

**Legislative Council Panel on Constitutional Affairs
Meeting on Monday, 15 November 2010**

Briefing by the Privacy Commissioner for Personal Data

Purpose

Members were briefed on 19 March 2010 by the Privacy Commissioner for Personal Data (“**the Commissioner**”) on the strategic plan of the Office of the Privacy Commissioner for Personal Data (“**PCPD**”) for the period 2010-2014. This paper serves to:-

- (a) update the appraisal of the strengths, weaknesses, threats and opportunities (SWOT analysis) of PCPD;
- (b) outline PCPD’s strategies;
- (c) report on the progress of implementation of PCPD’s work plan; and
- (d) highlight PCPD’s way forward.

For convenient reference, the mission and key goals of the PCPD are recapped at the outset.

Mission

2. The mission of the PCPD is to secure the protection of privacy of individuals in relation to personal data through promotion, monitoring and supervision of compliance with the Personal Data (Privacy) Ordinance (“**the Ordinance**”).

Key Goals

3. The key goals of the PCPD are to ensure that:
- (a) individuals are aware of their rights as data subjects under the Ordinance and how to exercise them;
 - (b) public and private sector organizations are aware of their obligations

- as data users under the Ordinance and how to meet them;
- (c) individuals and public/private sector organizations are aware of the role of the PCPD and how we can assist them;
 - (d) enquiries are responded to courteously and efficiently to the satisfaction of the enquirers;
 - (e) complaints are investigated and resolved efficiently in a manner that is fair to all parties concerned;
 - (f) all other functions of the PCPD are carried out cost-effectively and efficiently; and
 - (g) other jurisdictions with data protection laws are made aware of the robustness of our law in protecting the privacy of individuals in relation to personal data so as to obviate any interference in the free flow of personal data to Hong Kong.

SWOT Analysis

Strengths

4. PCPD possesses the following strengths:-
- (a) statutory and independent status;
 - (b) government funding;
 - (c) dedicated staff with relevant experience and expertise;
 - (d) established track record and cumulative experience in protecting personal data privacy in Hong Kong since 1996; and
 - (e) reputable standing in regional and international privacy arena.

Weaknesses

5. PCPD currently operates with the following limitations/challenges:-
- (a) insufficient resources to cope with rapidly-increasing demand for its services, given in particular the proliferation of web and IT-enabled technological advancement;
 - (b) relatively high staff turnover;
 - (c) difficulties in recruiting staff with suitable calibre and experience; and

- (d) insufficient sanctioning powers on the part of the Commissioner.

Threats

- 6. PCPD has to manage the following threats:-
 - (a) rapid and relentless development of technologies poses new challenges to data protection and privacy rights;
 - (b) globalization gives rise to complex compliance issues as regards cross-border transfers of personal data;
 - (c) increasing number of complaints about infringement of personal data privacy, underlining an unsatisfactory level of compliance with requirements under the Ordinance; and
 - (d) rising public expectations on personal data protection as the community matures in its civic mindedness (also an opportunity).

Opportunities

- 7. PCPD is presented the following opportunities:-
 - (a) level of organizational and individual awareness of personal data privacy protection is at an all-time high;
 - (b) increasing demand from organizational data users for advice and assistance in compliance with the Ordinance, and organizing training programmes for their staff;
 - (c) current review of the Ordinance with a view to amending the legislation to ensure that personal data protection in Hong Kong is adequate and relevant given the evolution of privacy landscape in particular community preparedness and expectations; and
 - (d) general community consensus on tightening controls over personal data protection.

Strategies

- 8. As the work of PCPD grows in volume and complexity, the Commissioner will adopt the following strategies to achieve cost effectiveness and efficiency:-

- (a) maintain high standards of corporate governance;
- (b) adhere to the principles of transparency and accountability in the discharge of his functions;
- (c) maximize utilization of resources to achieve economy, efficiency and effectiveness;
- (d) continuous efforts to streamline work procedures;
- (e) apply a “selective in order to be effective” approach in prioritizing work, with an emphasis on assignments producing the greatest impact;
- (f) enhance engagement of stakeholders holistically to strive to be proactive, in particular to collaborate with Legislators, human rights advocates, concern/pressure groups, professional and business associations and relevant Government departments;
- (g) partner with other regulators, leveraging their legislative mandates, institutional tools and enforcement powers;
- (h) enter into strategic alliance with overseas data protection authorities for handling cross-border privacy issues;
- (i) promote best practices among organizational data users on top of meeting minimum legal requirements; and
- (j) maximize publicity and education impact through publication, media exposure and community engagement to reach out in particular to the young people.

Work Plan - Progress Update

9. **Annex** gives an update of the progress of implementation of the work plan (2010-2014) presented in March 2010. New work emphases are included where appropriate.

Way Forward

10. Recent major incidents of serious contraventions of the requirements under the Ordinance have heightened public awareness of the importance of personal data privacy to an unprecedentedly high level. Complaint cases received by PCPD from April to October 2010 have increased by 19%

compared with the corresponding period in 2009, with August 2010 recording a 44% increase.

11. PCPD will strive to cope with this upsurge in enquiries and complaints. At the same time, it will conduct self-initiated compliance checks on data users and inspections of personal data systems to promote compliance with the provisions of the Ordinance.

12. As regards public education and promotion of personal data privacy, an added focus will be the young generation. Efforts will be made to incorporate this human right topic of personal data protection into the Liberal Studies curriculum of secondary schools, and to promote the understanding and discussion of this subject under “Other Learning Experiences” of the New Senior Secondary Curriculum. For practitioners, apart from general awareness programmes, PCPD will in future provide workshop and focused training on specific topics to help them comply with the requirements under the Ordinance in the respective areas of their work.

13. PCPD notes that there is a rising call among the general public for more powers to be entrusted with the Commissioner in order for PCPD to achieve its mission, in particular, through imposing heavier sanctions for contraventions of personal data privacy rights. To meet this public aspiration, PCPD advocates, through public engagement and consultation with interest groups, the re-activation of the following PCPD proposals to amend the Ordinance that the Government has indicated not to pursue further:-

- (a) granting criminal investigation and prosecution power to PCPD;
- (b) empowering PCPD to award compensation to aggrieved data subjects; and
- (c) empowering PCPD to fine data users for serious contraventions of Data Protection Principles.

14. Meanwhile, PCPD will consult and discuss with the Police and the Secretary for Justice with a view to formulating joint policies and guidelines for referral of cases of privacy contravention to be investigated and prosecuted under the Ordinance. PCPD hopes this will improve the existing inter-organizational arrangements and lead to greater success in prosecution.

15. Separately, PCPD will undertake research into and monitor developments in the information and communications technology with a view to assessing its latest impact on data protection and privacy rights. It will issue (a) further guidelines to organizational data users to promote compliance with the requirements under the Ordinance, and (b) information leaflets to data subjects to assist them to protect their privacy rights.

16. The pace of PCPD's work against its mission, goals and work plan depends largely on the allocation of resources by the Government. PCPD has submitted for 2011/12 the following bids:-

(a) Non-recurrent expenses

- Purchase of permanent office accommodation: \$117.0M
- IT equipment replacement / addition / security enhancement: \$2.2M
- Legal reserve fund: \$3.0M

(b) Recurrent expenses

- Upgrading of 2 posts and increase of 52 posts amounting to \$45.1M per annum

The non-recurrent bid for permanent office accommodation has been turned down by the Government.

The Office of the Privacy Commissioner for Personal Data

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Work Plan (2010-2014) Progress Update

(a) Enforcement

From April to October 2010, PCPD received 767 complaints, representing an increase of 19% over the corresponding period last year. In August 2010 alone, PCPD experienced a 44% increase in complaint cases, compared to the same month in 2009. The complaint cases comprised alleged breaches of rules on direct marketing (section 34 of the Ordinance) and data protection principles (misuse of personal data (35%) as well as allegations concerning collection of personal data (32%)). It is worth-noting that there was a 152% increase in complaint cases alleging unauthorized use of personal data in direct marketing.

In response to increased public concern on personal data privacy, the number of compliance checks carried out from April to October 2010 increased by 19% compared to the corresponding period in 2009.

(b) Review of the Ordinance

The Government published on 18 October 2010 the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance and launched further public discussions on the legislative proposals to strengthen personal data privacy protection under the Ordinance. PCPD will continue to play its role in the Government consultation process, to listen to the views of the public and to help expedite the legislative amendment process.

Through public engagement and consultation with interest groups, PCPD itself will also advocate for the re-consideration by the community of its proposals that the Government has indicated not to pursue further in its Consultation Report, mainly in the following areas:-

- (i) Sensitive personal data should be subject to more stringent control;
- (ii) Direct regulation of data processors and sub-contracting activities;
- (iii) Granting criminal investigation and prosecution power to the PCPD;

- (iv) Empowering the PCPD to:-
 - award compensation to aggrieved data subjects; and
 - require data user to pay monetary penalty for serious contravention of Data Protection Principles;
- (v) Collection and use of personal data in direct marketing:-
 - the data user should obtain the explicit consent of the data subject to so use the personal data i.e. the “opt-in” proposal;
 - setting up of a territory-wide do-not-call register against direct marketing activities; and
 - the right for data subject to request disclosure by direct marketers the source of his personal data collected.

(c) Data Users Return

PCPD has completed a comprehensive review of the plans for launching Data User Returns and Register of Data Users under Part IV of the Ordinance. Tentatively and subject to further consultation with the Government and the industries concerned, the initial phase of the project will cover (i) the public sector; (ii) the regulated industries of banking, telecommunications and insurance; and (iii) organizations with a large membership base.

(d) eHealth Record Sharing Programme

PCPD participated in the meetings of the eHR Working Group on Legal, Privacy and Security Issues and provided comments in relation to personal data privacy protection, leading to the commissioning of an external consultant to carry out a Privacy Impact Assessment scoping study in August 2010. PCPD will stay active in this important exercise which is among the public sector pioneers in seeking to accurately and efficiently share information in a multiple-location operation.

(e) Regional and Global Data Protection Activities

PCPD continues to participate in the APEC Data Privacy Pathfinder projects endorsed by the APEC Ministers in 2007. In August 2010, PCPD joined the APEC Cooperation Arrangement for Cross-Border Privacy Enforcement which comprises 5 participating privacy

enforcement authorities, including those from Australia, Canada, New Zealand and the United States. In investigating violation of personal data privacy involving cross-border data transfer, PCPD may now approach these participating privacy enforcement authorities for assistance or make referrals and conduct parallel or joint enforcement exercises.

The Commissioner attended the 32nd International Conference of Data Protection and Privacy Commissioners from 27 to 29 October 2010 in Israel and participated in the development of a binding legal instrument for adoption by the United Nations setting out in detail the rights to data protection and privacy as enforceable human rights.

(f) Promotion and Educational Activities

PCPD launched a mass media campaign to enhance the community's understanding of the Ordinance. This comprised (i) a series of 10-episode Infomercial broadcast on TVB Jade; (ii) banner display in MTR train compartments; (iii) television Announcements of Public Interest; and (iv) a Privacy Awareness Week of promotional activities targeting at senior citizens. PCPD also launched an industry-wide educational campaign for the insurance industry in Hong Kong. It conducted a total of 28 Continuing Professional Development seminars and 4 public seminars for insurers sharing with them on how to protect customers' personal data.

In the coming year, PCPD will continue to conduct educational and promotional activities for members of the Data Protection Officers' Club and different sectors of the community. More emphasis will be paid on providing practical training to practitioners to assist them to comply with the requirements under the Ordinance in their daily work.

The PCPD will also make new attempt to convey the message of personal data privacy among the younger generation through Liberal Studies and Other Learning Experience ("OLE") under the New Senior Secondary ("NSS") curriculum. It plans to produce a set of teaching materials, which includes basic knowledge about the Ordinance and work sheets on topical privacy issues, to enable students to analyze the importance of

personal data privacy vis-à-vis other social interests in the society. PCPD staff will act as privacy mentors and assist secondary students to organize their own Privacy Awareness promotional activities within their schools under the OLE through seminars and workshops.

Besides, the PCPD is planning to carry out a series of consumer road shows in 2011. Through face-to-face interaction with members of the public, the PCPD will educate people of their privacy rights and ways to handle their personal data more wisely in everyday life.

(g) Section 33 of the Ordinance

PCPD has completed the preparatory work for the implementation of section 33 of the Ordinance and is awaiting advice from the Government on the next step.

(h) Administration and Management

The administrative and financial irregularities identified by the Director of Audit in his Report No. 53 have been remedied. PCPD will follow up the recommendations of the Director of Audit and the Public Accounts Committee as regards corporate planning and strengthening internal administrative and financial control and compliance. An overall review of the staffing structure, remuneration system and staff relations issues will be undertaken with a view to effecting a culture change and building a loyal, dedicated staff force. Our holistic stakeholder engagement strategy starts at home with the engagement of staff.

(i) Code of Practice on Consumer Credit Data

PCPD aims to launch in January 2011 a public consultation exercise on the proposed extension of the scope of data sharing under the Code of Practice on Consumer Credit Data to include positive mortgage data. Subject to the outcome of the consultation exercise, the Code will be amended in March 2011.

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