulate such activities carried out by the law enforcement agencies ("the LEAs").

The Privacy Commissioner addressed the issues raised in the proposed legislative framework which were summarized in the following table:

<b>主要問題</b> <b>Main Issues</b>	<b>意見</b> <b>Comments</b>
<b>非政府機構或人士</b> <b>Non-governmental parties</b>	<p>規管私人或私營機構所進行的秘密監察活動的立法建議同樣重要，不應擱置。私隱專員期待當局就第二階段的相關工作定下一個具體的時間表。</p> <p>It is equally important that legislative proposals governing covert surveillance activities which are carried out by private individuals or organizations should not be left in abeyance. The Privacy Commissioner expects a concrete time frame for the second phase of the exercise.</p>
<b>授權機制</b> <b>Authorization</b>	<p>應用於各個概念上的用詞(例如「公共安全」、「相稱及必要的驗證準則」、「侵擾程度較高的秘密監察」、「侵擾程度較低的秘密監察」及「個人的合理私隱期望」)的決定準則至為重要，必須明確加以述明，以防出現濫用的情況。</p> <p>The criteria for determining the application of various conceptual terms (such as "public security", "tests of proportionality and necessity", "more intrusive covert surveillance", "less intrusive covert surveillance" and "reasonably expected privacy of individuals") are important and should be spelt out in no uncertain terms so as to prevent abuse.</p> <p>長期進行監察活動嚴重侵犯目標人物及無辜第三者的個人資料私隱。因此，批核續期申請的準則應比用以考慮原有申請的準則更為嚴格。</p> <p>Intrusion of the intended target as well as innocent third parties' personal data privacy would be aggravated as a result of prolonged surveillance activities being carried out. Hence, criteria for granting any renewal application should be more stringent than those used to consider the original application.</p> <p>對於重複或經常監察同一目標人物的做法須作出警惕性的規管，並且可制訂額外的保障措施，規定有關行為須獲法庭批准。</p> <p>The repeated or frequent surveillance of the same targeted individual also needs vigilant control and additional safeguards may be imposed by requiring such act to be sanctioned by Court.</p> <p>至於向指定的獲授權人員提出的續期申請，可減低濫權風險的其中一項保障措施是訂明有關人員只限批准首次續期申請，而該項申請必須有合理的理由作依據，包括如早前的監察未達預期效果，為何還須繼續進行有關監察的理由。任何首次以外的續期申請必須獲法庭授權。</p> <p>For renewal applications made to designated authorized officer, one of the safeguards that could be used to lessen the risks of abuse is to limit the granting of only one renewal application and that such application has to be supported by good reasons including reasons to show why if the previous attempt was not fruitful the surveillance should continue. Any further renewal application has to be authorized by the Court.</p>

<b>主要問題</b> <b>Main Issues</b>	<b>意見</b> <b>Comments</b>
<p>獨立的監察機構及投訴的處理</p> <p>Independent oversight authority and complaint handling</p>	<p>為方便履行其職能及行使其權力，獨立的監察機構須獲賦予其他附帶權力，例如傳召證人、搜查及扣押、進行聆訊及發表報告等權力。</p> <p>The oversight authority should be equipped with other incidental powers such as the power to summon witnesses, to search and seize, to conduct hearing and to publish reports, etc. in facilitating the exercise of its functions and powers.</p> <p>除獲賦予下令支付賠償的權力外，獨立的監察機構亦應獲賦權下令停止進行有關監察作為或行為，以及銷毀所收集的資料，藉以制止有關不當行為。</p> <p>In addition to the power to order payment of compensation, the oversight authority should also be given the power to order cessation of the ongoing surveillance act or practice and the destruction of the information gathered in order to abate the wrongful act.</p> <p>獨立的監察機構亦應獲賦權監察那些無須獲授權亦可進行的監察活動的恰當性，以防濫用行政權力。</p> <p>The oversight authority should also be empowered to oversee the propriety of those surveillance activities which do not require authorization in order to prevent abuse of powers.</p> <p>獨立的監察機構與私隱專員的職能及權力有時或許重疊，例如處理執法機構進行秘密監察活動的投訴。獨立的監察機構的職能及權力必須明確界定，以免在應循何種渠道尋求協助及糾正措施方面令市民受誤導。</p> <p>There may be situations where the functions and powers of the oversight authority will overlap with those of the Privacy Commissioner, such as in dealing with complaints against law enforcement agencies concerning the conduct of covert surveillance activities. A clear distinction of the functions and powers of the oversight authority is called for so that the public is not misled as to the proper channel through which they can seek assistance or redress.</p> <p>基於有關活動的秘密性質，資料當事人難於察覺有關監察行為及作出投訴，特別在隨後無作出檢控的情況下。除非另有理據，建議中的法例應考慮《截取通訊條例》第7(5)條下的須給予通知規定。</p> <p>By virtue of the covert nature of the activities, it would be difficult for a data subject to be aware of the act and to lodge a complaint, especially when no prosecution ensues. Unless otherwise justified, the proposed legislation should give due regard to the notification requirement stated under section 7(5) of the Interception of Communications Ordinance.</p>

主要問題 Main Issues	意見 Comments
<p>其他保障私隱的措施 Other privacy safeguards</p>	<p>應認真處理透過截取通訊或秘密監察取得的個人資料的保安及保管事宜。所有該等個人資料必須妥加保存及上鎖，只限基於「需要知道」原則獲授權的職員查閱，以保障該等資料不受未獲准許或意外的查閱。主管人員應有良好操守、審慎態度及辦事能力，以遵從現行的有關條例、適用的指引、行事訓令及實務守則的規定。</p> <p>The security and safekeeping of the personal data collected through interception or covert surveillance should be seriously addressed. All such personal data should be securely kept and locked, to be accessible only on a "need to know" basis by authorized staff so as to prevent unwarranted or accidental access. The staff in charge should possess the requisite integrity, prudence and competence in complying with the requirements of the ordinances, applicable guidelines, practice directions and code of practices that are in force.</p> <p>在履行收集目的後，必須妥善銷毀所收集的個人資料，以免保存超乎適度的個人資料。如授權被撤銷或已履行原本的目的，則透過截取通訊或秘密監察取得或產生的資料必須以妥善及無法還原的方法銷毀。</p> <p>The personal data collected should be properly disposed of when the purpose of collection has been fulfilled so that they are not excessively retained. Where authorization is revoked or the original purpose has been fulfilled, the materials collected or generated through interception of communications or covert surveillance should be safely and irreversibly destroyed.</p> <p>個別執法機構應定期對個人資料的管理手法進行覆檢，以確保本身的行為或處事手法符合保障私隱的規定。</p> <p>Regular review of the personal data management practice is to be carried out by the respective law enforcement agencies to ensure that their act or practice is privacy compliant.</p>
<p>實務守則 Code of Practice</p>	<p>為更有效實施實務守則，獨立的監察機構可在守則的草擬階段擔當一個更積極主動的角色，以及在其後階段就實務守則提出適切的修訂建議。</p> <p>For more effective implementation of the Code of Practice, the oversight authority may assume a more proactive role in its drafting stage and thereafter to recommend amendments to the Code whenever it considers appropriate.</p> <p>建議中的法例可訂明違反實務守則的規定，在法庭、裁判法院或審裁處進行的程序中，可被援引為違反法例中相關條文的一項可予推翻的推定。</p> <p>The proposed legislation may explicitly provide that a breach of the Code of Practice will give rise to a rebuttable presumption of contravention of the relevant requirements under the proposed legislation in proceedings brought before any court, magistrate or tribunal.</p>

草案在 2006 年 3 月 3 日刊登憲報，私隱專員於 2006 年 3 月 28 日向保安局常任秘書長及法案委員會提交對草案的意見。有關意見的撮要見下表：

The Bill was gazetted on 3 March 2006 and the Privacy Commissioner's comments on the provisions of the Bill were furnished to the Permanent Secretary for Security and the Bills Committee on 28 March 2006. They were summarized in the following table :

主要問題 Main Issues	草案條款 Clauses(s) in the Bill	意見 Comments
合理的私隱期望 Cases of reasonable expectation of privacy	2(1) and 2(2)	<p>一個清晰的定義或基準界定合理的私隱期望是必須的。法律改革委員會報告書：《私隱權：規管秘密監察》(下稱「法改會報告書」)內建議的因素應予以適當的考慮。</p> <p>A clear definition or benchmark to determine the reasonable expectation of privacy is imperative. Due consideration should be given to the factors recommended in the Law Reform Commission's report on <i>Privacy: the Regulation of Covert Surveillance</i> ("the LRC Report").</p> <p>截取通訊及監察事務專員應獲通知有關執法機構在沒有訂明授權下進行秘密監察的情況，以評估其適合性。</p> <p>The Commissioner on Interception of Communications and Surveillance ("the I&amp;S Commissioner") should be informed of cases where LEAs have carried out covert surveillance without prescribed authorizations in order to assess their appropriateness.</p>
第 2 類監察 Type 2 surveillance (轉下頁 to be continued on next page)	2(1)(a)(i)(B) and (ii) and 2(1)(b)(i)	<p>「侵犯私隱程度較低」的監察分類含糊不清，有關情況包括參與者同意其他人進行監察活動；但目標人物可能沒有預期說話或活動被第三者偷聽或監視。</p> <p>Doubtful classification under "less privacy intrusive" surveillance in cases where participating party consents to others carrying out the surveillance activities; the target individual might not expect words or activities to be overheard or monitored by unexpected third party.</p>



主要問題 Main Issues	草案條款 Clauses(s) in the Bill	意見 Comments
		<p>類似的情況是這些活動獲得鄰居的許可可在毗鄰的處所進行，但目標人物並不知情或同意。 Similar concern where such activities carried out in adjacent premises with permission of neighbour but without knowledge or consent of the target subject.</p>
<p>訂明授權的發出、 續期或持續有效 Issue, renewal or continuance of prescribed authorization</p>	<p>3(1)(b)(i)</p>	<p>「運作的角度」本身的概念含糊，其基準讓人有操控空間。 The qualifying benchmark of “operational term”, itself being an elusive concept, gives room for manipulation.</p> <p>在應用相稱的驗證準則時，應適當考慮法改會報告書內建議的因素。 Due consideration should be given to factors recommended in the LRC Report when applying the proportionality test.</p>
<p>通知資料當事人 Notification to data subjects (轉下頁 to be continued on next page)</p>	<p>第 3 部第 4 分部 Division 4 of Part 3</p>	<p>在隨後無作出檢控或撤銷授權的情況中，沒有通知資料當事人，是對資料當事人的保障不足。 Absence of notification to data subjects in cases where no prosecution ensues or where authorization revoked does not afford sufficient protection to data subject.</p> <p>因此建議最少在以下情況給予通知：(i) 隨後無作出檢控；(ii) 根據第 24(3) 條撤銷授權；以及 (iii) 執法機構根據第 52 條報告不遵守規定的情況。 Notification is therefore recommended at least for cases (i) that no prosecution ensues; (ii) authorization revoked under Clause 24(3); and (iii) non compliance reported by the LEAs under Clause 52.</p> <p>法改會報告書亦支持在某些情況下給予通知。 LRC Report also supports the giving of notification in certain circumstance.</p>

主要問題 Main Issues	草案條款 Clauses(s) in the Bill	意見 Comments
		<p>首次發出的緊急授權應由草案建議的 48 小時改為 24 小時之內作出認可（按法改會報告書所述）。</p> <p>Initial authorization on emergency application should be ratified within 24 hours (according to the LRC Report), as opposed to 48 hours as proposed in the Bill.</p>
<p>緊急授權的申請 Cases of emergency application</p>	<p>20(1)</p>	<p>「<b>逼切</b>風險」、「<b>重大</b>損害」、「<b>關鍵</b>證據」等詞語需要給予清晰的定義或指引。 Words like “<b>imminent risk</b>”, “<b>substantial damage</b>”, “<b>vital evidence</b>” need clear definition or guidance.</p> <p>沒有足夠措施，防止以緊急情況為藉口提出緊急授權的申請。 Insufficient safeguard against the bringing upon oneself of an emergency situation to justify urgent application.</p> <p>截取通訊及監察事務專員應獲賦予權力，尤其是根據第 24 (5)、27 及 55 條，監督沒有濫權的情況出現。 The I&amp;S Commissioner should be empowered to oversee that there is no abuse, particularly under Clauses 24(5), 27 and 55.</p>
<p>限制續期申請的次數及審批准則 Limiting the number of renewal application and approval criteria</p>	<p>3(1), 11, 12(4), 17</p>	<p>申請次數不限會增加對私隱的損害及侵犯；建議設立上限。 Unlimited number of application may aggravate damage and intrusion to privacy; advisable that a ceiling be set.</p> <p>續期申請需要符合更嚴格的條件；法改會報告書亦有類似的觀點。 More stringent grounds to be met in renewal application; similar view shared in the LRC Report.</p>

<p>主要問題 Main Issues</p>	<p>草案條款 Clauses(s) in the Bill</p>	<p>意見 Comments</p>
<p>器材取出手令 Device retrieval warrant</p>	<p>32(1), 34(b)</p>	<p>執法機構必須確保在達到目的後移除監察器材，以防止延長或未經授權取得或使用個人資料。</p> <p>It should be obligatory for the LEAs to ensure removal of the surveillance device after purpose fulfilled in order to guard against prolonged or unauthorized access or use of personal data.</p> <hr/> <p>器材取出手令的時限訂為不得超過 3 個月；時限似乎過長，建議採較短時限。</p> <p>The period for a device retrieval warrant to last for not longer than 3 months might seem unnecessarily long and shorter period is recommended.</p>
<p>截取通訊及監察事務專員的權力 Powers of the Commissioner (轉下頁 to be continued on next page)</p>	<p>41(3), 42(2), 43(2)(b), 43(3), 45(1)(b), 50(3), 51(1), 59(1), 59(5)</p>	<p>建議向個別人士提供協助，以闡明及作出投訴。</p> <p>Assistance to be rendered to assist individual in formulating and making complaint.</p> <hr/> <p>截取通訊及監察事務專員的權力應包括命令即時停止截取或秘密監察的權力、傳召及審訊證人，以及向不遵從規定回答問題或提供資料的公職人員施以制裁的附帶權力。法改會報告書建議應賦予包括裁決懲罰性賠償的權力。</p> <p>Powers of the I&amp;S Commissioner should extend to include power to order for immediate cessation of the interception or covert surveillance, ancillary powers to summon and examine witnesses and to impose sanction on non-compliance by public officer to answer question or provide information. LRC Report recommended the power to award punitive damages.</p> <hr/> <p>就截取通訊及監察事務專員是否有權干預不符合第3條的規定而繼續進行訂明授權的申請，第 43(2) 條的用語不夠清晰。</p> <p>Wording in Clause 43(2) unclear as to whether the I&amp;S Commissioner has power to intervene in cases which do not meet the criteria under Clause 3 to proceed with application for prescribed authorization.</p>

主要問題 Main Issues	草案條款 Clauses(s) in the Bill	意見 Comments
		<p>不遵從實務守則應該可以在起訴執法機構錯誤進行截取或秘密監察的法律程序中，被援引為可反駁的推定。</p> <p>Non-compliance with code of practice should be allowed as rebuttable presumption in legal proceedings against the LEAs on wrongful interception or covert surveillance.</p>
<p>剝奪查閱資料的權利 Data access right stripped</p>	<p>45(2), 51(3)</p>	<p>審查的申請人無權查閱與該審查有關連的資料，是剝奪條例第 18 條的一般查閱資料權利。</p> <p>Applicant for examination is denied the right to access to information in connection with the examination; it has the effect of depriving the general data access right under section 18 of the Ordinance.</p> <p>《個人資料(私隱)條例》第 VIII 部已提供可以依據的豁免情況，因此草案這項一般性的否定條文是不必要的。</p> <p>Part VIII of the Personal Data (Privacy) Ordinance already provides for exempting circumstances to be properly relied upon. This general denial is therefore unnecessary.</p>
<p>豁免被起訴 Immunity from suit</p>	<p>61</p>	<p>這項一般豁免權影響《個人資料(私隱)條例》第 66 條的運作，造成明顯的矛盾。</p> <p>This general immunity affects the operation of section 66 of the Personal Data (Privacy) Ordinance, giving rise to an apparent inconsistency.</p>
<p>對《個人資料(私隱)條例》的相應修訂 Consequential amendments to the Personal Data (Privacy) Ordinance</p>	<p>第 58A 條 加進《個人資料(私隱)條例》 Addition of 58A to the Personal Data (Privacy) Ordinance</p>	<p>如果立法原意是確保私隱專員與截取通訊及監察事務專員的權力沒有重疊，應以獨立條文明確把有關的個人資料及個人資料系統從《個人資料(私隱)條例》的適用範圍中豁除，較納入條例的第 VIII 部的做法，似乎更為適切。</p> <p>If legislative intent is to ensure that there is no overlapping of powers between the Privacy Commissioner and the I&amp;S Commissioner, independent clause explicitly excluding the relevant personal data and the personal data system from the jurisdiction of the Personal Data (Privacy) Ordinance instead of including it under Part VIII of the Personal Data (Privacy) Ordinance appears to be the more appropriate course to take.</p>

## 婚姻(設立婚姻監禮人制度及一般修訂)條例草案

草案就婚姻監禮人的委任訂定條文。第5B及5D條賦予婚姻登記官(下稱「登記官」)收集與婚姻監禮人的執業有關的資料。由於婚姻監禮人披露的資料相當可能涉及客戶的個人資料，登記官收集資料的目的應該清楚列明及縮窄範圍，以確保不會收集不必要的個人資料。為了保障婚姻監禮人所收集的結婚人士個人資料免受進一步及不必要的使用，公署建議在草案中列明這些個人資料的許可使用目的。此外，公署亦建議在結婚證書登記冊加入目的聲明，以防止透過公眾查閱而得到的個人資料遭濫用。



## Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Bill

The Bill provided for the appointment of civil celebrants of marriages. Clauses 5B and 5D empowered the Registrar of Marriages ("the Registrar") to collect information *in relation to the practice of the civil celebrants*. As the information disclosed by the civil celebrants would likely involve personal data of clients, the purpose of collection of the information by the Registrar should have been clearly spelt out and narrowed down to ensure that no unnecessary personal data would be collected. In order to protect the personal data of the marrying parties collected by the civil celebrants from further and unnecessary use, it was advisable for the permitted purpose of use of these personal data to be stated in the Bill. Also, it was advisable to insert a purpose statement for the register of certificates of marriages in order to prevent abusive use of the personal data obtained through public searches.

保安局局長(下稱「局長」)在回應時表示同意在草案第5H(1)條列明收集資料的目的，只限於根據《婚姻條例》對可疑罪行作出調查及收集證據。局長解釋，登記官發出的實務守則，以及撤銷或暫時吊銷委任違反守則的婚姻監禮人，都是有效的措施，確保婚姻監禮人正確使用個人資料。至於在結婚證書登記冊上加入目的聲明一事，局長表示，此事另外連同入境處處長備存的所有登記冊一併考慮較為適合。

根據保障資料第1(1)原則的規定，收集的個人資料應該是必需的、足夠但不超乎適度，私隱專員要求局長檢討結婚證書收集的個人資料，例如年齡、結婚前婚姻狀況、職業、雙方家長的姓名。局長回應表示，這個問題會在另一個有關限制公眾查閱結婚記錄的項目中處理。

In response, the Secretary for Security agreed to state the purpose of collection of information in section 5H(1) of the Bill to be confined to the investigation and obtaining evidence of any suspected offence under the Marriage Ordinance. The code of practice to be issued by the Registrar as well as the cancellation or suspension of appointment as a civil celebrant who breaches the code were explained by the Secretary to be effective measures to ensure proper use of personal data by the civil celebrants. As for the insertion of purpose statement for the register of certificates of marriages, the Secretary replied that it would be appropriate for it to be included and considered in one-go in a separate exercise covering all registers maintained by the Director of Immigration.

In view of the requirements under Data Protection Principle 1(1) that personal data collected should be necessary, adequate but not excessive, the Privacy Commissioner requested the Secretary to review on the necessity for the collection of such personal data in the marriage certificate, such as, age, marriage condition, occupation, names of the parents of the parties to the marriage. The Secretary responded that this issue would be dealt with in a separate exercise in limiting public access to marriage records.

在展示擬結婚通知書方面，亦應考慮披露有關個人資料的需要。私隱專員建議，審慎的做法是在訂明表格(包括第I及II部分)列明個人資料的使用目的。就此，局長建議對《婚姻條例》第7(3)及7(4)條作出相應修訂，指明只有訂明表格第I部分所載的個人資料可供查閱。在本年報期間，草案獲通過生效。

### 保護瀕危動植物物種條例草案

草案建議賦予漁農自然護理署署長權力，在發出進口、從公海引進、出口、再出口或管有或控制某列明物種的標本的許可證時，列明許可證持有人的姓名或名稱及地址。草案亦賦予獲授權人員權力，要求出示、檢查及審核或複印與遵從草案有關的文件。此外，獲授權人員亦有權要求有關人士表明其姓名及地址，以及出示身分證明，以供檢查。

由於過程中很可能會收集個人資料，公署提醒建議該草案的環境運輸及工務局，注意保障資料第1(3)原則有關提供收集個人資料聲明的規定，以及保障資料第3原則有關使用資料的規定。



The exhibition of the Notice of Intended Marriage should also take into account the need for the disclosure of the personal data in question and the Privacy Commissioner suggested that the prudent practice was to state in the prescribed form (comprising Parts I and II) the purposes of use of personal data. As a result, consequential amendments were proposed by the Secretary to section 7(3) and 7(4) of the Marriage Ordinance to specify that only personal data contained in Part I of the prescribed form would be made available for inspection. The Bill was passed and came into effect during the reporting period.

### Protection of Endangered Species of Animals and Plants Bill

The Bill sought to, inter alia, empower the Director of Agriculture, Fisheries and Conservation to specify in the license the name and address of the holder of the license for the import, introduction from the sea, export, re-export or possession or control of a specimen of a scheduled species of animals and plants. It also empowered the authorized officer to require for production, inspect and examine or take copies of any document that would be related to the compliance with the Bill.

Furthermore, the authorized officer was also empowered to require the relevant person to state his name and address, and produce his proof of identity for inspection.

As personal data might well be collected in the process, the PCPD reminded the Environment, Transport and Works Bureau proposing the Bill of the requirements under Data Protection Principle 1(3) regarding the giving of Personal Information Collection Statement and Data Protection Principle 3 regarding the usage of the data.

### 2005年聖士提反書院法團(聖士提反書院的校董會名稱更改及一般修訂)條例草案

草案第10條建議加入新條款第6B條，容許公眾查閱根據該條登記的文件。根據該條，登記的文件包括教委會成員的姓名及地址。公署向教育統籌局局長表示，關注教委會成員的個人資料可能被濫用，並建議局長在條文中明確指明供公眾查閱的個人資料的使用目的，以及對不適當使用該等個人資料施以制裁。局長在收到建議後，重新考慮是否必須收集教委會成員的地址，其後在法案委員會審議階段作出修訂，只需要教委會成員的姓名作登記。

### St. Stephen's College Incorporation (Change of Name of the Council of St. Stephen's College and General Amendments) Bill 2005

Clause 10 of the Bill proposed to add a new section 6B allowing public access to documents registered under the section. The documents to be registered under the section included the names and addresses of the Council members. The PCPD informed the Secretary for Education and Manpower of its concern over the possible misuse of the personal data of the Council members and advised the Secretary to specify explicitly in the provisions the purpose of use of the personal data available for public inspection and to impose sanction against improper use of such personal data. Upon being advised, the Secretary reconsidered the necessity of collecting the addresses of the Council members and thereafter made Committee Stage amendments so that only the names of the Council members are required for registration.