



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

Highlights

August 2009

Introduction

The Personal Data (Privacy) Ordinance ("PDPO") has been in force since 1996. The Constitutional and Mainland Affairs Bureau has, with the support of the Privacy Commissioner for Personal Data ("PCPD"), conducted a comprehensive review of the PDPO to examine whether its existing provisions still afford adequate protection to personal data having regard to developments, including advancement in technology, in the last decade.

Guiding Principles

In conducting the review, we are guided by the following:

- the right of individuals to privacy is not absolute. It must be balanced against other rights and public and social interests;
- balance is needed between safeguarding personal data privacy and facilitating continued development of information and communications technology;
- any changes to the privacy law should not undermine Hong Kong's competitiveness and economic efficiency as an international city;
- the need to avoid putting onerous burden on business operations and individual data users;
- due account should be given to local situations;
- the PDPO should remain flexible and relevant in spite of technological change;
- legislative intervention may not always be the most effective way. In certain circumstances,

personal data privacy protection may be achieved by administrative measures;

- consensus in the community about the privacy issues is important.

We have proposed a number of amendments to the PDPO, which may have profound impact on various sectors of the community, public and private organizations as well as members of the public. We have an open mind on the proposals and welcome views from the community in this regard.

Major Proposals

SENSITIVE PERSONAL DATA

- Should we subject sensitive personal data, such as fingerprints, to more stringent regulation?

DATA SECURITY

- Should we regulate data processors entrusted with handling of personal data?
- Should we require data users to notify the PCPD and affected individuals of personal data leakage incidents?

POWERS OF THE PCPD

- Should we give the PCPD criminal investigation and prosecution power?
- Should we empower the PCPD to provide legal assistance to an aggrieved data subject who suffers damage by reason of a data user's contravention of a requirement under the Ordinance and intends to institute legal proceedings against the data user?

- Should the PCPD be empowered to award compensation to an aggrieved data subject?

OFFENCES AND SANCTIONS

- Should we make contravention of a Data Protection Principle an offence?
- Should we make it an offence when a person discloses for profits or malicious purposes personal data obtained from a data user without the latter's consent?
- Should we make it an offence when a data user intentionally resumes the same contravening act shortly after complying with an enforcement notice issued by the PCPD against him?

- Should we empower the PCPD to impose monetary penalty on serious contravention of Data Protection Principles?

- Should we impose heavier penalty for repeated non-compliance with an enforcement notice?
- Should we raise the penalty for misuse of personal data in direct marketing?

RIGHTS OF DATA SUBJECTS

- Should we empower a third party to give consent to the change of use of personal data of a minor or a mentally incapacitated person?
- Should we permit a data user to refuse a data access request made by parents on behalf of a minor when compliance with the request is not in the minor's best interests?

EXEMPTIONS FROM THE PDPO

- Should we grant exemption to law enforcement agencies and rescue and relief agencies for handling personal data in emergency situations?
- Should we allow data users to transfer personal data of minors that are relevant to parental care and guardianship to parents or guardians?

Your Views

You can obtain the consultation document from District Offices or download it from the website (www.cmab.gov.hk). Please send us your views and comments by mail, facsimile or email **on or before 30 November 2009**:

Address: Team 4
Constitutional and
Mainland Affairs Bureau
Room 364, East Wing
Central Government Offices
Lower Albert Road
Hong Kong

Fax number: 2523 0565

E-mail address: pdpo_consultation@cmab.gov.hk