

Seventeenth Meeting of the Human Rights Forum
22 October 2009 at 10:00 am
Room 601, 6/F, Central Government Offices, West Wing

Present

<u>Organisation</u>	<u>Name/Post</u>
1. Amnesty International Hong Kong Section	Ms Milabel Cristobal Director Ms Medeleine Mok LGBT Coordinator
2. Equal Opportunities Commission	Mr Ferrick Chu Head, Policy & Research
3. Hong Kong Council of Social Service	Ms Belinda Hui Chief Officer
4. Hong Kong Human Rights Monitor	Mr Kwok Hiu-chung Education Officer
5. Hong Kong Sex Culture Society	Mr Lau Chi-hung Senior Pastoral Secretary
6. Office of Emily Lau, Legislative Councillor	Ms Astor Chan Research Officer, the Democratic Party
7. The Society for Truth and Light	Ms Helen Fu Assistant General Secretary

Constitutional and Mainland Affairs Bureau

1. Mr Arthur Ho (Chairman)	Deputy Secretary (Constitutional and Mainland Affairs)1
2. Mr Hubert Law	Principal Assistant Secretary (Constitutional and Mainland Affairs)5
3. Ms Christina Chong	Principal Assistant Secretary (Constitutional and Mainland Affairs)4

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| 4. Miss Vinci Chan | Assistant Secretary
(Constitutional and Mainland Affairs)4B |
| 5. Mr Frank Tsang
(Secretary) | Assistant Secretary
(Constitutional and Mainland Affairs)5A |

Introduction

The Chairman welcomed members to the meeting.

Review of the Personal Data (Privacy) Ordinance (Agenda Item 1)

2. The Chairman said that the Government was committed to protecting individuals' right to privacy with respect to personal data. The Government, with the support of the Privacy Commissioner for Personal Data (PCPD), had conducted a comprehensive review of the Personal Data (Privacy) Ordinance (PDPO) and launched a public consultation on 28 August 2009 to examine whether its existing provisions still afford adequate protection to personal data, having regard to developments, including advancement in technology and increasing community concerns about personal data privacy protection, since the PDPO came into force in 1996. The consultation period would end on 30 November 2009.

3. Ms Chong presented the background, guiding principles and key proposals of the consultation document. She said that the Government would consolidate the views received during this round of consultation, and when the general directions on the way forward were available, the Government would arrange for further public discussions on possible legislative proposals.

4. The Chairman invited views from members.

Guiding principles

5. A member remarked that the guiding principles in the review put too much emphasis on the need to maintain Hong Kong's competitiveness and economic efficiency as well as a person's other individual rights. The Chairman explained that any amendments to the privacy law would need to strike a balance with other important human rights and freedoms protected under the law, and take into account the local circumstances as well as the community's views.

Rights of a minor

6. A member queried whether Proposal No. 27, which concerned the transfer of a minor's personal data to their parents or guardians, would breach articles of the Convention on the Rights of the Child on protection of privacy and against self-incrimination (e.g. articles 17 and 40). A member also expressed concern that test results under the proposed school drug-testing scheme would be transferred to a third party (say a prosecuting authority).

7. Ms Chong explained that the PDPO allowed a "person who has parental responsibility for the minor" (e.g. a parent or guardian) to access personal data of a minor, but did not allow data users, of their own accord, to transfer a child's personal data to their parents or guardians. Under the proposal, the primary consideration was whether the transfer was in the best interest of the minor concerned. The Government appreciated that this would involve striking a balance between the need to protect the well-being of a minor "at risk" and the minor's privacy. Proper safeguards were proposed to prevent abuse.

8. Regarding Proposal No. 13, a member opined that there were cases where parents need to make a decision on the use of data on behalf of a minor, as the minor might lack the knowledge or maturity to arrive at one which was in his/her best interest.

9. A member was concerned that Proposal No. 14 would place a heavy onus on schools and social workers to judge whether to accede to data requests from parents. The member suggested that the views of schools and relevant parties should be sought on the operational difficulties of this proposal. A member was concerned that the proposal might restrict parents' access to a minor's personal data, and in turn hinder parents from discharging their responsibility to take proper care of their child, and affect the enforcement of legislation to protect minors, such as the Protection of Children and Juveniles Ordinance.

10. In response, Ms Chong said that the proposal aimed at better protecting the interest of the minor under circumstances such as an estranged parent who had record of abusing the minor to discover the whereabouts of the minor. The Government would ensure that any proposal would not affect the operation of legislation aimed at safeguarding the interests and rights of the child. The Chairman added that the Government was aware of the concerns of parents about the effect

of the proposal on the discharge of their parental responsibilities, and would listen to their views carefully.

Offences and enforcement powers of PCPD

11. Some members expressed concerns about the proposals to provide additional investigatory and prosecution powers to the PCPD, and empower the PCPD to provide legal assistance to an aggrieved data subject (Proposals No. 4-5). They were concerned that such powers might be excessive and might be biased towards the aggrieved person. They also queried whether it was appropriate to empower the PCPD to impose monetary penalty (Proposal No. 10), as the PCPD would then be vested with a combination of enforcement and punitive powers.

12. A member expressed reservation on Proposal No. 7 which made contravention of a Data Protection Principle an offence, and added that Government should be careful not to create criminal offences lightly. Relevant case laws should be studied before making a decision.

13. The Chairman said that the power for the PCPD to provide legal assistance was modelled upon similar powers of the Equal Opportunities Commission under the various anti-discrimination ordinances under specific circumstances, e.g. when a case raised a question of principle. He added that the Government fully appreciated the concern on possible concentration of the powers on the PCPD, and would listen to the views of the community carefully in this respect.

Personal data security breach notification

14. With regard to Proposal No. 3 which proposed to require organisations to notify the PCPD and affected individuals of any leakage of personal data due to security breaches, a member suggested that the Government should assess whether a voluntary system would be effective and, if not, a mandatory system should be put in place. The member also queried if the proposed requirement for notification within five business days of discovery of the breach would be too long. Ms Chong said that if the voluntary notification system was accepted by the community, the Government would review its operational experience and other factors, including the cost of compliance, before deciding on whether a mandatory system should be put in place.

Sensitive personal data

15. A member supported Proposal No. 1 to impose more stringent regulation of sensitive personal data, and considered that “sensitive personal data” should be clearly defined, say, with reference to the EU Directive (95/46/EC). Ms Chong responded that the consultation document proposed to classify biometric information of a person as “sensitive personal data” since such information was unique and unchangeable, and any information leaked would cause serious harm and damage to the data subject. In considering whether to take forward the proposal, the Government would take into account relevant factors, including implementation costs and other social and public interests.

16. A member considered that under a scenario in Proposal No. 1 where a person disclosed his/her HIV-positive status to obtain relevant medical treatment at a hospital, the Hospital Authority might further disseminate such information to other clinics on the grounds of “necessary for medical purposes” (paragraph 3.09(f) of the consultation document), even though a clinic receiving the information might be a general clinic not providing relevant treatment. The member suggested that the condition for transfer of the information should be amended to “reasonably necessary”, which was a more objective criteria. The Chairman responded that Government would consider the suggestion.

Other relevant issues

17. In response to a member’s enquiry, Ms Chong clarified that the Government had decided not to pursue the proposal to define Internet Protocol (IP) addresses as personal data nor to prohibit disclosure of IP addresses to third parties by email service providers without the authorisation of the subscribers (section A.2 of Annex 2 to the consultation document). Ms Chong explained that the PCPD considered that IP addresses alone would not meet the definition of “personal data” as it concerned an inanimate device, not an individual, and could not on its own reveal the location nor identity of the data subject.

18. In response to a member’s query on the proposed facilitation measure for holders of Hong Kong identity cards travelling to Macao to use the Macao Automated Passenger Clearance System (i.e. autogates), Ms Chong said that a user of the service had to give prescribed consent (through an enrolment procedure) before their personal data (e.g. fingerprint information) would be passed to the Macao immigration authorities. The HKSAR Government would sign a memorandum with

the Macao SAR Government on facilitation measures which would include measures to ensure that the data would be processed and transferred in a secured manner.

[Post meeting notes: The Financial Secretary of the HKSAR signed a Memorandum on "Entry and Exit with Permanent Resident Identity Card and Mutual Exemption from Furnishing Arrival/Departure Cards" with the Secretary for Administration and Justice of the Macao SAR on 24 November 2009 on the relevant immigration facilitation measures, which would be implemented on 10 December 2009.]

19. The Chairman thanked members for their views and reminded Members that they were welcomed to submit further views before the end of the consultation period on 30 November 2009.

Any other business

Administrative Guidelines on Promotion of Racial Equality

20. The Chairman said that at the last meeting, members were informed that CMAB was working on draft Administrative Guidelines on Promotion of Racial Equality in consultation with relevant bureaux and departments. CMAB subsequently circulated to members on 3 July 2009 and 16 October 2009 two papers prepared by the Administration for the Panel on Constitutional Affairs of the Legislative Council (LegCo), attaching the draft Guidelines, as well as draft checklists of measures in the areas of education, vocational training and community service – communications and technology prepared by respective bureaux, departments and public authorities.

21. Mr Law presented the key contents of the draft Guidelines and the implementation progress. In response to a member's enquiry, Mr Law said that the Government's target was to finalise the Guidelines and the checklists after views from the LegCo Panel and other organizations had been received. Relevant bureaux, departments and public authorities would review their implementation of the Guidelines and checklists under their purview in light of the operational experience and the situation of specific service areas.

22. In response to a member's query on training given to teachers, The Chairman said that the Education Bureau had provided various support measures to schools and teachers to assist them in meeting the needs of non-Chinese speaking students.

23. A member asked if guidelines in the areas of education, similar to the Code of Practice on Employment issued by the Equal Opportunities Commission (EOC) under the Race Discrimination Ordinance (RDO), would be drawn up. The Chairman said that while enactment of the RDO has sent a strong message to the community on racial equality, the Government believed that publicity and public education were equally important in raising public awareness on race-related issues. In this regard, the EOC had been actively pursuing various publicity and public education measures. Mr Chu supplemented that while there was no immediate plan to draw up a code of practice on education, schools and teachers were primary targets of EOC's publicity efforts.

24. A member expressed concern that the Guidelines were not legally binding and non-compliance with the Guidelines did not lead to any disciplinary actions. The member was also concerned that the use of wording such as "encouraged" gave rise to the interpretation that compliance was voluntary.

25. In response, Mr Law said that as explained to the Bills Committee during scrutiny of the Race Discrimination Bill, in light of the local situation and our strategy to promote racial equality in a progressive manner, the Administration was of the view that guidelines of an Administrative nature were more appropriate. As with other administrative guidelines drawn up by the Government, bureaux and departments were required to follow the Guidelines. Any person who felt aggrieved as a result of a non-compliance with the Guidelines could lodge a complaint through established mechanisms. Mr Law said that in finalising the Guidelines, comments received, including those on the wording of the Guidelines, would be taken into account.

26. In concluding, the Chairman said that the Government would consider the views expressed by the LegCo Panel as well as concerned NGOs and ethnic minority communities through channels such as the Human Rights Forum and the Committee on the Promotion of Racial Harmony, before finalising the Guidelines. He added that the CMAB would circulate to members the remaining draft checklists in the areas of medical, employment and other major community services when available.

[Post meeting notes: The other draft checklists of measures in the areas of medical and health, employment, community services – social welfare, and community services – public enquiry and declaration services prepared by respective bureaux, departments and public authorities were circulated to Members for comments on 7 December 2009].

27. The Chairman also invited members to send in their views on the topics of discussion for future meetings.

**Constitutional and Mainland Affairs Bureau
December 2009**