Minutes of the 41st Meeting of the Personal Data (Privacy) Advisory Committee held at 13/F, 248 Queen’s Road East, Wan Chai, Hong Kong at 10:00 a.m. on 18 March 2014

Present
Mr Allan CHIANG, Privacy Commissioner (Chairman)
Ms Shirley HA (Member)
Ms Susanna SHEN (Member)
Mr Jimmy KWOK (Member)
Mr SIU Sai-wo (Member)
Mr David WAN (Member)
Ms Winnie YEUNG (Member)
Mrs Philomena LEUNG, Principal Assistant Secretary for Constitutional and Mainland Affairs (Member)

In Attendance
Mr Michael CHUNG, Chief Corporate Services Manager (Secretary)

Absent with apologies
Mr Billy HUNG (Member)

A copy of the “Rules of Procedure for the Personal Data (Privacy) Advisory Committee” was tabled and recirculated to members before the meeting.

(I) Minutes of the last meeting held on 12 November 2013 (Paper No. 01/14)

1.1 The Committee confirmed the draft minutes of the last meeting held on 12 November 2013.
(II) **Matters arising from the minutes of the last meeting**

*Renewal of the lease of the PCPD accommodation*

2.1 The Chairman informed members that the lease of the PCPD accommodation which expired at the end of January 2014 was renewed for a term of two years with further increase in rental. He said that since the first lease was taken up in 2006, government subvention had not been increased to cover the repeated increases in rental. PCPD had been encountering financial difficulties in coping with the increasing rental and would conduct a study on the office accommodation options when the current lease came to an end in January 2016.

(III) **Promoting the implementation of Privacy Management Programme (Paper No. 02/14)**

3.1 The Chairman recapped the background of the introduction of the Privacy Management Programme (“PMP”) as an interim alternative to the Data User Returns Scheme (“DURS”). Regarding the reform of data protection system in the EU, he updated members that the European Parliament gave support on 12 March 2014 for the European Commission’s reform proposals which included abolition of the notification system (upon which the DURS was based) in favour of a new system emphasising “accountability”. The European Parliament would be discussing with the Council of the EU with a view to reaching a consensus by the end of 2014. It was envisaged that the proposed privacy protection regulation would be adopted by EU member states as national legislations by 2016.

3.2 The Chairman said that he was pleased that the government had taken the lead to support PMP, and that in December 2013 all policy bureaux and government departments had pledged to implement PMP. This was followed by the same pledge from twenty five companies from the insurance sector, nine companies from the telecommunications sector and five organisations from other sectors, i.e. CLP Holdings Limited, The Hong Kong and China Gas Company Limited, The Hong Kong Electric Company Limited, Hospital Authority and Octopus Holdings Limited. As regards the banking sector, the Hong Kong Association of Banks had indicated to the PCPD that the banking industry supported
the voluntary PMP and individual banks would take necessary steps having regard to their own privacy protection framework to implement the principles of PMP. As the most important data users in Hong Kong had indicated support, the Chairman expressed that the result of promoting the implementation of PMP was conclusively encouraging.

3.3 The Chairman further briefed members PCPD’s efforts to promote implementation of PMP. The CEO Breakfast Meeting held on 17 December 2013 was well attended by some 70 CEOs and senior executives from the target industries. Over 250 government administrators as well as legal and compliance professionals from the private sector attended the International Conference on Data Privacy in Corporate Governance on 11 February 2014. Local and international privacy practitioners and consultants spoke at the conference. Participants were provided with the best-in-class tools and templates for implementing PMP based on an accountability approach. Insights and experiences of implementing successful PMPs were also shared by the CEO of the Octopus group of companies and the in-house privacy professionals from CLP Power Hong Kong, HKT Group, Hewlett-Packard, MasterCard and Nokia. Also, he spoke on personal data privacy and PMP at the government’s Heads of Departments Meeting on 17 January 2014, chaired by the Chief Secretary and attended by some 90 Bureaux and Department Heads.

3.4 In response to the questions from one member regarding the reasons for promoting PMP to the insurance sector and the absence of some prominent insurance companies in the list of pledging organisations, the Chairman said that the DURS was originally targeted at the public sector, and the banking, telecommunications and insurance industries. Organisations in these sectors held vast amounts of personal data and received a great number of complaints about personal data privacy protection. He further said that for the insurance sector, PMP promotion efforts were made with the assistance of the Hong Kong Federation of Insurers and all its member insurance companies were made fully aware of the exercise. Participation in the pledge was confirmed by individual companies on an entirely voluntary basis.
Mrs Philomena LEUNG said that the Constitutional and Mainland Affairs Bureau (“CMAB”) had issued a circular memorandum in December 2013 advising bureaux and departments to implement the principles in “Privacy Management Programme: A Best Practice Guide” (the “Guide”) issued by PCPD and to have the relevant policies and practices in place by end of 2014.

One member enquired whether PCPD would monitor a pledging organisation’s compliance with the Guide. The Chairman explained that as PMP was not a requirement under the Personal Data (Privacy) Ordinance (the “Ordinance”), PCPD would not take enforcement actions and, in any case, did not have the resources to monitor organisations’ compliance with the Guide. However, when a personal data privacy complaint was received, PCPD would invariably examine whether the data user concerned had relevant personal data protection policies, procedures and practices. If not, PCPD would serve an Enforcement Notice directing the data user at fault not just to remedy the contravention but also to establish policies and practices to prevent recurrence of the contravention. An organisation committed to PMP and having due policies and practices in place was in a better position to demonstrate compliance with the Ordinance.

The same member said that many banks considered that the Guide provided a high level PMP framework, and wished to know whether a more detailed implementation guide would be issued by PCPD. The Chairman said that the Guide had adequately recommended best practices and outlined the key components of a PMP. PCPD would not issue a more detailed guide as it would be overly prescriptive. He emphasised that PMP should not be considered as an end in itself. It required assessment and revision on an ongoing basis.

One member enquired whether a credit reference agency which held a large amount of personal credit data should also pledge to implement PMP. The Chairman said that while there were no barriers for willing organisations to commit to PMP, the credit reference agency concerned operated under highly regulated rules. Its primary focus must be to comply with very stringent requirements of the “Code of Practice on Consumer Credit Data” (the “Code”). A breach of the Code by that
agency would give rise to a presumption that the agency had contravened the requirements under the Ordinance.

3.9 One member suggested that education and promotion programmes for PMP should also be extended to SMEs through trade associations. The Chairman said that there were plans to promote compliance with the Ordinance to SMEs in PCPD’s Business Plan for 2014.

3.10 The Chairman said that Hong Kong was the first privacy authority in Asia to introduce the adoption of PMP and the accountability principle as a means to manage privacy and data protection. The initiative, plus the extensive and proactive regulatory experience PCPD possessed, had attracted many invitations from overseas counterparts and conference organisers for the Privacy Commissioner to speak at international privacy events. The invitations were often accompanied with offers of free passage and accommodation. He invited members’ comments on the factors to be considered in deciding whether an overseas duty visit should be made.

3.11 In response, members suggested the following factors to be considered:

(i) the detailed programme and participants of the event, and the purpose and value of attending the event and the take-away;
(ii) the opportunity of arranging other worthwhile commitments during the overseas stay;
(iii) whether there were alternate means of achieving the objective of the overseas trip;
(iv) availability of the required funding;
(v) a good balance between the purpose of the visit and the time and resources incurred;
(vi) the need for the Privacy Commissioner’s personal appearance in the event and for Hong Kong to keep abreast of international developments.

3.12 One member further suggested that in order to facilitate members to understand more about the purpose of the Privacy Commissioner’s intended duty visits (other than regular attendance at scheduled international and regional privacy meetings with counterparts), the aim
to be achieved should be specified in future information papers circulated to members on the subject.

3.13 The Chairman thanked members for their suggestions which he would take into consideration for deciding on his future duty visit commitments.

3.14 Members noted the work progress and promotion activities of PMP without further comments.

(IV) **Report on section 39 cases (Paper No. 03/14)**

4.1 The Chairman briefed members on the work progress relating to the handling of complaint cases for the 4-month period from 1 November 2013 to 28 February 2014. During the reporting period, the PCPD received 469 complaint cases. Together with 392 outstanding cases brought forward from the last reporting period, a total of 861 cases were handled. Of these cases, 498 cases (58%) were closed under section 39. Twenty-nine cases (3%) were investigated under section 38 and concluded. There were currently 334 outstanding cases. Compared with the monthly average workload in the last reporting period from 1 May to 31 October 2013, there was a noticeable decrease (31%) in the reporting period. The drop in the number of complaints received in the reporting period was partly attributable to the drop in complaints relating to direct marketing.

4.2 The Chairman said that in 2013, 62% of the cases were served refusal notices within 45 days and he admitted that this was not satisfactory. He indicated that 2013 was a difficult year for PCPD as the number of complaints and enquiries increased by 48% and 27% respectively when compared with 2012. They were both record high figures. With the number of complaint and enquiry cases received levelling off in recent months and the recruitment of additional staff to strengthen the manpower of the operations team, he aimed to raise the performance of serving refusal notices within 45 days to 75% in the second half of 2014.

4.3 Members noted the report on section 39 cases without comments.
Report on one investigation case and one inspection case (Paper No. 04/14)

5.1 The Chairman briefed members on an investigation report concerning excessive collection of some 200,000 members’ personal data by California Fitness, a fitness centre chain (“CF”).

5.2 PCPD concluded that CF’s collection of members’ full date of birth particulars and copies of HKID Card/Home Visit Permit was unnecessary and amounted to excessive collection of personal data, thus contravening the requirements of Data Protection Principle 1(1). An enforcement notice was issued to CF directing it to remedy the breach. CF had lodged an appeal to the Administrative Appeals Board against the enforcement notice.

5.3 The Chairman further briefed members on PCPD’s inspection on the Student Financial Assistance Agency (“SFAA”)’s personal data system in respect of four of its financial assistance schemes in the period from April to August 2013. Specifically, the collection, retention, use and security of personal data were reviewed against the requirements under Data Protection Principles 1 to 4 of the Ordinance.

5.4 The PCPD found that SFAA’s data protection measures were reasonably satisfactory. Nevertheless, the PCPD had identified 15 areas for improvement, and called on SFAA to follow up.

5.5 Mrs Philomena LEUNG said that the CMAB would share PCPD’s recommendations with policy bureaux and government departments concerned which held large amount of personal data similar to SFAA.

5.6 One member enquired how an organisation was selected by PCPD for conducting inspection. The Chairman said that owing to resource constraints, only one inspection was carried out each year. The target organisation was selected for inspection based on the volume and degree of sensitivity of the personal data held, the gravity of the privacy harm in the event of malpractice and the educational purposes that could be served by publicising the inspection report to other organisations. He invited members to suggest targets for future inspections.

5.7 Members noted the investigation report and the inspection report without further comments.
6.1 The Chairman briefed members on the results of the Internal Compliance Check ("ICC") for 2012-13, and highlighted two major irregularities spotted.

6.2 The first major irregularity was the delay in completing appraisal reports, a problem which persisted since the last ICC. The Chairman had formally counselled the senior officer concerned who was responsible for causing the major delay.

6.3 The second major irregularity was that some case files were found missing at the time of checking although they were all later found. The Chairman said that the Divisions concerned had investigated how the missing files were traced, and identified the problems in the existing system for remedial actions and improvements. Staff had been reminded to properly record the handover of files, and an IT system would be developed to provide a more efficient way to record and track the movement of case files.

6.4 One member suggested that case files should be processed and archived in electronic form, thus facilitating access control, record keeping and better case management. The Chairman said that a computerised "Case Handling System" was in place to monitor the handling of complaint cases. The irregularities identified in the ICC were due to transfer of files which were unrecorded.

6.5 Mrs Philomena LEUNG said that the government had published a "Good Records Management Practices" for reference by government-owned or funded statutory bodies in 2011. She would send a copy to PCPD for reference.

6.6 One member enquired about the findings in the ICC that there was no attendance record of three staff on the inspection days. Mr Michael CHUNG explained that it was because during the staff access card replacement exercise, incorrect data were input by the Administration Division into the new access cards of the three staff, resulting in failure of recording the attendance records of the staff concerned in the computer system. The Administration Division had detected this
irregularity in a subsequent verification check and corrected the wrong data.

6.7 The same member further enquired about the handling of gifts presented to PCPD staff in their official capacity. The Chairman said that PCPD had issued internal guidelines on accepting advantages and entertainment, and explained briefly the stipulations.

6.8 Another member further asked how PCPD staff would handle a high-value gift won in a lucky draw while participating in social events in their official capacity. The Chairman said that subsequent approval to retain the gift by the staff or dispose of the gift in other ways was required. Alternatively, the prize could be immediately returned to the host for another draw.

6.9 One member enquired whether financial limits were imposed on acceptance of entertainment and provision of official entertainment. The Chairman said that PCPD’s internal guidelines stipulated that staff should not accept lavish or unreasonably generous or frequent entertainment, and that they should report acceptance of entertainment/hospitality offered to them in their official capacity. The normal expenditure limits for official entertainment followed the corresponding government’s guidelines issued in early 2014, i.e. luncheon up to $450 per head; and dinner up to $600 per head.

6.10 Mrs Philomena LEUNG supplemented that there were administrative guidelines in the government on the expenditure limits for official meals and bestowal of gifts/souvenirs in an official capacity. Where acceptance of a gift was involved, the officer concerned would need to report and seek approval for disposal of the gift.

6.11 On bestowal of gifts, the Chairman quoted the example of an exceptional case of presenting a pen purchased at $890 to a guest who had spent a very long time participating in a PCPD promotional event as a guest speaker and also as a member of a judging panel in a promotional competition. Members agreed that it was inappropriate to offer an honorarium to the guest under that circumstance. One member suggested PCPD to consider making some standard gifts, such as key chains, USB drives and pens inscribed with PCPD’s logo. The
Chairman said that bestowal of gifts was rare and therefore mass production of such gifts would not be economical.

6.12 Members noted the report on PCPD’s Internal Compliance Check for 2012-13 without further comments.

(VII) **PCPD’s (i) Report on Implementation of Business Plan 2013; (ii) Strategic Plan 2014 - 2018; and (iii) Business Plan 2014 (Paper No. 06/14)**

7.1 The Chairman presented the report on the implementation of the Business Plan 2013; the Strategic Plan setting out the strategies that PCPD would follow in a 5-year plan; and the Business Plan setting out the specific work goals to be achieved by PCPD in 2014.

7.2 The Chairman reiterated that the year 2013 was difficult for PCPD as the number of complaints and the number of enquiries were both record high. When compared with 2012, the number of complaints in 2013 increased by 48% and number of enquires increased by 27%. He further briefed members that despite this increase in workload, an overwhelming majority of the work goals in the Business Plan 2013 had been achieved, while some items relating to promotion and research work had been re-prioritised and deferred to 2014. In facing the challenge of the huge increase in workload in 2013, PCPD had correspondingly completed a record high number of complaint and enquiry cases by streamlining working procedures and enhancing staff productivity.

7.3 The Chairman said that regarding staff management, there was high staff turnover in 2012 but the situation had stabilised in 2013. He further said that while he was thankful for the government to have provided additional resources to PCPD in the past years, the amount provided still fell short of PCPD’s needs for coping with the increasing workload. As a result, long term projects such as policy formulation and research lagged behind, and service levels were not promising, as reflected in the time required to complete investigations and that only 62% of complaint cases were served refusal notices within 45 days in 2013. He hoped that the government would in future years make substantial funding support to PCPD.
7.4 As the Personal Data (Privacy) (Amendment) Ordinance 2012 (the “Amendment Ordinance”) had introduced a number of new offences, the Chairman highlighted that in 2013, PCPD had referred more cases to the Police for criminal investigation (total of 20) but no conviction was recorded. When compared with four convictions in 2011 and two convictions in 2012, the result in 2013 was unsatisfactory. He further said that he had raised the issue with the Secretary for Justice who had subsequently promised to request the Director of Prosecution to arrange a debriefing session for PCPD on the reasons for not proceeding with the referred cases. On the other hand, PCPD had also liaised with the Police for stepping up efforts and taking more serious actions in criminal investigation of cases referred by PCPD. He said that PCPD would continue to follow-up with Department of Justice and the Police to achieve better enforcement results in 2014.

7.5 One member suggested that PCPD should request the Police to set up a task force to focus on the cases referred by PCPD to the Police for criminal investigation. The Chairman said that he had discussed this suggestion with the Police in early 2011 but the Police declined the suggestion, pointing out that privacy complaints could be competently handled at district level.

7.6 In response to a further question from the same member on whether PCPD would continue to pursue those complaint cases rejected by the Police, the Chairman said the PCPD would, as far as practicable, try to take alternative enforcement action under the Ordinance, or resort to other means of settlement.

7.7 The Chairman said that one of the major areas of concern for PCPD’s work in 2014 was the increasing popularity of mobile applications (“apps”). On the one hand, as revealed in the privacy awareness survey conducted by PCPD in 2013, the general public had a low level of awareness about the privacy risks in using mobile apps. On the other hand, most of the mobile apps developers were SMEs not familiar with the requirements of the Ordinance. Therefore PCPD would take a two-pronged approach in improving privacy and data protection in the use of mobile apps, covering both enforcement as well as professional and public education. PCPD would arrange seminars for SMEs and issue
practical tool kits in the form of check lists to facilitate legal compliance by mobile apps developers and SMEs in general.

7.8 Mrs Philomena LEUNG referred to PCPD’s Business Plan for 2014 and enquired whether PCPD would set a target for serving refusal notices within 45 days in handling complaint cases under section 39 of the Ordinance. The Chairman said that the target would be 75% of cases and this would take effect from October 2014, allowing time for the new staff to gear up for their job.

7.9 Mrs Philomena LEUNG further referred to PCPD’s report on the implementation of the Business Plan 2013 regarding the review of the salary range of some of PCPD’s staff, and enquired whether the salary range of PCPD’s staff was pegged to that of similar ranks in the civil service. The Chairman confirmed that this was generally the case, except for some modifications. For example, the salary range of the Assistant Personal Data Officer (“APDO”) rank was pegged to Master Pay Scale (“MPS”) 16 - 27 for Executive Officer II rank in the civil service. In order to enhance the promotion opportunities at the basic rank, this was replaced by a new 2-tiered structure of APDO II (at MPS 16 – 21) and APDO I (at MPS 22 - 27) ranks. Also, to achieve savings in order to recruit more staff than the number approved by Government, the long pay scales for the Head (Administration and Personnel) and the Accountant were curtailed at the upper end. The Chairman confirmed that the maximum pay of the salary range of PCPD’s staff would not exceed that of similar ranks in the civil service.

7.10 One member referred to the report on the implementation of the Business Plan 2013 regarding PCPD’s promotion and education activities, and suggested PCPD to also partner with SME associations so as to extend PCPD’s education work to SMEs in 2014. He further suggested preparation of some tailor-made guidelines for the SMEs to comply with the Ordinance. The Chairman said that PCPD had previously organised events for SMEs using the platform of the Hong Kong Productivity Council, and PCPD’s Data Protection Officers’ Club (“DPOC”). Regarding education work for SMEs in 2014, he would liaise with the SME associations as suggested.
7.11 The member further referred to PCPD’s Strategic Plan for 2014 – 2018 as regards the government’s plan to introduce the eHealth Records Sharing Scheme (eHRSS”) in 2015. He suggested that awareness programmes for the eHRSS should be conducted for nurses and staff working in private clinics. The Chairman responded that the Government had decided to allocate additional resources to PCPD to undertake law enforcement only in the new regulatory regime of the eHRSS. Education and promotion work associated with the eHRSS would be taken up by the Government.

7.12 The member further suggested PCPD to consider making use of the District Council platform to extend the reach to citizens to promote public awareness of personal data privacy. The member added that some funding might be made available from the District Council to support such privacy promotion work. The Chairman welcomed the suggestion and said that PCPD would follow-up, perhaps commencing with a trial programme in the Sham Shui Po District.

7.13 Members noted PCPD’s report on the implementation of the Business Plan 2013, the future Strategic Plan and Business Plan 2014 without further comments.

(VIII) Plans for Privacy Awareness Week 2014 (Paper No. 07/14)

8.1 The Chairman presented to members the paper on Privacy Awareness Week (“PAW”) 2014 and said that privacy topics relating to ICT would be featured in various programmes during that week.

8.2 The Chairman highlighted that upon PCPD’s invitation, the privacy teams of Facebook and WeChat would meet with local privacy advocates and youngster during the PAW 2014. He further briefed members that the PAW Inauguration Ceremony would be held to coincide with the Student Ambassador Programme Prize Presentation on 4 May 2014. He invited members to attend these two events. Members would be advised of the date of the meeting with Facebook and WeChat once it was confirmed.

8.3 Members noted the paper on PAW 2014 without any comments.
(IX) **Any other business**

9.1 One member expressed concern about the proliferation of cyber-bullying activities and their damaging effects. He suggested PCPD to consider ways to protect the victims of cyber-bullying. The Chairman said that in most cyber-bullying cases, PCPD could not play a meaningful role as the victim was not able to identify or pinpoint the person who disclosed the victim’s personal data. He said that in situation where intimidation was involved, the matter should be reported to the Police for follow-up. In general, individuals should protect themselves by not indiscriminately posting their personal data in the public domain.

9.2 Mrs Philomena LEUNG supplemented that the new offence under section 64 of the Ordinance might be applicable in some cyber-bullying cases where a person disclosed personal data obtained from another person without that other person’s consent and the disclosure caused psychological harm to the data subject.

9.3 One member suggested educational messages be included in PCPD’s new information leaflet on cyber bullying, advising Internet users, especially youngsters, to be mindful of the risks of indiscriminately posting their personal data onto the web.

9.4 There being no other business, the meeting was adjourned at 12:30 p.m.

**Office of the Privacy Commissioner for Personal Data**

**April 2014**