

PCPD’s submission in response to the consultation paper on causing or allowing the death or serious harm of a child or vulnerable adult

This submission is made by the Privacy Commissioner for Personal Data (“**PCPD**”) in response to the consultation paper published by the Causing or Allowing the Death of a Child or Vulnerable Adult Sub-committee of the Law Reform Commission of Hong Kong (“**LRC**”) on causing or allowing the death or serious harm of a child or vulnerable adult (“**Consultation Paper**”) in May 2019. LRC reviews the law relating to the criminal liability of parents or carers for the death or serious harm of a child or vulnerable adult as a result of an unlawful act or neglect of the parents or carers, and recommends certain changes in the law.

2. As the regulator to oversee compliance with the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”), the PCPD offers comments on selected matters mentioned in the Consultation Paper that may have a personal data privacy protection angle.

General comments

3. The Consultation Paper targets to strengthen protection of children or vulnerable persons provided under law. These target persons generally represent the class of people who are unable to protect their own rights and interests by themselves, including the rights and interests in data privacy. While it is the focus of the Consultation paper to safeguard these target persons against abuse, protection of data privacy of these target persons under the proposed legal regime is equally important.

Specific comments

Reporting of abuse by frontline professionals

4. In Chapter 8 of the Consultation Paper, LRC studies the reporting of abuse cases. According to the Consultation Paper, the reporting by frontline

professionals or workers (such as teachers, social workers, doctors and nurses) plays an important role to prevent the perpetuation of abuse, no matter whether voluntary reporting or mandatory reporting would be put forward.

5. LRC discusses the issue concerning the reporting of abuse to bring it to the attention of the Government. We note that the issue is not strictly within the terms of reference of the LRC and hence, in the Consultation Paper, LRC does not make any recommendation that mandatory reporting system be established.

6. We also observe that currently reporting of abuse cases in Hong Kong is on a voluntary basis. The Social Welfare Department and the Education Bureau have issued some guidelines for frontline professionals or workers to report abuse cases.

7. Frontline professionals or workers may have collected personal data of an abusee and/or abuser in the course of performing their professional duties. When a frontline professional or worker reports a case of abuse, he or she may need to disclose personal data of abusee and/or abuser to a law enforcement agency.

8. In general, Data Protection Principle (“DPP”) 3 under Schedule 1 to the PDPO provides that personal data shall not be used (including disclosed or transferred) by a data user (e.g. a frontline professional) for a new purpose without the express and voluntary consent of the data subject (e.g. an abusee or abuser).

9. For disclosing personal data of a minor in a report case, a frontline professional (as a data user) is required to have express consent given voluntarily by a person who has parental responsibility for the minor (under DPP3(2)) and the frontline professional must have reasonable grounds to believe the use for the new purpose is in the interest of the data subject (under DPP3(3)).

10. However, while disclosure of personal data by a frontline professional or worker is subject to DPP3, under section 58(2) of the PDPO, the requirements in DPP3 are exempt if the use of personal data of a data subject is for the purposes of, among other things, (a) the prevention or detection of crime, (b) the apprehension, prosecution or detection of offenders, or (c) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct or dishonesty or malpractice and failure to so use the personal data would have been likely to prejudice the above purposes. We therefore believe that in majority of reporting situations, the exemption under section 58 of the PDPO would operate to allow such disclosure to a law enforcement agency.

11. In other cases, where the person who has the parental responsibility is the abuser of the minor, the frontline professionals or workers may also trigger section 58(2) exemption to report the abuse cases, and disclose the related personal data to the law enforcement agency.

12. However, in case there exists situations where the disclosure of personal data of the abused persons is necessary (other than for situations covered by the exemptions under the PDPO), a frontline professional could inform a data subject (i.e. the service recipients who may be the victim of an abuse) at the time of collection of personal data of the data subject that reporting or preventing an abuse case is one of the purposes for using the data collected. This can be done by spelling out the purposes in the personal information collection statement of the relevant organization that the frontline professional works for (e.g. hospitals, clinics, schools and community services centres). The purposes could be spelt out in broad terms such as preventing other persons from depriving the legal rights of a service recipient in a suspected abuse case.

13. We are also aware that those frontline professionals or workers (e.g. doctors) may be subject to their professional codes which require them to maintain

confidentiality of the information obtained from their clients. As those are not within the purview of the PDPO, we do not offer any comment.

The Privacy Commissioner for Personal Data, Hong Kong

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