

**Minutes of the 30th Meeting
of the Personal Data (Privacy) Advisory Committee
held at 13/F, 248 Queen's Road East, Wan Chai, Hong Kong
12:30 pm on 14th October 2010**

Present

Mr. Allan CHIANG, Privacy Commissioner (Chairman)
Mr. Arthur HO, Deputy Secretary for Constitutional and Mainland Affairs (Member)
Mr. Bunny CHAN (Member)
Ms. Virginia CHOI (Member)
Mr. Anthony CHOW (Member)
Ms. Shirley HA (Member)
Mr. SIU Sai-wo (Member)
Dr. Dennis YIP (Member)

Absent with Apologies

Mr. Edwin TAM (Member)

In Attendance

Ms. Adeline WONG, Under Secretary for Constitutional and Mainland Affairs
Ms. Christina CHONG, Principal Assistant Secretary for Constitutional and Mainland Affairs
Ms. Brenda KWOK, Acting Deputy Privacy Commissioner
Ms. Liza YIK, Administration Manager
Ms. Shirley LUNG, Corporate Communications Manager (Secretary)

(I) Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance

- 1.1 Ms. WONG delivered a presentation on the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance ("the Report"). Ms. Wong told members that the Report would be submitted to the LegCo Panel on Constitutional Affairs on 18 October 2010 and be released to the public afterwards.

- 1.2 Ms. WONG said that 37 proposals would be taken forward, some of which were newly added to address privacy concerns in relation to direct marketing in the wake of the Octopus incident. Ms. WONG requested the Chairman to consider revising in due course the “Guidance on the Collection and Use of Personal Data in Direct Marketing” to provide guidance on the approved legislative amendments and to carry out promotional and educational activities in due course.
- 1.3 Ms WONG highlighted some of the major proposals at the meeting:
- Raise the maximum penalty of contravention of section 34 to \$500,000 and imprisonment for 3 years.
 - Introduce additional specific requirements on the collection and use of personal data for direct marketing purposes and make it an offence if a data user does not comply with the requirements and subsequently uses the personal data for direct marketing purposes.
 - Data users should inform customers in writing and seek their consent if they intend to transfer customers’ personal data for monetary gains. Maximum penalty of contravention would be \$1 million and imprisonment for 5 years.
 - Make it an offence for disclosing personal data without the data user’s consent for profits or malicious purposes.
 - Data security – tighter control over regulation of data processor and sub-contracting activities.
 - Data breach notification – to start with a voluntary privacy breach notification system.
 - Remove the 45-day requirement under section 39(3) to inform the complainant of a decision to discontinue an investigation.
 - Make it an offence for repeated contravention of a data protection principle on same facts. Maximum penalty of \$50,000 and imprisonment for 2 years.
 - Make it an offence for repeated non-compliance with an enforcement notice. Maximum penalty of \$100,000 and imprisonment for 2 years.
 - Allow law enforcement agencies to transfer personal data of minors that are relevant to parental care and guardianship (exempt from DPP3) to their parents or guardians.

- 1.4 Ms Wong also highlighted some proposals that would not be taken forward:
- Subject some sensitive data to more stringent regulation.
 - Criminal investigation and prosecution power of the PCPD
- 1.5 Ms. WONG told members that CMAB would further consult the public after releasing the Report.
- 1.6 The Chairman invited members to express their views on the proposals.
- 1.7 A member said that the definition of “malicious purpose” must be defined clearly.
- 1.8 A member said that increased penalty might deter repeated contraventions effectively in the future.
- 1.9 Members discussed whether or not the Commissioner should be empowered with the prosecution power. The Chairman explained that past cases of successful prosecution were few and far between. There seemed to be a support from the community for the Commissioner to exercise greater punitive and enforcement power after the Octopus incident. Ms. KWOK cited an example reported in the media that prosecution was not instituted against a data user for continuing to use the complainant personal data for making direct marketing calls to him despite he had made an opt-out request. Members suggested that the Commissioner should communicate with the Commissioner of Police and DOJ to formulate joint policies and guidelines for referral and prosecution of cases. Ms Wong said that CMAB would assist in discussing the issue with the Security Bureau.

(Ms. WONG left the meeting at this juncture.)

(II) Approval of Minutes of meeting

- 2.1 The minutes of the meeting held on 9 July 2010 were confirmed without amendments, except that the address of the meeting venue should be incorporated.

- 2.2 With regard to item 7.2 of the minutes, members agreed to add post-meeting note as follows:

“On 9 July 2010, PCPD received further information that Octopus had sold customers’ personal data for profit. PCPD took follow up action and commenced an investigation on 22 July 2010.”

(III) Matters Arising from Minutes of Last Meeting

- 3.1 The Chairman reported that Google intended to resume the Street View Cars operation in October and in accordance with its undertaking made to the Commissioner, the Street View Cars would no longer detect or capture Wi-Fi data.

(IV) To consider disclosure to the public, attendance records, agenda and minutes of past meetings (PD(P) AC Paper No. 12/10)

- 4.1 Members discussed the disclosure of agenda, attendance record and meeting minutes on the PCPD website. In principle, members agreed with the disclosure. Nonetheless, some members had concern about the disclosure of confidential information, such as ongoing investigation cases, should not be made public until the cases are completed because it may prejudice the exercise of the Commissioner’s functions and powers.
- 4.2 After discussion, members agreed that the agenda and minutes of a meeting (which included attendance records) would be uploaded on the PCPD website automatically after the meeting minutes have been approved at the following meeting.
- 4.3 Member disagreed with retrospective disclosure of minutes of meetings held before July 2010 for the reasons that the disclosure arrangements were only approved at the meeting on 9 July 2010 and that existing members were not in a position to decide for members of previous terms.
- 4.4 Members then discussed retrospective disclosure, upon request, of attendance records prior to July 2010. A member suggested making reference to similar principles as in the Government’s Code on Access to Information. Members said that they did not mind disclosing their

attendance records prior to July 2010.

(Post-meeting note: The Secretary contacted a member absent from the meeting by telephone on 15 November 2010 and the member indicated no objection to disclosing his attendance records prior to July 2010.)

4.5 A member opined that the PCPD should give a full picture of the function and duties of the Advisory Committee when being asked by the media in the future. The public should note that members offered their views to the PCPD outside meetings as well via other means such as telephone and emails from time to time. In other words, their contributions could not be judged based on attendance records only.

4.6 Members reaffirmed that they did not consider it appropriate to disclose the meeting papers as they contained information not suitable for disclosure such as confidential and sensitive material.

(V) **To note the organizational restructuring of PCPD (PD(P) AC Paper No. 13/10)**

The creation of a new post of Chief Corporate Services Manager (CCSM)

5.1 The Chairman briefed members that the recruitment of the new post of CCSM was in progress and he hoped that the incumbent could report duty the earliest in December. CCSM would assist to strengthen PCPD's system of strategic planning as well as financial management control and compliance. Among other things, he/she would be charged with the duty to implement the recommendations given by the Director of Audit and the Public Accounts Committee in their "value-for-money" reports and inquiries.

The creation of a new post of Chief Personal Data Officer (CPDO) and the abolition of the post of Policy Advisor (PA)

5.2 The Chairman briefed members that he had decided to abolish the position of Policy Advisor in order to create an additional Chief Personal Data Officer (CPDO) post, which made up to four CPDOs to cope with the increasing workload in investigation and compliance.

The 4 CPDOs would be subject to job rotation thus providing greater flexibility in deployment of resources and manpower by the Commissioner.

(VI) To report on section 39 cases and investigation cases (PD(P) AC Paper No. 14/10)

6.1 The Chairman told members that there was a significant increase in the number of enquiry and complaint cases (44% increase in complaint cases in August). There was improvement in meeting the 45-day requirement although it was not 100%. A member said that he trusted that the PCPD would be able to clear the cases more effectively through streamlining work process and redeployment of manpower.

6.2 The Chairman briefed members on the progress of the investigation on Octopus. The investigation report was sent to the Octopus on 30 September 2010. The Chairman said that a press conference would be held to release the investigation report very soon. A Guidance Note on Collection and Use of Personal Data in Direct Marketing would also be issued providing industry players with practical guidance on the handling of personal data when engaging in direct marketing activities.

6.3 A member was concerned about some ongoing investigation cases that also involve direct marketing activities by other industries. The member hoped that it would not reveal other types of common malpractices. The Chairman replied that the other cases were of similar nature as the Octopus case.

(VII) To note the issue of Guidance Note on the Collection and Use of Personal Data in Direct Marketing (PD(P) AC Paper No. 15/10)

7.1 The Chairman briefed members that the new Guidance Note would address common problems and apply to direct marketing activities involving different industries including the banking industry. The Guidance Note would clearly state the minimum requirements to comply with the Ordinance, address some grey areas, and recommend good practices as well.

- 7.2 The Chairman said that the Guidance Note provided practical guidance for industry players to follow and clear doubts that they may have so that they could continue their direct marketing activities confidently. Therefore their livelihood should not be affected. However, he stayed firm on the stance that data users must meet the minimal legal requirements. For instance, “collected personal data will be used for any other purpose” would not be accepted as a legitimate purpose of collection as it was too vague.
- 7.3 The Chairman went on to brief members that two workshops would be conducted on 8 and 9 November for industry players to learn how to apply the Guidance Note in their daily operations. The workshops would be conducted on a partial cost-recovery basis.

(VIII) To note the proposed amendments to the Code of Practice on Consumer Credit Data (PD(P) AC Paper No. 16/10)

- 8.1 The Chairman briefed members that a public consultation would be conducted to gauge public’s views on Hong Kong Monetary Authority’s proposal to extend the scope of credit data sharing to include positive mortgage data. In the meantime, a tender exercise was in progress to hire a consultant to carry out the public consultation. Pending the result of the consultation, the PCPD would amend the CCD Code accordingly.
- 8.2 Members expressed concern about the classes and types of credit data to be shared and urged the PCPD to take tighter control over it. The PCPD explained that under the current proposal, credit providers could only share the number of residential mortgage loans. Members discussed and opined that it should suffice at this stage.

(IX) To note the PCPD’s responses to the Government’s consultations on Personal Data (Privacy) Ordinance Review (PD(P) AC Paper No. 17/10)

- 9.1 Members noted the paper and offered no comments further to the discussion under (I) (refer to 1.1 to 1.9 above).

(X) Any other business

10.1 Nil

(XI) Adjournment of Meeting

11.1 There being no other business, the meeting ended at 3 pm.

Office of the Privacy Commissioner for Personal Data
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