



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

Highlights

October 2010

Introduction

The Constitutional and Mainland Affairs Bureau, with the support of the Privacy Commissioner for Personal Data (“PCPD”), has conducted a comprehensive review of the Personal Data (Privacy) Ordinance (“PDPO”) to examine whether the existing provisions still afford adequate protection to personal data having regard to developments, including advancement in technology, over the last decade. We formulated a series of proposals and consulted the public from August to November 2009.

Views received reflect that many proposals to strengthen the protection of personal data privacy have gained general support from the public. We set out in the “Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance” (“consultation report”) the views received and the Government’s proposed way forward.

Separately, the community has recently expressed concerns about the transfer of customer personal data by some enterprises for direct marketing purposes without explicitly and specifically informing the customers of the purpose of the transfer and the identity of the transferees. We have examined these concerns carefully and put forward in the consultation report some new proposals to strengthen the protection of personal data privacy in this regard.

We welcome public views on the specific arrangements and details of the 37 proposals to be taken forward. The major ones are highlighted below :

Major Proposals to be Taken Forward

Direct Marketing and Related Matters

- To introduce additional specific requirements on collection and use of personal data for direct marketing purposes so as to tighten the control, and to make it an offence if a data user does not comply with the requirements and subsequently uses the personal data for direct marketing purposes
- To make unauthorised sale of personal data by data user an offence
- To raise the penalty for misuse of personal data in direct marketing under section 34(1)(b)(ii) of the PDPO
- To make it an offence for a person who discloses for profits or malicious purposes personal data which he obtained from a data user without the latter’s consent

Data Security

- To strengthen regulation of data processors and sub-contracting activities by requiring a data user to use contractual or other means to ensure that its data processors and sub-contractors comply with the requirements under the PDPO
- To institute a voluntary personal data security breach notification system

Statutory Powers and Functions of the PCPD

- To empower the PCPD to provide legal assistance to an aggrieved data subject who

intends to institute legal proceedings against a data user to seek compensation under section 66 of the PDPO

Offences and Sanctions

- To make it an offence for a data user who, having complied with the directions in an enforcement notice to the satisfaction of the PCPD, subsequently intentionally does the same act or engages in the same practice for which the PCPD had previously issued an enforcement notice
- To impose heavier penalty on data users for repeated non-compliance with enforcement notice

Rights of Data Subjects

- To empower a specified third party to give consent to the change of use of personal data of certain classes of data subjects (such as minors or mentally incapacitated persons) when it is in their best interests to do so

After considering views received in the public consultation exercise, we have set out in Chapter Four of the consultation report seven proposals not to be taken forward. These proposals include, among others, more stringent control on sensitive personal data, granting criminal investigation and prosecution power to the PCPD, and empowering the PCPD to award compensation to aggrieved data subjects. In addition, we set out in Annex 5 to the consultation report eight proposals not to be pursued as indicated in the consultation document issued in August 2009.

Your Views

You can obtain the consultation report from the Public Enquiry Service Centres of District Offices or download it from our website (www.cmab.gov.hk). If you would like to comment on the specific arrangements or details of the proposals to be taken forward, or raise any other comments, please submit them by mail, facsimile or e-mail **on or before 31 December 2010**.

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