

**Minutes of the 29th Meeting
of the Personal Data (Privacy) Advisory Committee
held at 13/F., 248 Queen's Road East, Wan Chai, Hong Kong
at 12:30pm on 9 July 2010**

Present

Mr. Roderick WOO, Privacy Commissioner (Chairman)
Mr. Arthur HO, Deputy Secretary for Constitutional and Mainland Affairs
(Member)
Mr. Anthony CHOW (Member)
Mr. Bunny CHAN (Member)
Ms. Shirley HA (Member)
Mr. Edwin TAM (Member) (joined meeting at 1:00pm)

Absent with Apologies

Mr. SIU Sai-wo (Member)
Ms. Virginia CHOI (Member)
Dr. YIP Chi-kwong (Member)

In Attendance

Ms. Margaret CHIU, Deputy Privacy Commissioner
Ms. Vanessa WU, Acting Chief Personal Data Officer (only present for
discussion of PD(P)AC Paper No. 09/10)
Mr. Alan KWAN, Policy Advisor (Secretary)

(I) Approval of Minutes of meeting

- 1.1 The minutes of the meeting held on 9 February 2010 were confirmed without amendments.

(II) Matters Arising from Minutes of Last Meeting

Measures to improve compliance of 45-day requirements

- 2.1 The Chairman said that the efforts to improve compliance of 45-day requirements were ongoing. For instance, for the purpose of streamlining workflow, the Privacy Commissioner (“PC”) had issued instructions to delegate to the Senior Personal Data Officer (“SPDO”) to issue s.38 letters to complainants after approval was obtained from PC to commence investigation. Another measure adopted to improve efficiency was to split the existing manpower of the Operations Division into two teams, one to screen complaints received and handle section 39 cases and the other to investigate into section 38 cases.
- 2.2 The Chairman reported that PCPD had thus far not received any written suggestions from Members on recommended ways to tackle the 45-day issue.

Positive mortgage data

- 2.3 The Chairman confirmed that PCPD had been having a series of working level meetings with the Hong Kong Monetary Authority to address the issue of including positive mortgage data in the consumer credit database. The Chairman referred Members to a submission (which was attached in the document bundle of the meeting) sent by a Member expressing views on the subject matter.

(III) To approve the Rules of Meeting Procedures (PD(P) AC Paper No. 07/10)

- 3.1 The Chairman invited comment from Members on the revised Rules of Meeting Procedures (“the draft Rules”). A Member asked whether a “meeting” should include one being held by means of paper meeting. The Chairman replied that this is not the intended mode of meeting covered in the draft Rules, but he would open this matter for Members’ discussion in future with the new PC.

- 3.2 A Member raised query as to whether the manner of circulation of paper mentioned in Section 9.1 of the draft Rules was confined to the purpose of “transacting any business”. The Chairman confirmed that Section 9.1 applied to the circulation of papers for purpose of transacting a specific business which was not the same as the holding of a meeting with named agenda.
- 3.3 Members agreed to adopt the revised rules of meeting procedures.

(IV) To report on measures to enhance Compliance and Internal Control of PCPD (PD(P) AC Paper No. 08/10)

- 4.1 The Chairman tabled a speech on 12 May 2010 from the Chief Secretary for Administration to respond to Public Accounts Committee (“PAC”) Report No. 53 in which the issues of Internal Controller and management study were mentioned.

The Chairman quoted a paragraph from the speech:

“The government agreed that PCPD had accepted the recommendations of the PAC and planned to engage a professional management consultancy to review the internal procedural matters for recommending measures to enhance compliance and internal control. Separately, the PCPD is currently recruiting an Internal Controller to supervise and monitor the work of the relevant Divisions of the PCPD to ensure compliance and proper internal control and achievement of performance targets.”

Recruitment of Internal Controller (IC)

- 4.2 The Chairman reported that during the recruitment exercise that took place in May 2010, 6 candidates were invited to the interview and 1 candidate was screened in for second interview. After the second interview, PC was not satisfied that the said candidate possessed the necessary skills and experience for the job. As no suitable candidate was in sight, PCPD commenced a second round of recruitment exercise towards the end of June.

- 4.3 In this second round recruitment, PCPD shortlisted 4 candidates. PC intended to conduct interviews and compile a report by the end of July but he would not make any decision on employment as he thought it was a matter to be more appropriately considered and decided by the new PC.
- 4.4 A Member was concerned if there would be a big time lag between the interviews of the candidates and the arrival of the new PC. Another Member responded that the recruitment of the new PC had already reached final stage and therefore he did not see that would present a problem.
- 4.5 Members requested for an explanation on the recruitment of the IC and the segregation of duties between the IC and the Deputy Privacy Commissioner (“DPC”). The Chairman explained that the role of IC was more akin to an Assistant Privacy Commissioner. The IC should have hands-on experience in monitoring the internal controls and day-to-day performance across all divisions. Differing from the main duties of the DPC, the IC would oversee the works of all functional divisions to improve efficiency, co-ordination, compliance and governance.

Management Consultancy Study on Compliance

- 4.6 The Chairman reported that PCPD invited two professional firms, namely PricewaterhouseCoopers and Hays Group, to advise and provide proposals on comprehensive review of the organisational structure, conditions of service, staff management and measures to strengthen internal control and compliance of the PCPD.

The example of the Equal Opportunities Commission (“EOC”) was quoted. After the audit report, EOC commissioned a professional management consultant to provide advice on proper implementation of the recommendations given by the Director of Audit and the Public Accounts Committee, with specific funding provided by CMAB.

- 4.7 A Member enquired about the timing of the study. The Chairman replied that the process involved application to CMAB for special funding subsidy, tender procedures, execution and report writing and he estimated that the study would take about 3 to 4 months' time to complete depending on the scope of the study. The employment of a 1-year time limited post of the IC served as an immediate measure on enhancing monitoring and compliance of daily operations of PCPD pending completion of the study and implementation of any approved recommendations.
- 4.8 A Member reported that the CMAB would likely support the commissioning of the study provided that the cost was reasonable and the study focused on the compliance with the recommendations contained in the Audit and PAC Reports. He had reservations on the proposal for the consultancy to also examine other matters such as staff structure, salary, appraisal, promotion and grievance policies as these were not issues raised in the Audit study and the examination of them might raise undue expectation from staff.

Another Member shared his past experience of a subvented hospital which undertook a study into delinking its payscale from the Government system. He believed that the consultant retained had adopted a commercial approach in conducting the study and there was an expectation gap between the user and consultant on the results of the study.

- 4.9 The Chairman concluded that PCPD would continue to finalise the scope of the study with CMAB. He expressed difficulty in recruiting and retaining capable staff if the term of the employment contract was short.

(V) To report on section 39 cases and investigation cases and to seek members' advice (PD(P) AC Paper No. 09/10)

- 5.1 The Chairman reported that PCPD would continue to handle complaints in a timely and expeditious manner. PCPD undertook a staff redeployment exercise in June 2010 for the Operations Division and the Compliance Division in order to speed up the complaint handling process as well as providing proper training to junior staff and new recruits.
- 5.2 The Chairman emphasized that of the three NGOs related to human rights in Hong Kong, namely EOC, PCPD and Office of the Ombudsman that all have complaint handling function, only PCPD faced with the 45-day statutory restriction. He was mystified as to the rationale of this statutory provision under Personal Data (Privacy) Ordinance (“PDPO”) as he could not find any public records during the legislative stage giving background to this provision.
- 5.3 A Member noted that the consultation document on the PDPO issued by the government had included a proposal to amend section 39(3) to remove the 45-day requirement and he understood that there was no strong objection from public to the proposed amendment.

(VI) To report on some selected cases and developments (PD(P) AC Paper No. 10/10)

- 6.1 A Member was concerned with the impact of Google's case on the general public. The Chairman explained that Google's Street View Cars had in the past collected payload data, i.e. unencrypted Wi-Fi data (“Data”) which might contain personal data. PC had promptly requested and secured from Google an Undertaking to take appropriate remedial measures, including stopping the Street View Cars operation and the collection of Wi-Fi data.

- 6.2 The Chairman reported that Google confirmed in public that it had mistakenly collected the Data. PCPD was asking Google to provide technical assistance to view the Data collected which was still in progress.
- 6.3 A Member asked about actions taken by overseas privacy regulators on this Google incident. The Chairman replied that the authority in U.K. and Ireland believed that the Data were collected mistakenly by Google and requested Google to delete the Data. PCPD would decide on the next step to take after viewing the Data and considering the impact of the case on personal data privacy.
- 6.4 A Member questioned whether Google would be unable to provide the intended location services if the Data were deleted. The Chairman referred Member to the Undertaking given by Google and since technical aspects were canvassed, he suggested that he would ask PCPD's IT Adviser to contact him after the meeting to explain the technical side.
- 6.5 The Chairman gave brief summary of the issuance of the Guidance Note on Data Breach Handling and the Giving of Breach Notification as well as the ongoing inspection conducted on TransUnion.

(VII) Any other business

PCPD Guidelines Note on PIA and CCTV

- 7.1 The Chairman reported that PCPD would shortly issue two guidance notes on CCTV and the conduct of Privacy Impact Assessment respectively. These were issues of public concerns.

Octopus Cards

- 7.2 The Chairman reported that for the Octopus Card issue, there was no complaint henceforth received that warranted an investigation. The Chairman reported that he had met with senior management of Octopus Card Limited on 7 July 2010 to discuss the concern regarding the system and its likely impact on personal data

protection.

(Post-meeting note: On 9 July 2010, PCPD received further information that Octopus had sold customers' personal data for profit. The PCPD took follow up action and commenced an investigation on 22 July 2010.)

- 7.3 The Chairman reported that the senior management of the Octopus Card Limited confirmed that the cards would no longer store ID card numbers in the personalized cards from the fourth quarter this year.
- 7.4 A Member requested PCPD to contact Mainland Privacy authority to ensure the personal data stored in Octopus card would not be transferred outside Hong Kong especially after the Octopus card developed its cross-bordering features by end of this year.
- 7.5 The Chairman stated that there was no corresponding privacy regulating authority in the Mainland but he promised to keep close watch on the management of the personal data of the cardholders by Octopus Card Limited and he suggested them to conduct Privacy Impact Assessment before launch of any project or service which have personal data privacy impact.

A Briefing on Work Done by the PCPD during the Period from August 2005 to July 2010

- 7.6 The Chairman presented a summary highlighting the work done by PCPD for the period from August 2005 to July 2010 for the Members' reference.
- 7.7 Acknowledging the work done by PCPD under the leadership of Mr. Roderick B WOO as Privacy Commissioner and since this would be the last meeting before his term ended, a Member proposed a Vote of Thanks to him for his hard work and accomplishments over the past 5 years.

(VIII)Adjournment of Meeting

8.1 There being no other business, the meeting ended at 2:30pm.