



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Your Ref. : CMAB/CR 1/34/25
Our Ref. : PCPD/CR(A) 65/25 pt.6

17 July 2012

By Fax (2840 0657) & By Post

Constitutional and Mainland Affairs Bureau (Team 5)
Government Secretariat
12/F., East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

(Attn : Miss LI Wan-in)

Dear Miss Li,

**Outline of the topics in the third report on the
Hong Kong Special Administrative Region
under the Convention Against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment (the “Convention”)**

We refer to your letter dated 5 June 2012 enclosing therewith the outline of the topics for inclusion in the report.

2. We are glad to see that the Personal Data (Privacy) Ordinance (the “**Ordinance**”) and our established regulatory regime have been included in the general legal framework within which human rights are protected under Part I of the previous report submitted in 2006.

Part I – New Development

3. With the passage of the Personal Data (Privacy) (Amendment) Bill 2011 on 27 June 2012, the Ordinance has been amended to empower the Privacy Commissioner to grant assistance to an aggrieved data subject who intends to institute proceedings to seek compensation from data user. It is considered that this is a significant development in relation to protection of personal data privacy, which is a recognized kind of human rights. We propose that Part I of the third report may be supplemented with a description of this enhanced power of the

Privacy Commissioner. For your consideration, we set out below a brief description of the new legal assistance scheme.

4. Under section 66 of the Ordinance, an individual who suffers damage by reason of a contravention of a requirement under the Ordinance by a data user may seek compensation from that data user. By the Personal Data (Privacy) (Amendment) Ordinance 2012, a new section 66B is introduced which confers power on the Privacy Commissioner to grant legal assistance to such person in respect of those proceedings if he thinks fit to do so. Legal assistance so granted may include: - (1) giving advice; (2) arranging for the giving of advice or assistance by a solicitor or counsel; (3) arranging for representation by any person, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings; and (4) any other form of assistance which the Privacy Commissioner may consider appropriate.

5. Provisions in relation to the new legal assistance scheme will take effect on a date to be appointed by the Secretary for Constitutional and Mainland Affairs. A copy of section 66B (the gazetted version) is enclosed for your ease of reference.

6. We trust that you will give due consideration to the above. Should you require any further information, please feel free to contact the undersigned at 3423 6613.

Yours sincerely,



(Catherine CHING)
Legal Counsel

for Privacy Commissioner for Personal Data

Encl.

- (4) Rules under the District Court Ordinance (Cap. 336) may empower the District Court entertaining a claim under section 66 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.
- (5) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before the District Court, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.
- (6) In this section—
respondent (答辯人) includes a prospective respondent.

66B. Commissioner may grant assistance in respect of proceedings

- (1) A person who may institute proceedings to seek compensation under section 66 may make an application to the Commissioner for assistance in respect of those proceedings.
- (2) The Commissioner must consider an application under subsection (1) and may grant it if the Commissioner thinks fit to do so, in particular if—
 - (a) the case raises a question of principle; or
 - (b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided.
- (3) Assistance by the Commissioner under this section may include—
 - (a) giving advice;

- (b) arranging for the giving of advice or assistance by a solicitor or counsel;
 - (c) arranging for representation by any person, including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings; and
 - (d) any other form of assistance which the Commissioner may consider appropriate.
- (4) Subsection (3)(c) does not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address a court in, any proceedings except to the extent permitted under rules made in accordance with section 73F of the District Court Ordinance (Cap. 336).
- (5) If expenses are incurred by the Commissioner in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by relevant rules) constitutes a first charge for the benefit of the Commissioner—
- (a) on any costs or expenses which are payable to the applicant by any other person (whether by virtue of a judgment or order of the District Court or an agreement or otherwise) in respect of the matter in connection with which the assistance is given; and
 - (b) on the applicant's rights (so far as those rights relate to any costs or expenses) under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(6) The charge created by subsection (5) is subject to any charge under the Legal Aid Ordinance (Cap. 91) and to any provision in that Ordinance for payment of any sum into the Supplementary Legal Aid Fund established under that Ordinance.

(7) In this section—

relevant rules (《法院規則》) means any rules made under the District Court Ordinance (Cap. 336);

respondent (答辯人) includes a prospective respondent.”.

Division 11

Amendments Relating to Provisions in Schedules

40. Schedule 1 amended (Data protection principles)

(1) Schedule 1, English text, section 1(1)(a) and (c)—

Repeal

“data are”

Substitute

“data is”.

(2) Schedule 1, English text, section 1(3)—

Repeal

“are or are to be collected”

Substitute

“is or is to be collected”.

(3) Schedule 1, English text, section 1(3)(b)(i)(A)—

Repeal

“data are”

Substitute