

CHAPTER 9

Constitutional and Mainland Affairs Bureau

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

**Audit Commission
Hong Kong
27 October 2009**

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

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OFFICE OF THE PRIVACY COMMISSIONER FOR PERSONAL DATA

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PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Office of the Privacy Commissioner for Personal Data

Functions and powers

1.2 The Office of the Privacy Commissioner for Personal Data (PCPD) is an independent statutory body set up in 1996 to oversee the enforcement of the Personal Data (Privacy) Ordinance (PDPO — Cap. 486) which came into force in December 1996. The PCPD is headed by the Privacy Commissioner for Personal Data (Commissioner) who is appointed by the Chief Executive of the Hong Kong Special Administrative Region to carry out the functions and powers set out in section 8 of the PDPO, as shown in Appendix A.

Staffing and finance

1.3 The Commissioner may employ staff to assist him in the performance of his functions and the exercise of his powers under the PDPO. As at 1 July 2009, the PCPD had 55 staff. An organisation chart of the PCPD is at Appendix B.

1.4 The PCPD is funded mainly by recurrent subventions from the Government, which amounted to \$42.9 million for 2008-09. For 2009-10, recurrent subventions amount to \$44.5 million.

Housekeeping bureau

1.5 The Constitutional and Mainland Affairs Bureau (CMAB — Note 1), which has policy responsibilities for human rights and access to information, is the housekeeping bureau of the PCPD.

Note 1: *Before 1 July 2007, the Home Affairs Bureau was the policy bureau responsible for human rights and access to information. Since July 2007, following the reorganisation of the Government Secretariat, the CMAB has taken over the policy responsibilities.*

Audit review

1.6 The Audit Commission (Audit) has recently conducted a review of the PCPD's activities. The audit commenced in March 2009, focusing on the following areas:

- (a) corporate governance (PART 2);
- (b) complaint management (PART 3);
- (c) promotional activities (PART 4);
- (d) overseas duty trips (PART 5);
- (e) hospitality expenditure (PART 6);
- (f) other administrative issues (PART 7); and
- (g) performance reporting in Controlling Officer's Report (COR — PART 8).

1.7 Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

Acknowledgement

1.8 Audit would like to acknowledge with gratitude the full cooperation of the staff of the PCPD and the CMAB during the course of the audit review.

PART 2: CORPORATE GOVERNANCE

2.1 This PART discusses governance issues of the PCPD and suggests measures for improvement. The following issues are discussed:

- (a) strategic planning (paras. 2.4 to 2.9); and
- (b) meetings of the Personal Data (Privacy) Advisory Committee (Advisory Committee — paras. 2.10 to 2.16).

Mission Statement and key goals

2.2 **Mission.** The PCPD promulgates its Mission Statement and key goals on its website. According to the Mission Statement, the PCPD's mission is to secure the protection of privacy of individuals with respect to personal data through promotion, monitoring and supervision of compliance with the PDPO.

2.3 **Key goals.** The PCPD's key goals are to ensure that:

- (a) individuals are aware of their rights as data subjects under the PDPO and how to exercise them;
- (b) public and private sector organisations are aware of their obligations as data users under the PDPO and how to meet them;
- (c) individuals and public/private sector organisations are aware of the role of the PCPD and how the PCPD can assist them;
- (d) enquiries are responded to courteously and efficiently to the satisfaction of the enquirers;
- (e) complaints are investigated and resolved efficiently in a manner that is fair to all parties concerned;
- (f) all other functions of the PCPD are carried out cost-effectively and efficiently; and
- (g) all other jurisdictions with data protection laws are aware of the robustness of Hong Kong's law protecting the privacy of individuals with respect to personal data, so as to obviate any interference in the free flow of personal data to Hong Kong.

Strategic planning

2.4 **Purpose.** Strategic planning is an important element of corporate governance. It is a process of developing a long-term plan to guide an organisation towards its mission and goals. It is also a process of: assessing where an organisation is presently; ascertaining the challenges and opportunities that present themselves; and determining what destination is most desirable and how to get there.

2.5 **Key steps.** Apart from the formulation of a mission statement and key goals, a strategic planning process usually includes the following steps:

- (a) an “environmental scan” or situational analysis of the strengths and weaknesses of the organisation, including an analysis of external opportunities and threats (generally known as a “SWOT” analysis). This includes also a “stakeholder analysis” which is an analysis of persons, groups or organisations whose interests and concerns are of key importance to the overall strategic process;
- (b) the development of specific targets (or objectives) to be achieved;
- (c) the development of a set of action strategies to indicate what will be done to accomplish the goals and specific targets (or objectives);
- (d) the development of detailed operational or business plans that provide for resource allocation and timelines of the planned actions; and
- (e) an evaluation component to monitor and revise the overall strategic approach as it unfolds.

2.6 **The PCPD’s present position.** At present, the PCPD does not have a structured strategic planning process. For example:

- (a) it does not have a *formal strategic plan* (with a planning horizon of, say, 3 to 5 years updated annually on a rolling basis) that sets out: the PCPD’s strengths/weaknesses/opportunities/threats; and its action strategies indicating what will be done to accomplish its key goals and specific targets (or objectives);
- (b) it does not have a *formal annual business plan* setting out its resource allocation, and timelines of the planned actions, that aligns with the strategic plan;

- (c) there is no *timetable* for the annual conduct of strategic planning; and
- (d) there is no *strategic planning group* (comprising key management staff) in place to drive the strategic planning process.

Audit observations and recommendation

2.7 The PCPD has been given important statutory duties. To fulfil these duties, it has set for itself an important mission and a set of key goals to accomplish (see paras. 2.2 and 2.3). Putting in place a structured strategic planning process, in Audit's view, will help the PCPD accomplish its mission and goals more efficiently and effectively. It will also help the PCPD better meet its future challenges.

2.8 **Audit has recommended that the PCPD should consider implementing a structured strategic planning process, taking into account the audit findings in paragraph 2.6.**

Response from the PCPD

2.9 The PCPD accepts the audit recommendation and will take action to implement it. The **Commissioner** has said that:

- (a) with a small workforce, the Commissioner has to be selective in order to stay effective. This has all along been the unwritten strategic approach adopted for the functioning of his regulatory role. Constant reprioritisation and redeployment of resources are necessary, not only because the PCPD is at the mercy of the number of incoming complaints and their complexity but, more importantly, also because of the need to respond timely to issues of significant public concern whenever they arise. An example is the PCPD's inspection in 2008 of an information system at a large public sector organisation, which handles a large quantity of sensitive and personal data about its clients. In that case the PCPD had not planned on using the inspection power, but the spate of data-breach incidents demanded it. More than half of the manpower of the PCPD was redeployed for that exercise; and
- (b) for a structured strategic planning process to be successfully implemented, the above operational features have to be taken into account, and flexibility and fluidity have to be given due allowance in achieving economy, efficiency and effectiveness.

The Personal Data (Privacy) Advisory Committee

2.10 The Advisory Committee was established under the PDPO to advise the Commissioner on matters relevant to the privacy of individuals in relation to personal data, or other matters relevant to the operation of the PDPO. The Advisory Committee is chaired by the Commissioner. Members of the Advisory Committee are appointed by the Secretary for Constitutional and Mainland Affairs.

2.11 As at 1 July 2009, there were eight Members, apart from the Chairman. Among them was the Deputy Secretary (or Principal Assistant Secretary) for Constitutional and Mainland Affairs. The terms of reference of the Advisory Committee are at Appendix C.

Audit observations and recommendations

Meeting procedures

2.12 According to section 11(5) of the PDPO, the Advisory Committee “may regulate its procedure”. However, as at July 2009, Audit noted that the Advisory Committee had not compiled a set of formal rules to govern its meeting procedures, covering important matters such as the frequencies of meetings, quorum requirement, Members’ attendance and the need for prompt issue of minutes of meetings.

2.13 In the absence of formal rules, there was insufficient assurance that meetings were always properly conducted. From the records of meetings of the Advisory Committee, Audit noted scope for improvement in the following areas:

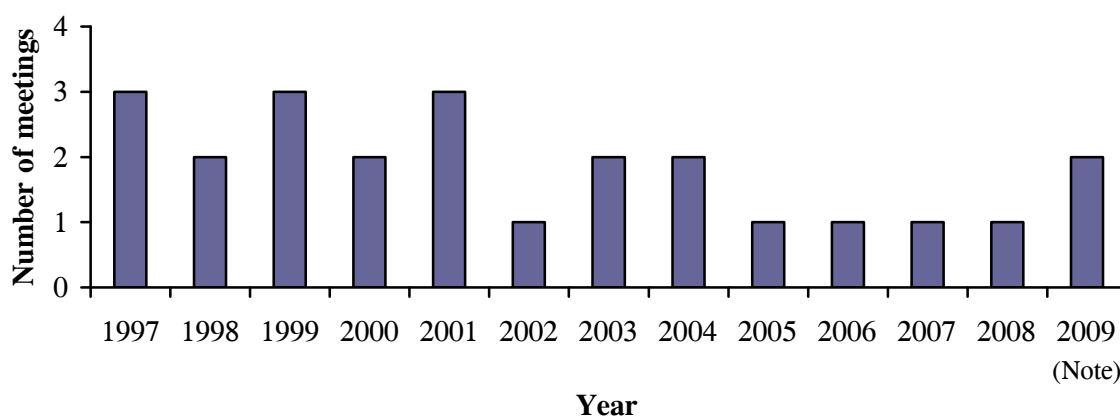
- (a) ***Frequencies of meetings.*** The frequencies of meetings varied between one meeting to three meetings per annum. In general, meetings were held more frequently in the earlier years. For example, three meetings were held in each of the years 1997, 1999 and 2001. From 2005 to 2008, however, only one meeting was held per annum. In 2009, the number of meetings has increased and, up to July 2009, two meetings had been held (see Figure 1). In Audit’s view, the Advisory Committee needs to set rules to govern the frequencies of its meetings, so as to ensure that an appropriate number of meetings are held each year;
- (b) ***Members’ attendance.*** The number of Members present at meetings also varied. At a meeting held on 23 March 2000, for example, only four of the nine Members were present (i.e. 44%). At another meeting held on 13 December 2002, all the nine Members were present (i.e. 100%). On average, 77% of the Members were present at the meetings held during 1997 to 2009. In Audit’s view, the Advisory Committee needs to set rules to govern the

attendance of its Members, so as to ensure that Members fulfil their duties by attending the meetings. In line with good practice, the Advisory Committee also needs to set a quorum requirement for its meetings; and

- (c) ***Minutes of meetings.*** The PCPD took a long time to issue minutes of meetings to Members. For example, for meetings held during the years 2005 to 2008, the PCPD took 153 days on average to issue the first draft of the minutes to Members. In one case, the time taken was 267 days. In Audit's view, draft minutes should be issued shortly after the meetings, so as to enable Members to comment on them or suggest amendments, while their memory is still fresh. To this end, the Advisory Committee needs to set rules to govern the issue of minutes of meetings.

Figure 1

**Frequencies of meetings of Advisory Committee
(1997 to 2009)**



Source: PCPD records

Note: Counted up to July 2009

Audit recommendations

2.14 Audit has recommended that the PCPD should:

- (a) **remind the Advisory Committee of the need to compile a set of formal rules to govern its meeting procedures; and**
- (b) **provide the Advisory Committee with the necessary assistance in compiling the rules.**

Response from the PCPD

2.15 The PCPD accepts the audit recommendations. The **Commissioner** has said that:

- (a) in performing its advisory function, the Advisory Committee has rendered useful advice on relevant matters to the Commissioner, both collectively at meetings and individually at Members' initiative or at the request of the Commissioner. The Commissioner agrees to more regularised meetings; and
- (b) the PCPD will assist the Advisory Committee to establish formal rules of procedures of meetings to regulate the conduct of future meetings including frequencies of meetings, quorum requirement, Members' attendance and the timely issue of minutes of meetings. Members of the Advisory Committee agreed at its meeting on 24 September 2009 that a set of formal rules of procedures be established.

Response from the Administration

2.16 The **Secretary for Constitutional and Mainland Affairs** supports the audit recommendations. He suggests that the Commissioner, as Chairman of the Advisory Committee, should consider convening meetings on a more frequent basis (e.g. once every three to four months) to seek Members' views and advice on relevant matters.

PART 3: COMPLAINT MANAGEMENT

3.1 The PCPD processes, on average, around 1,100 complaint cases a year concerning alleged breaches of PDPO requirements. This PART examines issues relating to the PCPD's management of complaint cases. The following issues are discussed:

- (a) complaint handling plans (paras. 3.9 to 3.11);
- (b) long outstanding cases (paras. 3.12 to 3.16); and
- (c) refusal notices (paras. 3.17 to 3.23).

The complaint handling process

3.2 Headed by a Chief Personal Data Officer (CPDO), the Operations Division of the PCPD is responsible for handling complaints. As at 1 July 2009, it had 13 staff, comprising the CPDO, 3 Senior Personal Data Officers (SPDOs), 5 Personal Data Officers (PDOs), 3 Assistant Personal Data Officers (APDOs) and 1 Administrative Assistant.

3.3 After receiving a complaint and verifying the identity of the complainant, the PCPD will first liaise with the complainant and the party being complained against to determine whether a prima facie case can be established. If there is a prima facie case, the PCPD will try to resolve the dispute through mediation. If the dispute cannot be resolved in this way, the PCPD may carry out a formal investigation. The PCPD may also proceed immediately to a formal investigation, if the suspected contravention in the complaint case is of a serious nature.

3.4 If the investigation confirms that the data user is contravening or has contravened a PDPO requirement, in circumstances that make it likely that the contravention will continue or be repeated, the PCPD may serve an enforcement notice on the data user to direct it to take necessary steps to remedy the contravention. Contravention of an enforcement notice is an offence that could result in a fine and imprisonment.

An example

3.5 For illustration, the following is an example of complaint cases handled by the PCPD.

An example of complaint cases

The Complaint

The complainant was a referee of a debtor who had borrowed money from a financial institution. In default of payment, the financial institution appointed a debt collection agent (the Agent) to recover the debt. The Agent posted various notices containing the complainant's name in the corridor of the building where he lived.

Outcome

After investigation, the PCPD found that the Agent did post up the notices, and did not have any internal policy or procedure regarding the handling of referees' personal data.

The PCPD took the view that a debt collector should only use the personal data of the referee (i.e. the complainant) in locating the whereabouts of the debtor rather than exerting pressure on the referee to repay the debt, and that it would not be within the reasonable expectation of the referee to have his personal data used in such manner. The PCPD found that, by displaying the complainant's personal data in public, the Agent had used the complainant's personal data other than for the original collection purpose, and thus contravened Data Protection Principle 3 (Note 2).

The PCPD issued an enforcement notice directing the Agent to stop posting the referee's personal data in public, and to develop policies and procedures for handling referees' personal data.

The Agent did not respond to the enforcement notice and, as a result, committed an offence by contravening the enforcement notice. The Agent was subsequently prosecuted, convicted and fined \$5,000.

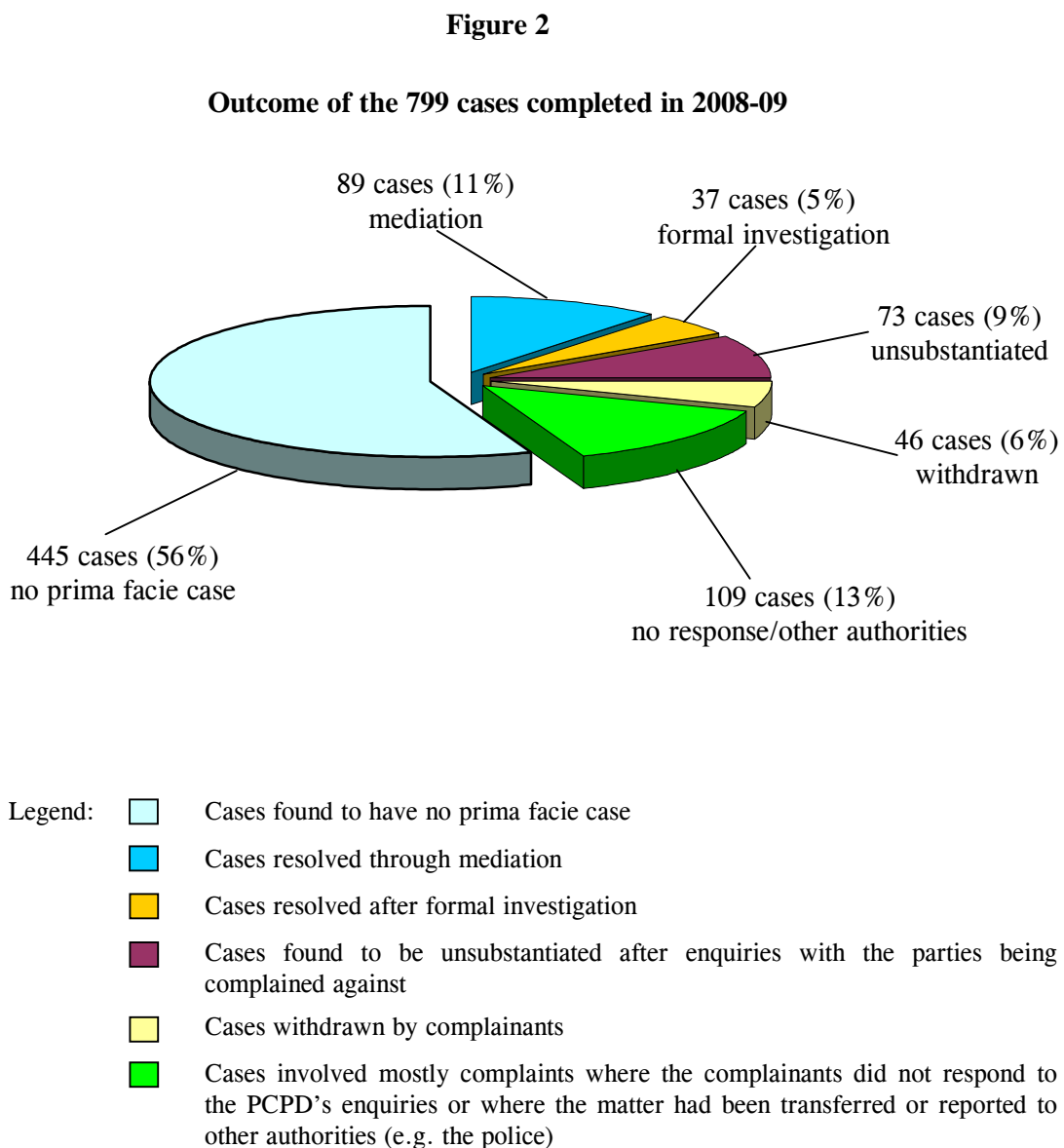
Source: PCPD records

Note 2: *According to Data Protection Principle 3, which is specified in the PDPO, personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than: (a) the purpose for which the data were to be used at the time of collection of the data; or (b) a purpose directly related to the purpose referred to in (a).*

Complaint caseload

3.6 In 2008-09, the PCPD received 824 complaint cases. Together with 148 cases brought forward from the previous year, the PCPD processed a total of 972 cases in that year. Of the cases handled, 799 (82%) were completed and the remaining 173 cases (18%) were in process as at 31 March 2009.

3.7 Figure 2 shows the outcome of the 799 cases completed in 2008-09.



Source: *Audit analysis of PCPD records*

Monitoring of complaint cases

3.8 The PCPD's senior management monitors the work of the Operations Division through the Monthly Case Review Meetings (chaired by the Deputy Commissioner) and the Monthly Commissioner's Meetings. Apart from these meetings, the Commissioner and the Deputy Commissioner receive weekly reports on case status and, whenever necessary, call on individual officers to explain the cases they are handling.

Audit observations and recommendations

Complaint handling plans

3.9 ***Planning procedures.*** The procedures for handling complaint cases are set out in the PCPD's Standing Instruction No. 43, issued in August 2007. The Instruction sets out the procedures for the preparation, submission and review of a complaint handling plan (also known as an "action plan") for each complaint case, as follows:

- (a) upon receipt of the case file, the PDO is required to assess the known facts of the case and prepare a complaint handling plan to the SPDO within one week;
- (b) the SPDO shall assess the plan and suggest alternatives if appropriate;
- (c) in the event of a subsequent and substantial change to the plan, which renders previous efforts redundant, the SPDO shall record his reasons for the change in writing;
- (d) within one week of endorsement by the SPDO, the complaint handling plan shall be submitted to the CPDO who is expected to discuss the plan with the SPDO and PDO. The CPDO shall also endorse the plan or direct changes; and
- (e) in the event of a subsequent and substantial change to the plan which renders previous efforts redundant, the CPDO shall give his reasons for the change in writing.

3.10 ***Suspension of planning procedures.*** In September 2008, a fast-track approach was adopted, as a short-term measure, to reduce the number of cases which did not conform to the 45-day statutory time limit (see para. 3.17). Under the fast-track approach, the planning procedures referred to in paragraph 3.9 would not be strictly followed. In an e-mail dated 5 September 2008 to the CPDO of the Operations Division, the Deputy Commissioner said that she agreed with "the suspension of the action plan until a firm decision is available on the way forward".

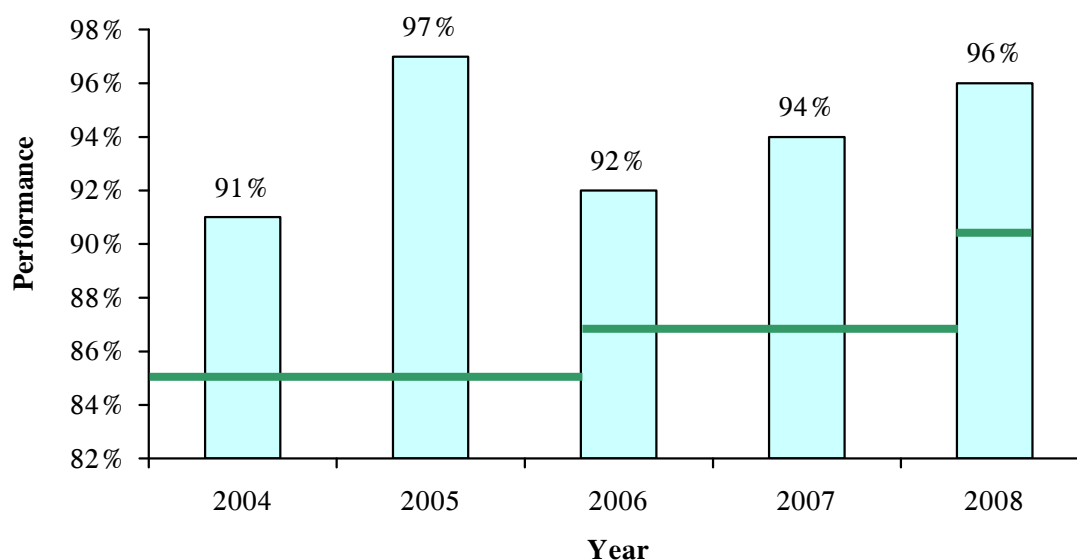
3.11 *Need to revisit the issue.* Audit noted that, as at July 2009, the planning procedures remained suspended. In Audit's view, the PCPD should set a target date to revisit the issue, with a view to making a firm decision. In revisiting the issue, the PCPD should give due consideration to restoring (or streamlining) the planning procedures, instead of discarding them. This is because it is a good practice to have an action plan. Such a plan helps focus the case officer's mind on the specific nature and requirements of the individual complaint, and guides the officer in taking the case forward. It will also help others who may need to review the case. In response to these audit observations, in September 2009, the PCPD revisited the issue and streamlined the planning procedures. Under the streamlined procedures, a case officer is required to prepare and submit an investigation plan to his supervising officers within seven working days after the commencement of a formal investigation.

Long outstanding cases

3.12 *Performance targets.* The PCPD has performance targets on the handling of complaints, in terms of the percentage of cases that can be closed within 180 days of receipt of the complaints. The targets are agreed between the PCPD and the housekeeping bureau. Figure 3 shows the PCPD's performance against the prevailing targets for the last five years (i.e. 2004 to 2008). It can be seen that the PCPD's performance exceeded the targets in all these years, and that more than 90% of the cases were closed within 180 days.

Figure 3

**Actual performance against targets
(2004 to 2008)**



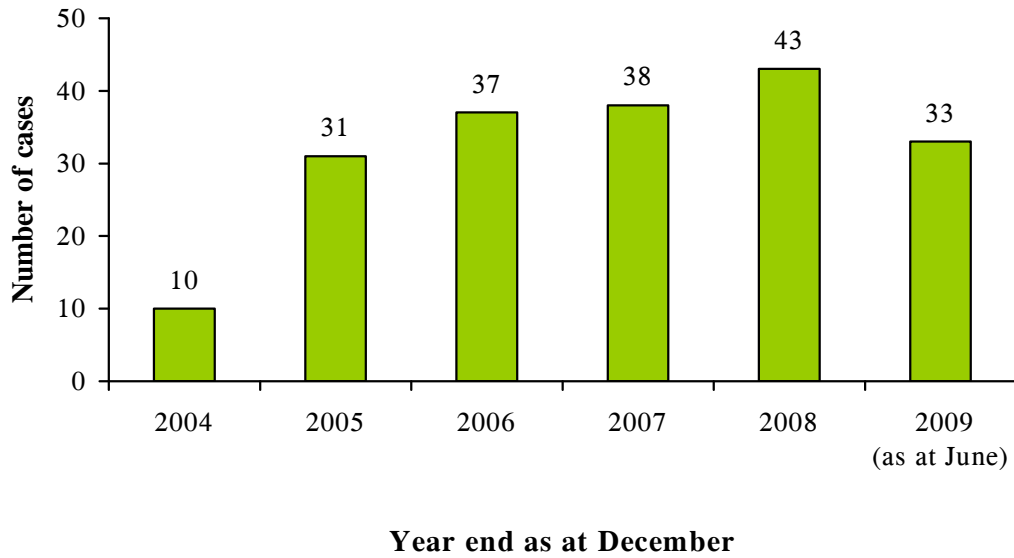
Legend: ■ Actual performance
— Target performance (Note)

Source: Audit analysis of PCPD records

Note: The target was revised twice during the years 2004 to 2008, from 85% to 87% and then to 90%, as shown above. In 2009-10, the target was further revised to 92%.

3.13 **Number of long outstanding cases.** Figure 4 shows the number of long outstanding cases that aged beyond 180 days (as at December of the five years 2004 to 2008, and June 2009). It can be seen that the number of such cases increased from **10** as at December 2004 to **31** as at December 2005, and further to **43** as at December 2008. As at June 2009, the number of such cases decreased to **33**.

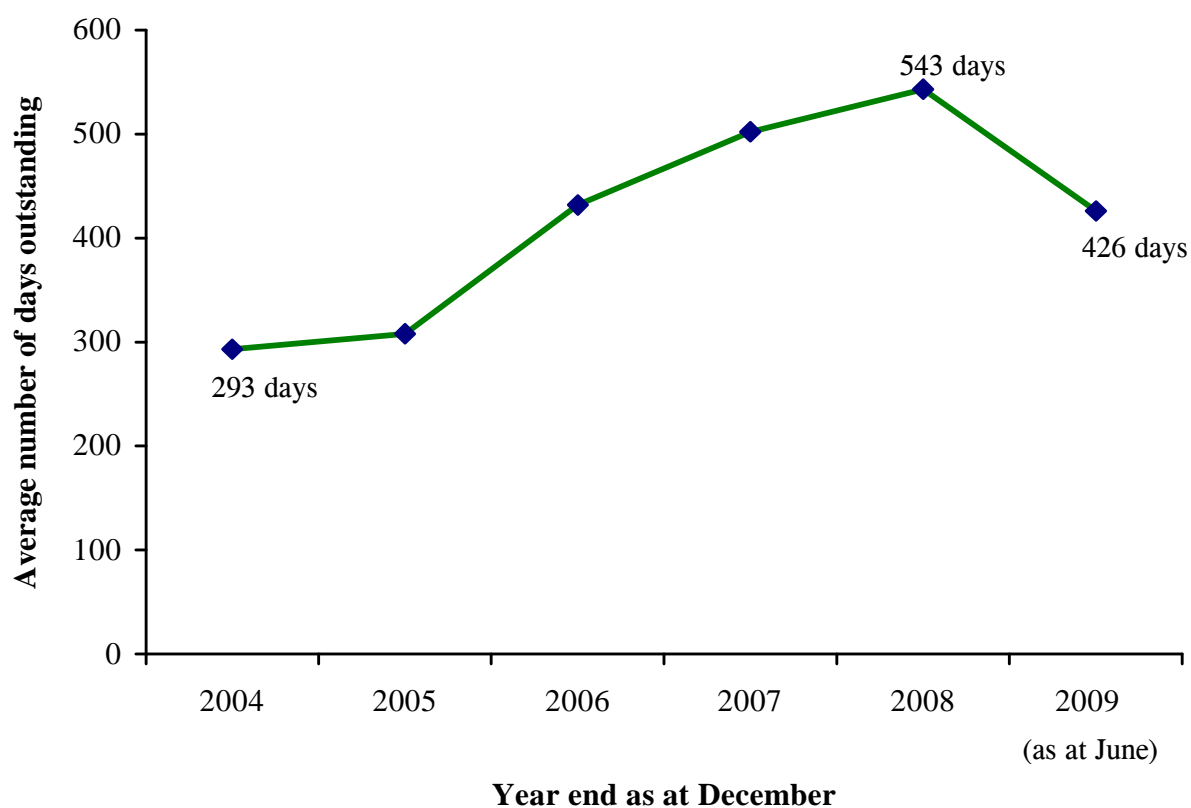
Figure 4

**Long outstanding cases aged beyond 180 days
(2004 to 2009)**

Source: Audit analysis of PCPD records

3.14 **Ageing analysis.** Audit asked the PCPD to produce an analysis of the average age of these cases. Figure 5 shows that the average age of these cases increased from **293 days** as at December 2004, by 85%, to **543 days** as at December 2008. It then decreased to **426 days** as at June 2009.

Figure 5

Average age of the long outstanding cases
(2004 to 2009)

Source: Audit analysis of PCPD records

3.15 **Reasons for long outstanding cases.** Upon enquiry, in July 2009, the PCPD informed Audit that the reasons for the long outstanding cases varied, and that the main reasons were as follows:

- (a) lack of manpower and heavy workload of the case officers concerned;
- (b) departure of the case officers; and
- (c) complex legal issues requiring the advice of the PCPD's Legal Division.

Regarding the point about manpower resources, in September 2009, the CMAB informed Audit that the Government was committed to the protection of personal data privacy, and had strived to provide resources at an appropriate level to support the PCPD (Note 3). Since assuming policy responsibilities for human rights in 2007, the CMAB had increased the annual budgetary allocation to the PCPD by more than 20%. The CMAB would continue to support the PCPD's work, and would consider favourably funding requests where the need for additional resources could be fully justified.

3.16 *Need to clear long outstanding cases.* Audit acknowledges that the vast majority of complaint cases were closed within 180 days. However, Audit is concerned that both the number and the ages of long outstanding cases have increased since 2004, as revealed in Figures 4 and 5. Audit notes the improvement made in the first half of 2009, but considers that increased efforts are necessary to clear the long outstanding cases, although they represent a small percentage only of the total number of cases handled.

Refusal notices

3.17 *45-day requirement.* Section 39(3) of the PDPO provides that, where the Commissioner refuses to carry out or continue an investigation initiated by a complaint, he shall, as soon as practicable, but in any case “*not later than 45 days after receiving the complaint*”, by notice in writing served on the complainant, inform the complainant:

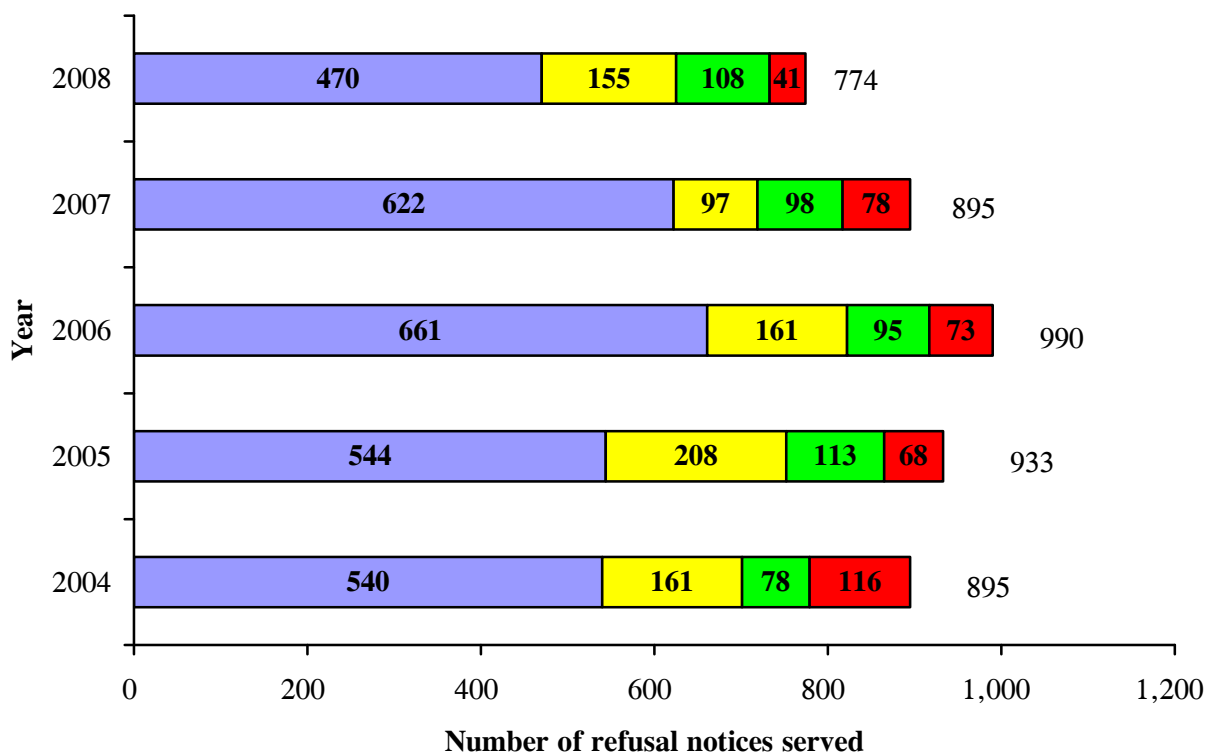
- (a) of the refusal; and
- (b) of the reasons for the refusal.

3.18 *Ageing analysis of refusal notices.* Notwithstanding the statutory requirement that a refusal notice should be served “not later than 45 days after receiving the complaint”, Audit noted that, prima facie, this requirement was not met in many cases. Based on the information provided by the PCPD in July 2009, Audit performed an ageing analysis of the refusal notices served in 2004 to 2008. Figure 6 shows the age distribution of the refusal notices served.

Note 3: *In 2008-09, an extra \$2.8 million was provided, which included \$1.8 million for the creation of three posts for strengthening the PCPD's enforcement manpower. In 2009-10, a recurrent subvention of \$5 million was provided for the creation of five posts to further strengthen the enforcement manpower.*

Figure 6

**Age distribution of the refusal notices served
(2004 to 2008)**



Legend:

- Served not later than 45 days
- Served within 46 to 75 days
- Served within 76 to 120 days
- Served beyond 120 days

Source: *Audit analysis of PCPD records*

Remarks: *For the purpose of this ageing analysis, the number of days within which a refusal notice was served, was counted from the date of physical receipt of the complaint (see also the PCPD's view in para. 3.19(g)).*

3.19 **PCPD's comments.** In response to the audit observations, in July 2009, the PCPD commented on the issue focusing on four aspects: when and how a refusal notice is served; the calculation of the 45-day period; the reasons for refusal notices being served beyond 45 days; and the unclear rationale for setting the statutory time limit at 45 days. The PCPD's comments are as follows:

When and how a refusal notice is served

- (a) in refusing to carry out or continue an investigation initiated by a complaint, the Commissioner shall in accordance with the PDPO have regard to all the circumstances of the case, such as: whether the complaint is of a substantially similar nature previously being investigated and found no contravention; whether the complaint is trivial, frivolous, vexatious or is not made in good faith; or whether investigation or further investigation is for any other reason unnecessary. An appeal right is expressly conferred upon the complainant to appeal to the Administrative Appeals Board (Note 4) against the refusal;
- (b) having regard to the specific grounds of refusal laid down in the PDPO and the appeal channel that is available to the complainants, any decision to refuse to investigate or continue with an investigation must not be made lightly. Generally, information will be gathered and clarification with the relevant parties made and carefully analysed, before a decision is made. Considerable time and efforts are involved in the conduct of preliminary inquiry and the preparation of the refusal notice, with reasons for refusal sufficiently and clearly stated;

Calculation of the 45-day period

- (c) section 39 of the PDPO requires the Commissioner to serve the refusal notice within 45 days after receiving the “complaint”. “Complaint” is defined in section 2 as meaning “a complaint under section 37”. Under section 37, certain conditions must be satisfied before a case can be treated as a “complaint” under the PDPO. These conditions may be summarised as follows: (i) the complaint relates to “personal data”; (ii) the complainant is the “data subject” or a “relevant person”; (iii) the identity of the “data user” is specified; (iv) the act or practice in question is specified; and (v) there may be a contravention of a requirement under the PDPO;
- (d) according to section 37(4), it is the duty of the Commissioner to assist a complainant to formulate his complaint;

Note 4: *The Administrative Appeals Board is an independent statutory body established under the Administrative Appeals Board Ordinance (Cap. 442) in July 1994. The Board will hear and determine appeals against a decision made in respect of an appellant and which falls under its jurisdiction.*

- (e) the PCPD takes the view that where the information and materials presented by a complainant in his complaint do not formulate a case that satisfies all the conditions set out in section 37 (which is usually the case when an individual lodges his complaint with the PCPD), the complaint may be regarded as incomplete. The time to comply with section 39(3), i.e. the 45 days, does not start to run until a properly completed complaint is formulated, usually through the assistance of the case officer who handles the complaint;
- (f) however, for administrative convenience and for the operation of the computer system which generates the complaint statistics, the PCPD uses the date when it first physically receives the complaint form, letter or e-mail from the complainant as the date of the receipt of a complaint;
- (g) the PCPD does not have statistics on the date when a complaint is properly formulated and completed, as it is difficult and impracticable to fix such a date. From the PCPD's experience, however, and on a rough estimate, it takes 30 days on average for a complaint to be properly formulated after clarification with, and obtaining the necessary information and relevant documents from, the complainant. On the premises, it would be fair to say that the compliance rate is about 80%, which is based on the figures for complaints closed (and refusal notices served) within **75 days** of the physical receipt of a complaint;

Reasons for refusal notices served beyond 45 days

- (h) several factors contributed to the situation where the refusal notices were served beyond the 45-day period (see items (i) to (m) below);
- (i) experience shows that, almost without exception, complainants did not present a complete picture when a complaint was filed. The case officers spent considerable efforts in helping the complainants establish their cases with supporting evidence. Many complainants did not even bother to provide proof of identity, although this was a basic requirement;
- (j) considerable delays were often caused by the complainants' failure to clarify anomalies despite having provided the basic information, and by difficulties in contacting the complainants. Case officers often tried their utmost to commence initial enquiries with the party being complained against simultaneously, regardless of missing information from the complainants;

- (k) it was not uncommon for the party being complained against to ask for an extension to the deadline for replying to the PCPD's enquiries. This was particularly significant with major corporations and government departments seeking legal advice. Indeed, this was often the factor that caused the longest delay, although the PCPD did not maintain any statistics on this;
- (l) given the complicated nature of some of the cases, further enquiries with the complainants were often called for, in the light of information provided by the parties being complained against. Further enquiries to clarify and/or verify facts with either party, or even a third party, again took extra time;
- (m) there was a shortage of manpower within the PCPD;

Unclear rationale for setting the statutory time limit at 45 days

- (n) while it is evident that the general intent of the 45-day rule is to impose a timeline on the PCPD, it has not been possible to trace the specific rationale for setting the timeline at 45 days. The PCPD searched records and sought assistance from the Department of Justice and the Home Affairs Bureau (HAB), the then policy bureau, to ascertain the rationale. The PCPD also traced the history of the passage of the Bill through the Legislative Council (LegCo), but to no avail. Other local regulatory bodies and overseas privacy regulators are not subject to a statutory time limit for notifying the complainant of refusal to carry out or continue an investigation;
- (o) the operation of the PDPO commenced on 20 December 1996. The PCPD detected, at a very early stage, practical difficulties in meeting the 45-day rule. In July 1998, the PCPD made a detailed case to the HAB and proposed to amend the PDPO to relax the 45-day rule. The proposal had the support of the HAB. A draft amendment bill, which included the legislative amendment on the 45-day rule, was prepared in 2002. However, no time slot could be secured for introducing the amendment bill into LegCo; and
- (p) in 2006, the PCPD undertook a comprehensive review of the entire PDPO. In December 2007, the PCPD put to the CMAB, the current policy bureau, some 50 proposed amendments, including a proposal to remove the 45-day time limit. The CMAB had incorporated the proposal in the public consultation document on the review of the PDPO issued in August 2009.

3.20 **Risks.** Audit notes the PCPD's aforesaid comments. However, Audit is concerned that the situation, if allowed to continue, may pose legal and reputational risks to the PCPD. The reputational risks may extend to the CMAB, given its housekeeping responsibility for the PCPD.

3.21 **Calculation of the 45-day period.** Audit notes the PCPD's view that refusal notices that were served within **75 days** of the physical receipt of a complaint should be regarded as in compliance with the 45-day requirement (see para. 3.19(g)). However, even if the PCPD's view is accepted, the number of non-compliance cases was still significant, not to mention that this view can be subject to legal challenges. As shown in Figure 6 in paragraph 3.18 (see the green and red portions of the bars), in the five years 2004 to 2008, a total of **868** (Note 5) refusal notices were served beyond 75 days of the physical receipt of the complaints. These accounted for 19% of the total number of refusal notices served.

3.22 **Risk assessment.** In Audit's view, the PCPD needs to carry out a thorough risk assessment, with a view to identifying, assessing and formulating measures to manage the risks arising from the non-compliance. Given the importance of the matter, the PCPD needs to involve the CMAB in the risk assessment exercise. Similarly, the Advisory Committee (see para. 2.10) should also be involved, given its statutory duty to advise the Commissioner on matters relevant to the operation of the PDPO.

3.23 **Standing agenda item.** Audit also considers that the issue of non-compliance with the 45-day requirement should form a standing agenda item of the Advisory Committee meetings, until the issue is satisfactorily resolved. The same should apply to the CMAB's progress review meetings with the PCPD. To keep the Advisory Committee and the CMAB informed of the position, the PCPD will need to provide them with statistics similar to those shown in Figure 6 in paragraph 3.18 on a regular basis.

Audit recommendations

3.24 **Audit has recommended that the PCPD should:**

Note 5: This was calculated by adding up the figures represented by the green and red portions of the bars in Figure 6 in paragraph 3.18, as follows: $108 + 41 + 98 + 78 + 95 + 73 + 113 + 68 + 78 + 116 = 868$.

Complaint handling plans

- (a) regarding the streamlined planning procedures (see para. 3.11), conduct a post-implementation review at an appropriate time to evaluate, in the light of experience, whether the procedures are effective in enhancing the management of complaint cases;

Long outstanding cases

- (b) make increased efforts to clear the long outstanding cases;

Refusal notices

- (c) carry out a thorough risk assessment, with a view to identifying, assessing and formulating measures to manage the risks arising from the non-compliance with the 45-day requirement of serving the refusal notice to complainants;
- (d) ensure that the CMAB and the Advisory Committee are involved in the risk assessment exercise;
- (e) ensure that the issue of non-compliance with the 45-day requirement forms a standing agenda item of the Advisory Committee meetings, until the issue is satisfactorily resolved. The same should apply to the CMAB's progress review meetings with the PCPD; and
- (f) provide the Advisory Committee and the CMAB with statistics similar to those shown in Figure 6 in paragraph 3.18 on a regular basis, to keep them informed of the position.

Response from the PCPD

3.25 The PCPD accepts the audit recommendations and is taking action to implement them. The **Commissioner** has said that:

Long outstanding cases

- (a) an investigation carried out under the PDPO entails a systematic investigative process. Considerable time is required in gathering information and evidence, identifying the breaches and conducting researches into the technical issues involved. Given the right to appeal against all decisions made by the

Commissioner, the results of investigations are communicated to the complainants as well as the parties being complained against with detailed and often elaborated reasons;

- (b) there has been a high turnover rate of personnel in the Operations Division in the last few years;
- (c) in 2008-09, the CMAB provided the PCPD with additional resources on a recurrent basis for the creation of three posts for the Compliance Division (Note 6). However, the establishment of that Division in December 2006 necessitated the redeployment of experienced officers from the Operations Division. The redeployment created a prolonged effect on the Operations Division which had to recruit and train up inexperienced officers. This has, to a large extent, accounted for the delay (up to this date) in the processing of complaints by the Operations Division;
- (d) with limited resources, there was a quandary on what should be given priority — complying with the 45-day requirement or processing the investigations as speedily as possible;
- (e) amid this quandary, investigating officers have put in extra efforts to keep down the processing time for the cases under investigation. This has resulted in a marked decrease in ageing cases since the beginning of 2009, as indicated in Figure 4 in paragraph 3.13;

Refusal notices

- (f) it takes time and efforts to decide whether to open a formal investigation. In one case, for example, officers had to watch a video recording lasting 64 hours in the process;
- (g) a refusal notice has to state the facts and the law so that the complainant can consider his right of appeal. For instance, in a case where a complaint was lodged against a university for failing to provide the complainant with 18 items of documents, the circumstances required all 18 items to be separately addressed; and

Note 6: *The responsibilities of the Compliance Division include, among other things, undertaking inspections of personal data systems and making recommendations to the data users concerned for improved compliance with the provisions of the PDPO.*

- (h) at the meeting of the Advisory Committee held on 24 September 2009, Members present agreed to be involved in advising the Commissioner on the risk assessment of the non-compliance with the 45-day requirement as they saw fit. Members also agreed that the matter should form a standing agenda item for all future meetings. For the purpose of risk management, the Commissioner will provide the Advisory Committee with statistics similar to those shown in Figure 6 in paragraph 3.18 at future meetings. He will also raise at the meetings special issues of concern or difficulties encountered in complying with the 45-day requirement.

Response from the Administration

3.26 The **Secretary for Constitutional and Mainland Affairs** has said that the CMAB will closely monitor the issue of non-compliance with the 45-day requirement at its progress review meetings with the PCPD, until the issue is satisfactorily resolved.

PART 4: PROMOTIONAL ACTIVITIES

4.1 The Corporate Communications Division (CCD), headed by a Corporate Communications Manager (CCM), is responsible for organising activities to promote awareness and understanding of the PDPO. In 2008-09, the PCPD's promotional expenditure amounted to \$1.5 million (Note 7). Audit selected some promotional events for case study, focusing on budgetary and expenditure issues. This PART reports the audit findings in the following areas:

- (a) budgetary control of promotional events (paras. 4.2 to 4.13);
- (b) expenditure items worthy of discussion (paras. 4.14 to 4.31);
- (c) expenditure-sharing arrangement (paras. 4.32 to 4.36); and
- (d) international seminars (paras. 4.37 to 4.39).

Budgetary control of promotional events

Elements of a good budgetary control process

4.2 A budget is a plan expressed in monetary terms. A good budgetary control process is essential to the effective control of expenditure. Therefore, for each major promotional event, Audit expects that:

- (a) the CCD should prepare a comprehensive budget, showing how much the event will cost and the composite expenditure items. The budget should be explicitly approved by the Commissioner;
- (b) where a budget increase is necessary, the CCD should submit a revised budget for the Commissioner's approval. No excess expenditure should be incurred before the approval;
- (c) the Administration Division (headed by the Administration and Finance Manager — A&FM) should be informed of the approved budget and subsequent revisions. The Division should make reference to the budget information when processing requests for payment from the CCD. The Division should not pass a payment if it would cause the budgeted amount to be exceeded;

Note 7: *The 2008-09 expenditure included an amount of \$1 million spent on two one-off promotional programmes (i.e. the production of an infomercial and a trainers' kit) to enhance the awareness and understanding of personal data protection and the PDPO.*

- (d) timely regular expenditure reports should be submitted to the Commissioner to facilitate his monitoring of expenditure against budget; and
- (e) after completion of the event, a timely final expenditure report should be submitted to the Commissioner, which should demonstrate compliance (or explain variances) with the approved budget. Unauthorised excess expenditure, if any, should be taken seriously.

4.3 Audit's study of the budgetary control process for two major promotional events, namely the Hotel Privacy Campaign and the Privacy Awareness Week (PAW) 2007, indicated that the process did not meet the aforesaid expectations. The audit findings are reported in paragraphs 4.4 to 4.12.

The Hotel Privacy Campaign

4.4 ***Event particulars.*** This Campaign was jointly organised by the PCPD and the hotel industry. The main objective was to raise hotel personnel's awareness of privacy risks in their everyday work. Hotel personnel were provided with practical guidance on day-to-day operations through various forms of training, including seminars, display boards, games, self-training modules and quizzes. A writing competition was also organised for hotel personnel. The Campaign lasted for about six months from late June to mid-December 2006. Expenditure incurred on the Campaign was \$431,900.

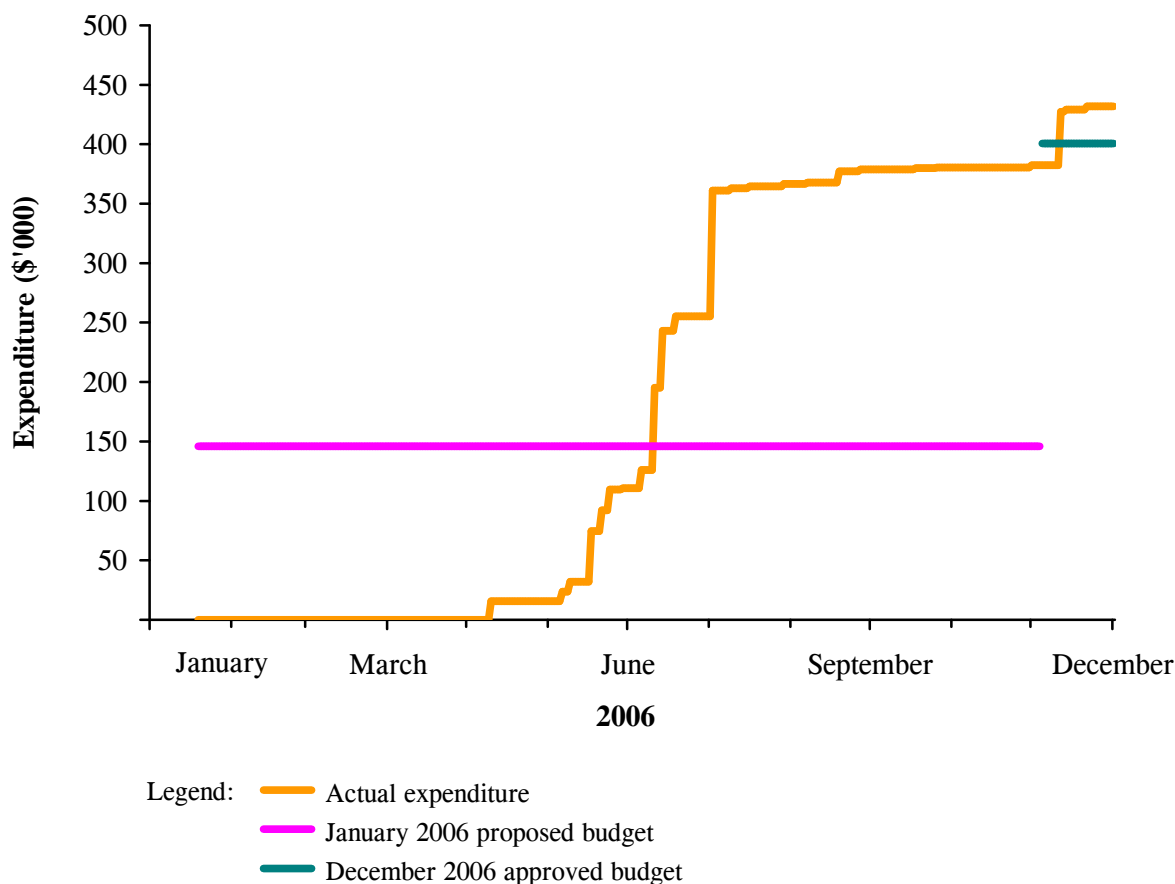
4.5 ***First budget proposal.*** On 18 January 2006, the CCM submitted a proposed work plan on the Campaign to the Commissioner. The proposal included an expenditure budget of \$146,000, comprising seven expenditure items, for the Commissioner's approval. The Commissioner sought the A&FM's advice as to whether the PCPD had the necessary funds for the event. Through a minute dated 24 January 2006, the A&FM replied that the proposed amount could be "absorbed". On 6 February 2006, the Commissioner initialed on the minute, but did not state clearly that he approved the budget. Thus, as far as the record is concerned, the proposal remained as a proposal pending the Commissioner's approval.

4.6 ***Second budget proposal.*** No further budget proposal was submitted to the Commissioner until 4 December 2006 (i.e. almost a year later). By then, the Campaign had been going on for more than five months and, according to Audit's analysis of the payment records, campaign expenditure of \$382,200 had already been paid. The budget proposal of 4 December 2006 (comprising 12 expenditure items) was \$400,700. In the CCM's submission minute to the Commissioner, the proposal was referred to as the "final budget", but no reference was made to the earlier budget proposal of \$146,000. The Commissioner explicitly approved the budget proposal of \$400,700, and raised no questions.

4.7 **Final expenditure.** In the end, the total expenditure on the Campaign was \$431,900, which exceeded the “final budget” by \$31,200 (i.e. 8%). There was no explicit covering approval by the Commissioner for the excess. Figure 7 shows a comparison of actual expenditure against the January 2006 proposed budget and the December 2006 approved budget.

Figure 7

Comparison of actual expenditure against the January 2006 proposed budget and December 2006 approved budget



Source: Audit analysis of PCPD records

4.8 **Room for improvement in budgetary control.** The facts of this case suggested that there was room for improvement in the PCPD’s budgetary control at the event level (as opposed to the whole-of-PCPD level). Apart from the lack of a properly approved budget until a very late stage (i.e. December 2006), the CCD was not required to submit regular expenditure reports to the Commissioner to facilitate his monitoring of the expenditure. Nor was the CCD required to give the Commissioner a timely final expenditure report, after completion of the Campaign, to demonstrate compliance (or explain variances) with the approved budget. Upon enquiries, in September 2009, the

PCPD informed Audit that the Commissioner and the CCM had frequent discussions during the course of the Campaign on the overall campaign expenditure. Having said that, the PCPD agreed that there was room for improvement in the budgetary control of the event.

The PAW 2007

4.9 **Event particulars.** The PAW 2007 was an annual international promotional event jointly organised with other Asia Pacific Privacy Authorities (APPA). Held from 26 August to 1 September 2007, the week-long campaign included various educational activities and a writing competition (for secondary school students) to promote privacy compliance. Expenditure incurred by the PCPD on the event was \$165,000.

4.10 **No comprehensive budget.** From the case file, Audit could not find a comprehensive budget showing the approved amount and the composite expenditure items. Instead, various items of expenditure were proposed piecemeal for the Commissioner's approval on different file minutes at different times. From the file minutes, Audit ascertained the approved budget to be \$135,000, details as shown in Table 1.

Table 1

Approved expenditure items for the PAW 2007

Date of proposal by CCM	Date of approval by Commissioner	Expenditure item	Amount (\$)
24 April 2007	3 May 2007	Prizes for winners of writing competition	10,000
24 April 2007	3 May 2007	Production of souvenirs (door hangers)	20,000
24 April 2007 (re-submitted on 8 June 2007)	11 June 2007	Survey on young people's attitudes towards the disclosure and collection of personal information on Internet	40,000
4 July 2007	6 July 2007	Honoraria for two speakers at a seminar	25,000
4 July 2007	6 July 2007	Expenditure on refreshment at prize presentation ceremony	5,000
19 July 2007	20 July 2007	Production of souvenirs (fans)	15,000
15 August 2007	Undated	Honorarium for a renowned artist to appear at the opening ceremony on 26 August 2007	20,000
		Total	135,000

Source: PCPD records

4.11 ***Final expenditure.*** Audit's analysis of the payment records indicated that the final expenditure on the event was \$165,000, which exceeded the approved budget by \$30,000 (i.e. 22%). There was no explicit covering approval by the Commissioner for the excess, and the CCD was not required to submit a timely final expenditure report to demonstrate compliance (or explain variances) with the approved budget.

Audit observations and recommendations

4.12 In Audit's view, a good budgetary control process is essential to the effective control of expenditure. **Audit has recommended that the PCPD should take action to improve the budgetary control of promotional events. In particular, the PCPD should:**

- (a) **compile a Promotional Events Manual that sets out clearly the budgetary control requirements for CCD officers to follow. These should include the requirements to submit timely budget proposals and expenditure reports for the Commissioner's approval and monitoring; and**
- (b) **strengthen the Administration Division's role in the budgetary control process of promotional events. When processing requests for payment from the CCD for an event, the Division should be required to make reference to the approved budget, and should not pass a payment if it would cause the budgeted amount to be exceeded.**

Response from the PCPD

4.13 The PCPD accepts the audit recommendations and, in response, compiled a Promotional Events Manual in September 2009 in which the budgetary control requirements are set out. The **Commissioner** has said that:

- (a) since taking office in August 2005, the Commissioner has assumed direct supervision of the CCD and met with its officers almost every day to steer and monitor the progress of all promotional activities and expenditure. This working mode applied to every phase of work done by the CCD, and the Hotel Privacy Campaign and the PAW 2007 were no exceptions. This working mode eventually led to a practice, whereby the CCM had to document key budgetary decisions made by the Commissioner, and submit comprehensive budget plans for all individual promotional events for record purposes;
- (b) the Hotel Privacy Campaign was the first industry-specific campaign ever launched by the PCPD. When the idea of the Campaign was conceived in January 2006, it received the support of a representative body of hoteliers. The PCPD's estimate was that about 15 hotels would participate, and the whole

Campaign would last for one month only. The expenditure budget of \$146,000, of which the development of an online self-training module formed the major part, was a preliminary estimation;

- (c) the PCPD made a presentation in March 2006 to that body's responsible committee. The positive response was beyond the PCPD's expectation. In May 2006, the Commissioner personally met and discussed the Campaign in greater details with the representatives of that body. The latter agreed to invite general managers and human resources directors of all its member hotels to support the Campaign and to attend the opening ceremony;
- (d) the Commissioner considered the enthusiastic response from that body very encouraging, and saw it as a great opportunity to promote the PDPO to a much wider audience in the hotel industry. He therefore directed that further resources be allocated to the Campaign. In the end, the number of hotels participating increased from the original estimate of 15 to 44. The number of seminars planned was also increased from 15 to 55. The Campaign, originally planned for one month, was stretched to over six months. The costs rose correspondingly and the Commissioner, due to his personal close involvement at all times, gave his verbal approval to the increased expenditure at meetings with the CCD;
- (e) the Campaign was highly successful in that more than 5,000 hotel personnel attended the 55 seminars conducted by the PCPD and proved to be value for money in promoting the PDPO. The online self-training module, specifically developed for the Campaign, is still available to hotel personnel and provides them with a continuous training platform; and
- (f) the Commissioner was aware of the additional expenditure of about \$30,000 and gave his approval at his meetings with the CCM, though the approval was not in writing.

Expenditure items worthy of discussion

4.14 In the case study of selected events, Audit noted some expenditure items that are worthy of discussion. The audit findings are reported as follows:

- (a) venue/food/beverages (paras. 4.15 to 4.20);
- (b) honoraria for artists (paras. 4.21 and 4.22);
- (c) service of an entertainment company (paras. 4.23 and 4.24);
- (d) backdrop production (paras. 4.25 and 4.26); and
- (e) cash prizes (paras. 4.27 to 4.29).

Venue/food/beverages

4.15 **Venue.** Promotional activities need to be held at a venue, and there is a wide range of choices to meet this need. The choices could range, for example, from using the PCPD's own conference room (low-cost option), to hiring the function room of a hotel (high-cost option). In between, there are many other choices of venue provided by non-profit-making organisations at affordable prices (medium-cost option).

4.16 **Food/beverages.** It is not unusual for food/beverages to be served at promotional activities (e.g. an opening ceremony). In theory, there is a wide range of choices in terms of prices. In practice, however, the choice of venue would restrict the selection of the caterer. For example, one cannot hire a hotel function room to hold an opening ceremony for an event and use an outside caterer to serve food/beverages.

4.17 **Low or medium-cost option.** Audit noted various occasions on which either a low or medium-cost option was taken for venue/food/beverages. For example, the opening ceremony of the PAW 2007 (cum press conference) was held on 26 August 2007 at the PCPD's conference room. No expenditure on venue/food/beverages was incurred. Another example was the opening ceremony of the PAW 2009 (cum press conference) held at the hall of a secondary school on 3 May 2009. Only \$125 was spent on the provision of distilled water for the attendees.

4.18 **Data Protection Officers' Club meeting.** In comparison, Audit noted an instance where a relatively high-cost option was taken. On 5 January 2006, the PCPD held a Luncheon Gathering Cum Plenary Meeting for members of the Data Protection Officers' Club (DPOC — Note 8). The meeting lasted for about three hours, beginning with a luncheon gathering followed by a plenary meeting, to discuss the handling of personal data in the context of property management. The cost of the meeting, including lunch for 100 persons, amounted to \$41,300 (i.e. \$413 per person).

4.19 **Opening ceremony for the Hotel Privacy Campaign.** Another instance where a relatively high-cost option was taken was the opening ceremony for the Hotel Privacy Campaign. Held at a hotel on 27 June 2006, the opening ceremony (including cocktail reception) lasted for about two hours. The cost of venue/cocktail reception for some 60 persons amounted to \$19,000 (i.e. \$316 per person).

Note 8: *The PCPD established the DPOC in 2000 with the primary aim of providing a channel for two-way communications between the PCPD and data protection officers across a broad range of organisations. The DPOC meets regularly and organises workshops exclusively for members. As at May 2009, there were 355 members and the membership fee was \$300 per year.*

4.20 **Guidelines needed.** Expenditure incurred by public entities on venue/food/beverages could easily arouse public concerns and, hence, is potentially sensitive. The public expects such sensitive expenditure, if any, to be moderate and conservative. Therefore, in Audit's view, the PCPD needs to set appropriate guidelines (and financial limits) to help ensure that all such expenditure meets the "moderate and conservative" principle (Note 9).

Honoraria for artists

4.21 **Cost of artists.** Audit noted that a famous actress was employed, at an honorarium of \$35,000, to officiate at the opening ceremony of the Hotel Privacy Campaign. Another famous actress was employed, at an honorarium of \$20,000, for the opening ceremony of the PAW 2007.

4.22 **Guidelines needed.** Famous artists may help increase publicity for an event, but they can be costly. In Audit's view, the PCPD needs to set guidelines on whether similar service should be used in future, or set an appropriate financial limit for the honoraria, to ensure the prudent use of public funds.

Service of an entertainment company

4.23 **Scope of service.** The PCPD used the service of an entertainment company at the opening ceremony for the Hotel Privacy Campaign. The cost of the service was \$55,000. According to the company's invoice dated 5 July 2006, the scope of the service was as follows: providing backdrop production (including design, set-up and dismantling); providing gimmicks for the event; inviting the press to attend the event; dispatching the press release; preparing newspaper clippings; coordinating the event; and providing the Master of Ceremony.

4.24 **Guidelines needed.** The CCD could have carried out much of the work (e.g. inviting the press to attend the event and newspaper clippings) without external help. Given the significant cost involved in engaging the service of the entertainment company, the PCPD needs to set clear guidelines on whether similar service should be used in future ceremonies, and on the criteria for justifying the cost of the service.

Note 9: *An expenditure does not meet the "moderate and conservative" principle if it gives rise to any perception of extravagance and inappropriateness.*

Backdrop production

4.25 ***Purpose.*** Backdrop production is a common item of expenditure across almost all promotional events. The purpose of backdrops is to attract media attention and give the guests a sense of hospitality.

4.26 ***Guidelines needed.*** Audit noted that the expenditure on backdrop production could vary significantly, ranging from \$2,100 for the opening ceremony of the PAW 2007, to \$20,800 for the opening ceremony of the PAW 2008 (Note 10). In Audit's view, the PCPD needs to set guidelines (or financial limits) on this expenditure item to ensure that low-cost options are duly considered and accorded high priority.

Cash prizes

4.27 ***Hotel Privacy Campaign.*** The PCPD spent \$45,000 on cash prizes for two competitions in the Hotel Privacy Campaign. For one competition, five winners were each given \$5,000. For another competition, 10 winners were each given \$2,000.

4.28 ***PAW 2007.*** The PCPD also spent \$10,000 on cash prizes for a competition in the PAW 2007. The amounts of cash awards, given to eight recipients, ranged from \$200 to \$4,000 each.

4.29 ***Guidelines needed.*** There was no documentation of the basis, or criteria, on which the amounts of prizes were determined. In Audit's view, the PCPD needs to set clear guidelines (or financial limits) to guide future decisions on the amounts of prizes to be offered, so as to ensure that the amounts are appropriate for the public sector environment.

Audit observations and recommendations

4.30 As illustrated in paragraphs 4.14 to 4.29, some promotional expenditure items can be costly and discretionary in nature. **To ensure the prudent use of public funds, Audit has recommended that the PCPD should:**

Note 10: *The opening ceremony for the PAW 2007 was held on 26 August 2007 at the PCPD's conference room. The opening ceremony for the PAW 2008 was held on 25 August 2008 at the function hall of a non-profit-making organisation.*

- (a) set clear guidelines to guide future decisions on these expenditure items; and
- (b) incorporate the guidelines into the Promotional Events Manual, referred to in paragraph 4.12(a), for easy reference.

Response from the PCPD

4.31 The PCPD accepts the audit recommendations, and has set out in the new Promotional Events Manual the guidelines recommended by Audit. The **Commissioner** has said that:

Venue/food/beverages

- (a) the PCPD has always considered the least expensive venues appropriate for the occasion. It has often used venues at low or no costs for its promotional activities;
- (b) in the case of the Hotel Privacy Campaign, 55 seminars for more than 5,000 personnel in 44 hotels were conducted. No expenditure on venue/food/beverages was incurred for the seminars;
- (c) members of the DPOC are mostly human resources and administrative personnel of private and public organisations. Club membership dues are used to fund activities organised by the PCPD. The Luncheon Gathering Cum Plenary Meeting was a half-day event in which members shared experience and understanding of data protection issues. PCPD staff updated members on cases of interest. Distinguished guests presented their views to members, and there was a question-and-answer session. The venue was chosen for members' easy access and the conference facilities were appropriate for that particular occasion;

Honoraria for artists

- (d) to introduce the innovative Hotel Privacy Campaign and to attract media attention, the PCPD, after due consideration, decided that the engagement of an artist was justifiable. The Campaign was widely publicised in 18 stories in 13 local newspapers. Following the "moderate and conservative" principle, the PCPD only engaged artists who agreed to accept honoraria or concessionary fees;

- (e) the PAW 2007 was also a pioneer project and the PCPD, likewise, considered that wide publicity was needed even at the cost of engaging a popular artist (at a concessionary fee). The event was reported in 28 stories in 17 local newspapers;

Service of an entertainment company

- (f) the Hotel Privacy Campaign was the first industry-specific and indeed the largest privacy campaign mounted by the PCPD up to then. At the time, the only three officers of the CCD were preoccupied in a series of educational activities for information technology professionals, organised after the well publicised online data leakage by a complaint handling body. Given the PCPD's lack of manpower and expertise, the engagement of an entertainment company experienced in organising such promotional activities was considered by the Commissioner to be justified and necessary. It was a learning experience and in similar events subsequently hosted, the PCPD was able to dispense with such external assistance;

Backdrop production

- (g) in deciding the size and quality of the backdrop, the PCPD always takes into account the theme of the event, the number of officiating guests and the media attention to be drawn. The opening ceremony of the PAW 2007 was officiated by only two guests in the PCPD's conference room, whereas the opening ceremony of the PAW 2008 was officiated by six guests of honour before some 100 other guests in a substantially larger venue. In the latter case, the backdrop was more elaborate as it also served as a publicity gimmick and created a photo-opportunity for the media. These largely explain the difference in the costs of the backdrop incurred in these two events; and
- (h) for all future promotional events, the CCD will follow the guidelines set out in the new Promotional Events Manual compiled in September 2009.

Expenditure-sharing arrangement

4.32 As mentioned in paragraph 4.4 above, the Hotel Privacy Campaign was jointly organised with the hotel industry, and a total expenditure of \$431,900 was incurred. There was at the time no policy to require the joint organiser to share any of the expenditure.

4.33 Subsequently, the PCPD adopted the practice of seeking joint organisers' agreement to share part of the expenditure. An example was the promotional campaign, which ran from August 2008 to March 2009, jointly organised with another statutory body. For this campaign, the expenditure was shared equally between the parties, which resulted in a reimbursement of \$47,200 from the joint organiser.

Audit observations and recommendation

4.34 Audit considers it a good practice to require joint organisers to share expenditure. It would not only reduce the financial burden of the PCPD, but also enhance the joint organisers' sense of ownership of the campaigns. Audit also considers that the PCPD should state the expenditure-sharing requirement clearly in the Promotional Events Manual mentioned in paragraph 4.12(a), in order to ensure continuance of this good practice by the CCD.

4.35 **Audit has recommended that the PCPD should state the expenditure-sharing requirement clearly in the Promotional Events Manual for CCD staff to follow.**

Response from the PCPD

4.36 The PCPD accepts the audit recommendation and has included the expenditure-sharing requirement in the new Promotional Events Manual. The **Commissioner** has said that the PCPD's commitment to reduce promotional expenditure is evidenced by the continual downward expenditure trend in organising these campaigns and activities.

International seminars

4.37 Over the past few years, the PCPD has held several international seminars, with the participation of delegates from overseas privacy authorities. Audit selected a recent seminar, i.e. the 31st APPA Forum, for scrutiny of expenditure. The APPA Forum, which cost \$24,900, was held from 11 to 13 June 2009 with 210 participants.

Audit observations and recommendation

4.38 Audit's scrutiny of the expenditure indicated that the expenditure met the "moderate and conservative" principle. **Audit has recommended that the PCPD should make continued efforts to ensure that the "moderate and conservative" principle (see Note 9 to para. 4.20) is met in organising international seminars in future.**

Response from the PCPD

4.39 The PCPD accepts the audit recommendation. The **Commissioner** has said that he is grateful for Audit's recognition of the PCPD's efforts to economise when hosting international seminars. The amount of \$24,900 spent in organising the 2009 APPA Forum was the lowest in the PCPD's history.

PART 5: OVERSEAS DUTY TRIPS

5.1 To keep abreast of developments in personal data protection work in different parts of the world, the PCPD participates regularly in international and regional gatherings of privacy authorities and officers. In 2008-09, the PCPD's expenditure on overseas duty trips was \$144,000. Audit selected three duty trips for case study, namely, the ones to the UK, Canada and Singapore in 2006-07, 2007-08 and 2008-09 respectively. This PART:

- (a) reports the downward trend of expenditure on the PCPD's overseas duty trips (paras. 5.4 to 5.6);
- (b) reports the audit findings on the three overseas duty trips selected for case study (paras. 5.7 to 5.27); and
- (c) discusses the issue of checks and balances on the overseas duty trips of the Commissioner (paras. 5.28 to 5.32).

Sensitive expenditure

5.2 Before going into the details of Audit's case studies, it is worth pointing out that expenditure incurred by a public entity on overseas duty trips is a sensitive expenditure (Note 11). The amount of money spent on an item of sensitive expenditure may be small in the context of an entity's total expenditure. However, each sensitive expenditure decision is important, because improper expenditure could harm the reputation of, and trust in, the entity. Applying the "moderate and conservative" principle will enable the entity's decisions on sensitive expenditure to withstand public scrutiny.

PCPD's policy on duty trip expenses

5.3 The PCPD's policy on duty trip expenses is stated in its financial circulars, as follows:

- (a) *Air passages.* The Commissioner is entitled to travel on business class (and he is encouraged to travel on economy class for short flights within four hours of flying time). For other PCPD staff, air passages for economy class are provided;

Note 11: *Sensitive expenditure is expenditure by a public entity that has the potential to provide a private benefit to an individual staff member of a public entity that is additional to the business benefit to the entity.*

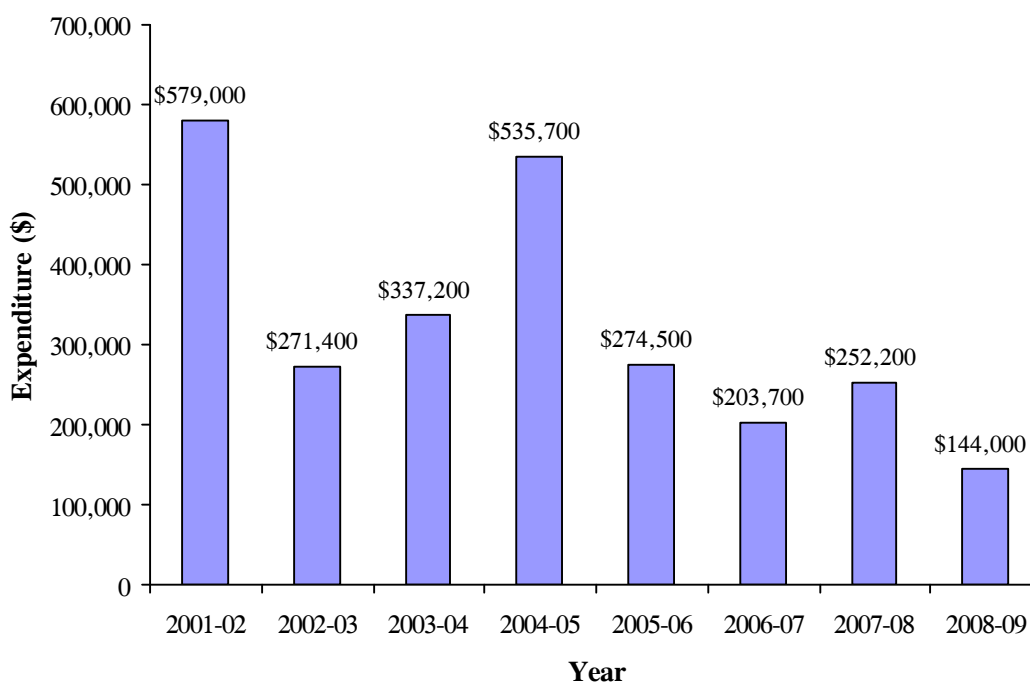
- (b) ***Hotel accommodation.*** The PCPD makes hotel reservation and settles the hotel bill on the officer's behalf. To ensure the prudent use of public funds, the cost of hotel accommodation should not exceed 60% of the rates of overseas subsistence allowance (OSA — Note 12) then prevailing. The Commissioner's approval is required for hotel accommodation cost that exceeds 60% of the OSA rates; and
- (c) ***Other duty expenses.*** In addition, the officer is granted an allowance in cash at 40% of the OSA rates. This portion of the OSA (hereinafter referred to as the "40% allowance") is intended to cover the cost of meals, laundry charges, casual entertainment, gratuities, travelling expenses within towns and all minor incidental out-of-pocket expenses. Necessary expenses incurred by the officer on airport transfer, visa application, etc. are not covered by this allowance but will be reimbursed to the officer when incurred.

Overall position

5.4 Figure 8 shows the expenditure on overseas duty trips incurred in the eight years from 2001-02 to 2008-09.

Note 12: *The PCPD's rates are the same as those applicable to the civil service. When the civil service revises its OSA rates, the PCPD will make a corresponding revision.*

Figure 8

PCPD's expenditure on overseas duty trips
(2001-02 to 2008-09)

Source: PCPD records

Audit observations and recommendation

5.5 From Figure 8, it can be seen that there has been a downward trend of expenditure on overseas duty trips, starting from 2005-06. The expenditure decreased from \$535,700 in 2004-05 by 73% to \$144,000 in 2008-09. Audit welcomes the significant decrease in expenditure on overseas duty trips. **Given the potential sensitivity of such expenditure, Audit has recommended that the PCPD should make continued efforts to economise on the expenditure in future.**

Response from the PCPD

5.6 The PCPD accepts the audit recommendation.

The UK trip (July 2006)

Event particulars

5.7 The Commissioner made an overseas duty trip to Cambridge, the UK (30 June to 7 July 2006) to attend an international conference on privacy laws and business, held at the St. John's College. He was also invited as a guest speaker, in his capacity as the Privacy Commissioner for Personal Data of Hong Kong. Participants consisted mainly of global and regional privacy officers from both the private and public sectors.

Analysis of expenditure

5.8 According to the payment records, an expenditure of about \$38,900 was incurred. Table 2 shows a breakdown of the expenditure.

Table 2

Expenditure for the Cambridge trip

Item	Amount (\$)	Remarks
(a) Air passages	22,900	This was the cost of a business class return ticket.
(b) Hotel accommodation	9,900	See paragraphs 5.9 and 5.10.
(c) The "40% allowance" (see para. 5.3(c))	5,200	See paragraphs 5.11 and 5.12.
(d) Others	900	—
Total	38,900	

Source: PCPD records

Audit observations and recommendations

Offer of free accommodation

5.9 From PCPD records, Audit noted that the organiser of the event had offered to provide free accommodation to the Commissioner because of his status as a guest speaker. According to the organiser, only a few "en suite rooms" at the St. John's College were

available. In his e-mails dated 1, 13 and 19 June 2006, the organiser urged the PCPD to register for the conference promptly if it wanted a college room as his guest (Note 13). As it turned out, the PCPD hired a hotel room which cost the PCPD \$9,900, at \$1,980 (or £135) per night for five nights. There was no documentation to explain why the offer for free accommodation was declined. In response to the aforesaid audit observations, in September 2009, the PCPD informed Audit that before the PCPD sent its registration for the conference on 23 June 2006, the organiser had informed it that the “en suite rooms” were no longer available. However, this information was not documented on file.

5.10 In Audit’s view, the PCPD should have acted more expeditiously to secure the availability of a college room, in which case the PCPD would have saved \$9,900.

The “40% allowance”

5.11 As mentioned in paragraph 5.3(c), an officer on overseas duty trips is granted an allowance in cash at 40% of the OSA rates, i.e. the “40% allowance”. For trips to the UK, there were two OSA rates then prevailing, a higher rate for London (at £171 per night) and a lower rate for areas other than London (at £149 per night). For the trip to Cambridge, the lower rate was applicable.

5.12 However, Audit found that the PCPD had mistakenly used the London rate for calculating the “40% allowance” payable to the Commissioner. As a result, he was overpaid an amount of £44 (equivalent to \$670 — Note 14). In September 2009, the PCPD informed Audit that this was a bona fide mistake which escaped the notice of everyone concerned with the claim. After Audit brought the matter to his attention, the Commissioner immediately refunded to the PCPD the amount overpaid.

Audit recommendations

5.13 **Audit has recommended that the PCPD should:**

Note 13: *For participants who were not guest speakers, college rooms were offered at £81 per night including tax (equivalent to \$1,190). For guest speakers, the organiser could waive the charges.*

Note 14: *The amount overpaid per night was £8.80 calculated as follows: $(£171 - £149) \times 40\%$. For five nights, the total amount overpaid was £44 (i.e. $£8.80 \times 5$), which was equivalent to \$670.*

Offer of free accommodation

- (a) for the sake of economy, give timely and due consideration to the option of free accommodation provided by the organiser (e.g. in cases where an officer is a guest speaker);
- (b) document the justifications, if there are compelling reasons for not taking the option; and

The “40% allowance”

- (c) take appropriate measures to ensure that the correct rate is used in calculating the 40% OSA in future.

Response from the PCPD

5.14 The PCPD accepts the audit recommendations and will take action to implement them.

The Canada trip (September 2007)

Event particulars

5.15 The Commissioner made a duty trip to Vancouver and Montreal, Canada in September 2007. The duty trip lasted for eight days from 21 to 28 September 2007. He then flew to Toronto in the evening of 28 September 2007 on a personal trip. He resumed duty in Hong Kong on 8 October 2007. Table 3 shows the details of the Commissioner’s itinerary.

Table 3

The Commissioner's itinerary of his Canada trip

Date	Details
21/9/2007 (Friday)	Departed Hong Kong for Vancouver
22/9/2007 (Saturday)	Attended a seminar in Vancouver
23/9/2007 (Sunday)	Ditto
24/9/2007 (Monday)	Departed Vancouver for Montreal
25/9/2007 (Tuesday)	Attended a workshop and a meeting in Montreal
26/9/2007 (Wednesday)	Attended an international conference in Montreal
27/9/2007 (Thursday)	Ditto
28/9/2007 (Friday)	Ditto Departed Montreal and arrived in Toronto in the evening
29/9/2007 (Saturday)	Non-working day
30/9/2007 (Sunday)	Ditto
1/10/2007 (Monday) (public holiday)	Ditto
2/10/2007 (Tuesday) to 5/10/2007 (Friday)	On annual leave
6/10/2007 (Saturday)	Departed Toronto for Hong Kong
7/10/2007 (Sunday)	Arrived in Hong Kong
8/10/2007 (Monday)	Resumed duty

Source: PCPD records

Analysis of expenditure

5.16 According to the payment records, an expenditure of about \$71,800 was incurred. Table 4 shows a breakdown of the expenditure.

Table 4

Expenditure for the Canada trip

Item	Amount (\$)	Remarks
(a) Air passages	43,400	This was the cost of a business class return ticket.
(b) Hotel accommodation	12,000	This was the hotel charges for seven nights from 21 to 27 September 2007. Hotel charges from 28 September onwards, which related to his personal trip to Toronto, were borne by the Commissioner himself.
(c) The "40% allowance"	7,400	—
(d) Others	9,000	This included mainly the registration fee for the international conference, and the fee for a social function arranged by the organiser of the conference.
Total	71,800	

Source: PCPD records

Audit observations and recommendation

Time off

5.17 Overtime work may be recompensed by time off. An issue about time off arose from this trip, concerning the Saturdays and Sundays in the period of the trip. In a file note dated 15 August 2007, the Administration Division stated that:

- (a) the Commissioner would embark on business trip to Vancouver and Montreal in late September, and there were "four non-work days in between", i.e. 22 (Saturday), 23 (Sunday), 29 (Saturday) and 30 (Sunday) of September; and
- (b) this Office would "reimburse" the Commissioner for "four days off" in the near future as appropriate.

5.18 According to the arrangement indicated in paragraph 5.17, the Commissioner was subsequently given four days off on 18 October 2007, 26-27 March 2008 and 14 April 2008.

5.19 In Audit's view, since there was no scheduled official business on 29 and 30 September 2007 (Saturday and Sunday), no time-off entitlement could have been earned. When Audit drew this to his attention, the Commissioner agreed.

Remedial actions taken

5.20 In September 2009, the Commissioner revisited the matter and took the following actions:

- (a) he issued a directive on time off, directing that "with immediate effect, any person holding (including in an acting capacity) the Office of the Privacy Commissioner for Personal Data shall not be granted time off for whatever reason"; and
- (b) he instructed his staff to deduct from the balance of his annual leave, the days of time off he had taken and rectify the records accordingly.

Audit recommendation

5.21 The actions referred to in paragraph 5.20 have addressed Audit's concern. **To ensure compliance with the directive on time off in future, Audit has recommended that the PCPD should re-circulate the directive periodically for the attention of the staff responsible for the administration of time off.**

Response from the PCPD

5.22 The PCPD accepts the audit recommendation and will take action to implement it.

The Singapore trip (February 2009)

Event particulars

5.23 The Commissioner made an overseas duty trip to Singapore (21 to 25 February 2009) to attend a seminar and a meeting on privacy issues, organised by the Asia-Pacific Economic Cooperation. He was accompanied by the Chief Legal Counsel of the PCPD.

Analysis of expenditure

5.24 According to the payment records, an expenditure of about \$22,400 was incurred. Of this amount, \$11,300 was borne by the PCPD and the remaining was reimbursed by the CMAB. Table 5 shows a breakdown of the expenditure.

Table 5**Expenditure for the Singapore trip**

Item	Amount (\$)	Remarks
(a) Air passages	Nil	The Commissioner and his staff travelled on economy class. No expenditure was incurred because the air tickets were obtained through air mileage redemption.
(b) Hotel accommodation	10,100	This was the cost of hotel accommodation for four nights. The amount was reimbursed by the CMAB because the Commissioner and his staff attended the seminar/meeting as representatives of the Hong Kong Special Administrative Region.
(c) The “40% allowance”	10,800	This amount was borne by the PCPD.
(d) Others	1,500	This included airport tax of \$1,000 which was reimbursed by the CMAB for the reason stated in (b) above. The remaining \$500 was borne by the PCPD.
Total	22,400	

Source: PCPD records

Audit observations and recommendation

5.25 Audit’s scrutiny of the expenditure indicated that the expenditure met the “moderate and conservative” principle. In particular, the Commissioner travelled on economy class despite his entitlement to business class. Furthermore, savings on air tickets were achieved through mileage redemption, and the cost of hotel accommodation was kept below the “60% limit” referred to in paragraph 5.3(b).

5.26 **Audit has recommended that the PCPD should continue to apply the “moderate and conservative” principle, in making expenditure decisions on future overseas duty trips.**

Response from the PCPD

5.27 The PCPD accepts the audit recommendation. The **Commissioner** has said that:

- (a) overseas duty trips are essential in discharging the Commissioner’s function to liaise and cooperate with international and overseas organisations on matters of mutual interest concerning personal data privacy; and
- (b) the significant decrease in expenditure on overseas duty trips, as shown in Figure 8 in paragraph 5.4, is evidence of his commitment to economise on such expenditure. The expenditure of \$144,000 in 2008-09 was the lowest since the setting up of the PCPD in 1996.

Checks and balances on the Commissioner’s overseas duty trips

Memorandum of Administrative Arrangements (MAA) 1997

5.28 The MAA, signed in November 1997 between the Secretary for Home Affairs and the then Commissioner, provided certain checks and balances on the Commissioner’s overseas duty trips. According to the MAA, the Commissioner was required to “inform” the Secretary for Home Affairs, for record purposes, of his overseas duty trips.

Proposal to strengthen the checks and balances

5.29 In August 2005, in order to address public concerns about the need to ensure the proper use of public funds on overseas duty trips by statutory bodies, and to enhance the checks and balances on the Commissioner’s overseas duty trips, the HAB considered that the Commissioner should seek prior “consent” from the Secretary for Home Affairs before the commencement of the trips. The Commissioner disagreed on the grounds that it might compromise the independence of the Commissioner. In December 2005, the matter was discussed at a meeting of the Panel on Home Affairs of LegCo, and some LegCo Members raised reservations about the proposal. Their main concerns were about the Government interfering with the work of the PCPD, which would have a serious impact on its autonomy and undermine its independence.

Latest development

5.30 In July 2009, Audit noted that no consensus had been reached between the PCPD and the Administration (represented by the CMAB since mid-2007). Audit expressed the view that the CMAB should revisit the issue of checks and balances on the Commissioner's overseas duty trips, taking into account the concerns of LegCo Members.

5.31 In September 2009, the CMAB and the PCPD agreed on an alternative administrative arrangement for the Commissioner's overseas duty trips, as follows:

- (a) the Commissioner will consult the Advisory Committee on his intended overseas duty trips;
- (b) the Commissioner will not proceed with the duty visits if the majority of the Members of the Advisory Committee advise that such duty visits are inconsistent with the discharge of his functions under the PDPO; and
- (c) the Commissioner will then inform the Secretary for Constitutional and Mainland Affairs of the Advisory Committee's advice, and confirm that the operations of the PCPD will not be adversely affected during such visits.

5.32 A new MAA was signed on 4 September 2009 to give immediate effect to the aforesaid arrangement. Audit welcomes the new arrangement which, in Audit's view, will enhance the checks and balances on the Commissioner's overseas duty trips.

PART 6: HOSPITALITY EXPENDITURE

6.1 Expenditure on hospitality (Note 15) is small relative to the total expenditure of an entity, but it is sensitive because of the opportunities for private benefit, and the wide range of opinions as to what is appropriate. This PART reports the audit findings arising from a sample check of the PCPD's hospitality expenditure, and suggests measures for improvement.

PCPD's policy on entertainment expenditure

6.2 In August 2006, the PCPD formulated its policy on entertainment expenditure, modelling on regulations and guidelines applicable to the civil service (Note 16). The current policy, promulgated in PCPD's Financial Circular No. 1/07 of April 2007, is as follows:

- (a) officers may undertake entertainment with outside parties in the course of duty;
- (b) entertainment bills may be charged to the entertainment vote when they are:
 - (i) directly related to the discharge of an officer's duties, or a necessary part of making or maintaining contacts in his official capacity; and
 - (ii) in the public interest;
- (c) the status of the guests and the standard of entertainment appropriate to the occasion must be taken into account when deciding the place and scale of entertainment. Normally the following budgets, inclusive of tips, have to be adhered to:
 - (i) up to \$300 per head for lunch (the amount was \$250 prior to April 2007); and
 - (ii) up to \$400 per head for dinner;
- (d) the prescribed ratio of participating guest and officers is 1 to 3;

Note 15: *In this report, the terms "hospitality" and "entertainment" are used interchangeably.*

Note 16: *Prior to August 2006, the PCPD did not have a formal policy.*

- (e) the Commissioner or the Deputy Commissioner must personally authorise expenditure from the entertainment vote;
- (f) expenditure on official entertainment should be fully supported by receipts wherever possible; and
- (g) vouchers must be accompanied by sufficient supporting information such as the list of guests and the purpose of the function.

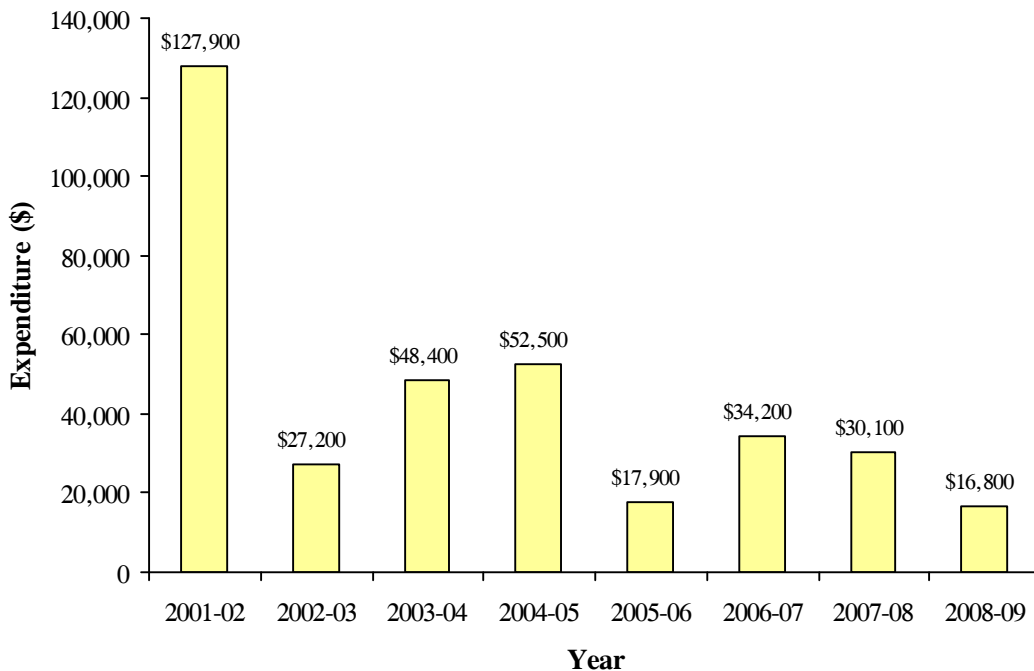
Audit observations and recommendations

Overall position

6.3 Figure 9 shows the amounts of hospitality expenditure the PCPD incurred in the eight years from 2001-02 to 2008-09.

Figure 9

**PCPD’s hospitality expenditure
(2001-02 to 2008-09)**



Source: PCPD records

6.4 It can be seen that the amounts varied between \$127,900 (in 2001-02) and \$16,800 (in 2008-09). The amount of \$16,800 incurred in 2008-09, being the lowest in eight years, to some extent reflected the PCPD's recent efforts to reduce hospitality expenditure. Upon enquiries, the Commissioner assured Audit that he had made significant efforts to keep down the hospitality expenditure during his four years in office, notwithstanding the hosting of two international seminars in 2006-07 and 2007-08 which necessarily entailed extra hospitality expenditure.

6.5 Audit welcomes the decrease in hospitality expenditure in the recent years and, particularly, in 2008-09. Audit considers that efforts in this regard should continue in future, in order to meet the public's expectation that such expenditure should be moderate and conservative. Some areas worthy of attention are discussed in paragraphs 6.6 to 6.13.

Farewell dinners for Commissioners

6.6 From PCPD records, Audit noted that the PCPD had held farewell dinners, using public funds, for past Commissioners when they left the PCPD's service. Table 6 shows the details of the farewell dinners held for the first two Commissioners.

Table 6

Farewell dinners for Commissioners

Month/year	Amount (\$)	Particulars
(a) September 2001	24,000	The average cost per person was \$650. The dinner was attended by 37 persons, including PCPD staff, Members of the Advisory Committee and other guests.
(b) January 2005	23,400	The average cost per person was \$750. The dinner was attended by 31 persons, including PCPD staff, Members of the Advisory Committee and other guests.

Source: PCPD records

6.7 Audit has reservations about the appropriateness of using public funds for this purpose. Furthermore, in Audit's view, at \$650 and \$750 per person respectively, the expenditure incurred on the two occasions did not meet the "moderate and conservative" principle.

Wines brought to events

6.8 There were instances where PCPD officers were invited, in their official capacities, to attend lunches/dinners hosted by other organisations, and they would bring wines to the events as a gesture of goodwill. Audit found six such instances in the years 2005-06 to 2007-08 (see Appendix D). An example is a dinner attended by the Commissioner and the CCM on 11 September 2007. On that occasion, they brought two bottles of wine (at \$428 per bottle) to the event as a gesture of goodwill. Audit did not find any similar expenses after September 2007.

6.9 In the file minutes seeking payment approvals, bringing wines to events was often described as the "usual practice". In Audit's view, this matter should fall within the scope of gifts giving which, for public entities, could be a sensitive issue. The PCPD needs to set clear guidelines on gifts giving, specifying the nature and value of gifts that are appropriate to particular occasions and the public sector environment.

Meals exceeding financial limit

6.10 As mentioned in paragraph 6.2, in August 2006, the PCPD formulated its policy on entertainment expenditure. The policy sets a limit per person at \$250 (revised to \$300 in April 2007) for lunch (see para. 6.2(c)(i)). Audit noted instances where the limit was exceeded, but the excesses were treated differently. Examples are given in paragraphs 6.11 and 6.12 for illustration.

6.11 ***Limit not enforced.*** For a hospitality lunch attended by three persons (a host and two guests) on 10 January 2007, the cost of \$969 (i.e. \$323 per person) exceeded the limit of \$250 per person by 29%, but reimbursement of the full amount was made. However, no acceptable explanation for the excess was recorded, and there was no documentation of the business purpose of the lunch. In September 2009, the PCPD informed Audit that the claim was immediately withdrawn after Audit brought the matter to its attention, and the entire amount of \$969 was refunded to the PCPD.

6.12 ***Limit enforced.*** For another hospitality lunch attended by four persons (a host and three guests) on 27 February 2008, the cost of the lunch was \$1,800 which exceeded the limit of \$1,200 (4 × \$300) by 50%. In this case, only \$1,200 was reimbursed which, in Audit’s view, set a good example of strict policy enforcement. The PCPD should follow this example, in future, in processing cases where financial limits are exceeded.

Staff welfare expenses

6.13 Apart from hospitality expenditure, Audit notes that the PCPD used to have an expenditure vote, known as the “Staff Welfare Fund”, for meeting expenses relating to staff welfare matters such as Christmas parties, staff outings and flowers for staff in hospital. Expenditure from this vote averaged about \$37,000 per annum from 2002-03 to 2004-05. The vote has been discontinued since 2005-06. Upon enquiries, the Commissioner informed Audit that he decided to abolish the vote when he took office in 2005-06 to achieve economy, and had since funded some of the staff welfare activities personally.

Audit recommendations

6.14 **Audit has recommended that the PCPD should:**

- (a) **make continued efforts to economise on hospitality expenditure in future;**
- (b) **review the appropriateness of using public funds to hold farewell dinners for the Commissioners, having regard to the personal nature of the occasions and the public’s expectation that hospitality expenditure should be moderate and conservative;**
- (c) **set clear guidelines on gifts giving, specifying the nature and value of gifts that are appropriate to particular occasions and the public sector environment;**
- (d) **clearly document the business purpose, and enforce the per-person financial limit, for hospitality meals hosted by PCPD officers; and**
- (e) **document the justifications, if there are compelling reasons for exceeding the financial limit for hospitality meals.**

Response from the PCPD

6.15 The PCPD accepts the audit recommendations and has taken action to implement them. The **Commissioner** has said that:

- (a) his commitment to contain and control hospitality expenditure is evidenced by the downward trend of expenditure shown in Figure 9 in paragraph 6.3. The yearly expenditure in 2008-09 of \$16,800 was the lowest since the PCPD was set up in 1996;
- (b) in response to the audit observations, the PCPD has revised its policy on entertainment expenses, which now expressly states that no expenses incurred for meals to bid welcome or farewell to any member of the PCPD (including the Commissioner) shall be paid out of PCPD funds. Furthermore, the PCPD has written to the two former Commissioners to inform them of the audit observations about their farewell dinners. In response, they have reimbursed the PCPD for the costs of their farewell dinners (at \$24,000 and \$23,400) respectively;
- (c) he was advised early in his term of office that it had been the practice for wines to be brought as a gesture of goodwill to special official functions, when he was invited as a guest of honour or otherwise in his official capacity. It was not uncommon for the host organisations to use the wines in lucky draws, which incidentally he was never put in the embarrassing position of winning. Had it happened, he would have refused. He of his own accord decided to stop this practice after September 2007; and
- (d) the PCPD will strictly follow the guidelines set out in the new Promotional Events Manual on gifts giving and souvenirs.

PART 7: OTHER ADMINISTRATIVE ISSUES

7.1 This PART examines the following administrative issues of the PCPD where Audit has identified scope for improvement:

- (a) office accommodation (paras. 7.2 to 7.13);
- (b) office car (paras. 7.14 to 7.31);
- (c) duty travelling expenses (paras. 7.32 to 7.36);
- (d) capital subvention for computer installation (paras. 7.37 to 7.42); and
- (e) staff performance appraisals (paras. 7.43 to 7.46).

Office accommodation

7.2 At present, the PCPD rents an office in Wanchai at a monthly rental of \$393,000 (Note 17). The total floor area (Note 18) of the office is 1,154 square metres (m²). The accommodation is rented under two leases, as follows:

- (a) a floor area of 1,028 m² under a lease for a term of five years from February 2006 to January 2011; and
- (b) the remaining floor area of 126 m² for a term of three years from February 2007 to January 2010, with an option to renew the lease for one year (see paras. 7.8 and 7.9).

Audit's assessment of the PCPD's accommodation needs

Office accommodation over-provided

7.3 From PCPD records, Audit could not find any documentation indicating that the PCPD had carried out a comprehensive assessment of its needs for office space, before taking up the leases. There was also no documentation of the basis/criteria on which the PCPD arrived at a total space need of 1,154 m².

Note 17: *The monthly rental of \$393,000 includes management fees, air-conditioning charges and government rates.*

Note 18: *The terms "floor area" or "area" in this report refer to the net area.*

7.4 In order to assess whether the PCPD's leasing of 1,154 m² was appropriate, Audit used the government accommodation standards as a benchmark for assessing the PCPD's accommodation needs (Note 19). Based on a total of 55 staff as at July 2009 and using the government standards, Audit assessed the PCPD's accommodation needs to be 732 m² (see Appendix E). In other words, the rented area exceeded Audit's assessed needs by 422 m² (or 58%) which cost about \$143,500 per month in rental.

7.5 Specifically, Audit found that over-provision was made in the following manner:

- (a) allocation of cellular offices instead of open plan (paras. 7.6 and 7.7); and
- (b) provision of space for posts not yet created (paras. 7.8 and 7.9).

Allocation of cellular offices instead of open plan

7.6 Compared with an open plan office, cellular offices take up more space because of the need for partitioning. According to the government standards, general office space should be open plan and, if required, individual cellular accommodation will be provided for directorate officers and non-directorate officers on Master Pay Scale point 45 and above.

7.7 However, the PCPD's practice was more generous than the government standards. Audit found that 25 PCPD officers (or 45% of the staff) were given cellular offices, although only 10 of them would have been eligible had government standards been applied.

Provision of space for posts not yet created

7.8 As mentioned in paragraph 7.2(b), there is a supplemental lease for office space of 126 m². Audit found that the PCPD had entered into this lease in late 2006 to rent additional area with effect from February 2007, in anticipation of creating 16 new posts to step up its work on promoting compliance with the PDPO.

Note 19: *The government accommodation standards are applicable to government offices. Audit acknowledges that the PCPD is not a government department and, therefore, is not bound by the government standards. However, Audit considers that the standards serve as a useful benchmark for assessing the PCPD's needs for office area, given the fact that its rental is paid out of public funds.*

7.9 However, the funding requests for the posts were considered not fully justifiable and, hence, not supported by the Administration. It was only in 2008-09 and 2009-10 that the Administration supported, on a progressive basis, a total of eight posts for the related work. In other words, this is a case where additional space was rented for posts not yet created, resulting in an over-provision of office space.

Audit observations and recommendations

7.10 The aforesaid audit findings indicate that there is scope for the PCPD to reduce its office space and yet still meets its accommodation needs. The rental thus saved can be better used for other business purposes.

7.11 **For the sake of economy, Audit has *recommended* that the PCPD should:**

- (a) **before renewing, or taking up new, leases for office accommodation in future, conduct a thorough assessment of its accommodation needs with reference to the government accommodation standards;**
- (b) **document the justifications, if there are compelling reasons for exceeding the government standards;**
- (c) **before entering into a new lease for additional space to accommodate anticipated additional posts, ensure that funding for creation of the posts is available; and**
- (d) **consider whether or not to renew the lease for the area of 126 m² which will expire shortly in January 2010 (see para. 7.2(b)), having regard to the costs and benefits of the options. It is advisable to consider not only the monetary benefits and costs, but also non-monetary aspects such as the disruptions that may be caused to the PCPD's operations in re-accommodating the staff affected.**

Response from the PCPD

7.12 The PCPD accepts the audit recommendations. The **Commissioner** has said that:

- (a) the PCPD will conduct a thorough assessment of its accommodation needs, particularly when the PCPD's present office lease is due to expire in January 2011. Any justifications for exceeding the government standards will be documented;

- (b) in 2005, in planning to relocate its office and sourcing suitable premises to lease, the PCPD had made reference to the office area then occupied in the Convention Plaza as an indicator of its needs. The options then available were as follows:

Option	Premises	Net area	Monthly rental (Note)
1	The office at Convention Plaza (then occupied by the PCPD)	808 m ²	\$414,600
2	An office at Quarry Bay	904 m ²	\$282,300
3	An office at Sheung Wan	720 m ²	\$333,700
4	An office at Queen's Road East, Wanchai (subsequently became the new PCPD office)	Totalling 1,028 m ² which comprised 727 m ² (on the whole of 12/F) and 301 m ² (at Room 1301 of 13/F)	\$204,100

Note: This was the monthly rental then prevailing, including air-conditioning, management and other charges.

The office at Queen's Road East, Wanchai presented the best option in terms of the rental and accessibility to members of the public. Having duly considered its operational needs, the PCPD decided to take up a lease of the whole of the 12/F and Room 1301 on the 13/F;

- (c) in the process of relocation, upon the internal advice given by his staff, the Commissioner allowed those officers who had previously worked in cellular offices to continue to do so in the new premises. The Commissioner took into account some officers' need to handle more sensitive and confidential materials. He accepts the audit recommendations, and will ensure that, at the first opportune time, a thorough assessment of the PCPD's accommodation needs will be conducted, with reference both to the government accommodation standards and to the way other statutory bodies accommodate their officers who have to handle confidential materials; and

- (d) the decision to lease the additional area of 126 m² in February 2007 was made under the following circumstances:
 - (i) with the establishment of the Compliance Division in December 2006, recruitment/redeployment of staff was anticipated to perform the compliance work and additional work expected of the Division; and
 - (ii) the Commissioner considered and made an executive forward-looking decision to take on the unit adjoining Room 1301 when it became available for rent.

Response from the Administration

7.13 The **Secretary for Constitutional and Mainland Affairs** has said that the PCPD is reviewing its accommodation needs in the light of the audit observations. Although this is a matter within the PCPD's autonomy, the CMAB will monitor the PCPD's action in this regard.

Office car

Guidelines on the use of office car

7.14 The PCPD operates an office car to provide transport service for the Commissioner and for PCPD staff. The PCPD issued in 1996 guidelines on the proper use of its office car. According to the guidelines:

- (a) the Commissioner may use the office car:
 - (i) for not more than one home-to-office return journey per day; and
 - (ii) to attend any function arising from his official position, in or outside office hours;
- (b) PCPD staff may use the office car on duty journeys undertaken in respect of operational, administrative and organisation purposes of the PCPD;
- (c) any journey that is not made in the course of an officer's official duties will be regarded as misuse of the office car; and

- (d) senior staff may use the office car, if available, for not more than one journey each to and from their point of departure for travel outside Hong Kong on each occasion when they depart for, or return home from, vacation leave for a period of not less than 14 days.

Vehicle log books

7.15 The driver of the PCPD is required to provide a record of his work by completing a vehicle log book. According to the instructions laid down in the cover page of the log book:

- (a) the nature of duty should be stated in the “Purpose” column;
- (b) at the end of each journey, the officer using the car, or authorising the journey, must sign his name and indicate his post in the “Signature” column; and
- (c) the responsible transport officer must carry out periodical checks to ensure that entries in the log book are correct.

Audit observations and recommendations

Vehicle log books

7.16 Audit’s scrutiny of the vehicle log books indicated that the purposes of the car journeys had not been stated for almost all the journeys since the operation of the office car in 1997.

Use of the office car

7.17 In examining the journeys recorded in the log books of the PCPD’s office car for the three years 2006-07 to 2008-09, Audit found that the car made about 6,000 journeys in the three years. The audit findings are as follows:

- (a) Audit ascertained that 2,570 (i.e. 43%) of the journeys were consistent with the PCPD’s guidelines on the use of office car. These were mostly home-to-office return journeys made by the Commissioner, and journeys for refuelling and vehicle maintenance. There were also occasions on which the Commissioner and PCPD staff used the car for official duties;

- (b) for about 3,200 journeys (i.e. 53%), Audit could not ascertain whether they were consistent with the PCPD's guidelines on the use of office car. Audit found that many of these journeys were made during lunch breaks; and
- (c) for 230 journeys (i.e. 4%), the circumstances seemed to suggest that the journeys were not consistent with the PCPD's guidelines on the use of office car. These consisted mainly of home-to-office return journeys, made by the Commissioner mostly during lunch breaks in excess of the allowable limit of one home-to-office return journey a day, and some journeys to and from the airport. These journeys were made mostly in 2006-07 and 2007-08.

In this connection, Audit noted that although the vehicle log books had been periodically checked by the responsible transport officer, no questions had been raised on the journeys.

Need to revise guidelines

7.18 Audit also noted that the PCPD's guidelines on the use of office car were modelled on similar guidelines applicable to the civil service. In the context of an economy drive in 2003, the Government discontinued with the practice of allowing senior staff to use an office car for home-airport journeys for vacation purposes. Audit considers that the PCPD should make a corresponding revision to its guidelines (see para. 7.14(d)), in order to align with the Government's practice and for the sake of economy.

7.19 After Audit brought the matter to its attention, in September 2009, the PCPD decided to abolish the practice of allowing senior staff to use the office car for home-airport journeys for vacation purposes, and revised the guidelines accordingly. Audit welcomes this development.

Procurement of the office car

7.20 **MAA requirements.** Apart from utilisation, Audit notes that the procurement of the car back in 2003-04 is also worth reporting. According to the 1997 MAA, capital subvention would be provided for items of non-recurrent expenditure for specific purposes and any stores and equipment costing more than \$100,000 per item. No virement between recurrent subvention and capital subvention would be allowed, except with the approval of the Secretary for the Treasury (now re-titled the Secretary for Financial Services and the Treasury).

7.21 **Unsuccessful funding proposal for capital subvention.** In August 2003, the then office car, purchased in 1997, had been in operation for 6 to 7 years and had a mileage of 110,000 kilometres. The maintenance expenses for 2002-03 were about \$40,000. Planning for a replacement, the PCPD paid an initial deposit of \$10,000 for a new car. In October 2003, the PCPD submitted a funding proposal to the HAB for a capital subvention of \$300,000 for purchasing a new car, but the proposal was not supported.

7.22 **Approval for virement sought.** At the PCPD's request, in December 2003, the HAB sought the Financial Services and the Treasury Bureau (FSTB)'s approval for the virement of \$300,000 from the PCPD's recurrent subvention to its capital subvention for the car replacement. The FSTB asked the HAB to seek the Government Logistics Department (GLD)'s expert advice. In January 2004, the GLD (Note 20) informed the HAB that, taking into account the cumulative maintenance cost and the workshop days in the past three years, an immediate replacement of the car was not justified. The GLD suggested that the replacement need should be reviewed in the following year. The HAB conveyed the GLD's advice to the PCPD immediately.

7.23 **Order placed.** In February 2004, the PCPD placed a firm order for a new car at a price of \$291,000. A further deposit of \$40,000 was paid. According to an internal minute of the PCPD, the PCPD considered the car replacement justified on the following grounds:

- (a) the PCPD did not have pool transport support from the Government. In case of a breakdown of the office car, the PCPD had to hire a car estimated at a monthly rental of above \$20,000; and
- (b) 2003-04 was the most appropriate time in which the PCPD could afford the purchase. The replacement would not be possible in the ensuing three financial years due to shortage of funds. The old car would have reached the age of 10 by that time. Safety was always a concern of the PCPD.

7.24 **FSTB's decision.** On 4 March 2004, the FSTB informed the HAB that:

- (a) having reviewed the case, the FSTB agreed with the GLD that the immediate replacement of the PCPD's car was not justified; and

Note 20: *Although the GLD usually would not be involved in evaluating vehicle procurement proposals of subvented organisations, in response to the request of the FSTB/HAB, it carried out an assessment in this instance.*

- (b) the proposed virement of fund from the PCPD's recurrent subvention to its capital subvention for the car replacement was therefore *not* supported.

7.25 *Car purchased.* The HAB informed the PCPD of the FSTB's decision on 4 March 2004. However, on 5 March 2004, the PCPD made the final payment for the new car. The total cost of the purchase (i.e. \$291,000) was paid out of the PCPD's recurrent subvention.

7.26 *Audit concerns.* In Audit's view, the facts of this case raise a number of concerns, as follows:

- (a) the PCPD paid an initial deposit of \$10,000 for the new car before submitting a funding proposal to the HAB, an act that was less than prudent;
- (b) the PCPD did not heed the Government's advice that there was no immediate need to replace the car;
- (c) the PCPD placed a firm order (and a further deposit of \$40,000) for the new car before obtaining the FSTB's approval for the virement of fund. Again, this was an act that was less than prudent; and
- (d) knowing the FSTB's decision not to support the virement, the PCPD went on to complete the purchase and paid the cost out of its recurrent subvention. This constituted a breach of the MAA requirements.

Audit recommendations

7.27 **Regarding the use of office car, Audit has *recommended* that the PCPD should:**

- (a) **remind its staff of the need to comply with the instructions on the proper completion of vehicle log books (i.e. stating the purposes of journeys); and**
- (b) **remind its staff of the need to ensure that the office car is used in accordance with the laid-down guidelines.**

7.28 **Regarding procurement, Audit has *recommended* that the Secretary for Constitutional and Mainland Affairs, in conjunction with the Secretary for Financial Services and the Treasury, should review the appropriateness of the manner in which the PCPD purchased its office car in 2003-04.**

Response from the PCPD

7.29 The PCPD accepts the audit recommendations in paragraph 7.27, and is taking action to implement them. The **Commissioner** has said that:

- (a) as a continuous effort to economise on the use of office car, the number of overtime hours of the office driver has been kept to an all time low of 450 hours in 2008-09, as compared to 1,250 hours in 2002-03 which represented the highest figure. The downward trend began in 2005-06; and
- (b) regarding paragraph 7.28, he was not aware of the manner in which the office car was purchased until Audit brought it to his attention. From the records, it would appear that the decision to replace the office car in March 2004 was made for safety reasons and in the light of the high maintenance and repair costs.

Response from the Administration

7.30 The **Secretary for Constitutional and Mainland Affairs** accepts the audit recommendation in paragraph 7.28. He has said that:

- (a) in accordance with the 1997 MAA, the PCPD is required to submit an application for virement of funds from the recurrent subvention account to the capital account for the approval of the Secretary for Financial Services and the Treasury. It is not appropriate for the PCPD to have procured a new office car out of the PCPD's recurrent subvention in 2003-04, given that its application for virement of funds did not have the approval of the Secretary for Financial Services and the Treasury; and
- (b) the CMAB will write to the PCPD to underline the importance of compliance with MAA requirements at all times to prevent recurrence of similar incidents in future. The CMAB will also step up monitoring of the implementation of the MAA to ensure compliance with the requirements by the PCPD.

7.31 The **Secretary for Financial Services and the Treasury** has said that he agrees with the audit observations and the CMAB's comments that the acts of the PCPD in the procurement of the office car in 2003-04 were not in compliance with the MAA.

Duty travelling expenses

7.32 On 19 December 2008, the PCPD issued guidelines on duty travelling expenses vide its Financial Circular No. 03/08. According to these guidelines, in normal circumstances, an officer should travel by public transport except taxi. Other forms of conveyance may be used where, for example, an officer is obliged to carry heavy or bulky articles required for use on duty.

7.33 The guidelines also state that, in order of priority, the methods of conveyance are public transport except taxi, the office car (if available), hired vehicle (if the fare is lower than that for taxi) and taxi. The use of taxi for duty journeys should be strictly controlled.

Audit observations and recommendations

7.34 Audit found that, for the three years from 2006-07 to 2008-09, PCPD staff had used taxi for 69 duty journeys (at a cost of \$2,200) when the office car was idle. These instances had occurred before the implementation of the new guidelines on 19 December 2008. As no similar instances occurred after the implementation date, Audit considers that the guidelines have so far been effective in tightening the control over the use of taxi for duty journeys.

7.35 **Audit has recommended that the PCPD should:**

- (a) **continue to exercise strict control over the use of taxi for duty journeys, in accordance with its new guidelines; and**
- (b) **in particular, remind its staff to make use of the office car before considering the use of taxi for duty journeys.**

Response from the PCPD

7.36 The PCPD accepts the audit recommendations and is taking action to implement them.

Capital subvention for computer installation

Register of data users

7.37 According to the PDPO, the Commissioner has the power to specify classes of data users required to submit data user returns (Note 21). The Commissioner has the discretion to decide the scope and timing of the introduction of this requirement. If the Commissioner exercises this discretionary power, he is required to establish a register of data users (hereinafter referred to as the Data User Registration Scheme — DURS). He is also required to maintain a database of the information supplied in the data user returns.

Unspent fund earmarked for DURS

7.38 In 1996-97 and 1997-98, the PCPD received a total capital subvention of \$7.8 million for the installation of office computer systems. In March 1999, the capital subvention had an unspent balance of some \$5 million. The PCPD proposed to implement the DURS in *1999-2000*, and sought the HAB's agreement for it to keep the unspent balance of \$5 million "earmarked" for implementing the DURS. The HAB replied that it had no objection to the PCPD's proposal.

Audit observations and recommendations

7.39 As at July 2009, Audit noted that the DURS had not yet been implemented. Appendix F shows a summary of the developments since 2000. Meanwhile, the balance of the earmarked fund had decreased from \$5 million to \$3.2 million. Of the expenditure of \$1.8 million paid out of the earmarked fund, Audit found that \$1.23 million was for computer items not specifically related to the DURS. While Audit does not question the need for procuring such computer items, Audit is of the view that the expenditure should not have been charged against the fund earmarked for implementing the DURS.

7.40 The PCPD agrees with Audit's view and, in September 2009, explained to Audit that, at the material times, there was a misunderstanding by the PCPD that the \$5 million could be used for procuring necessary computer items, and for computer maintenance and updating the existing computer system. The PCPD also indicated that there was no question about the legitimacy of the expenditure of \$1.23 million, and that it was a case of spending money appropriately but debiting the expenditure against the wrong account. To address Audit's concern, the PCPD has returned the amount to the earmarked fund, by transferring \$1.23 million from its general reserve. It has also assured Audit that the earmarked fund will not be used for any purposes in future other than for the DURS.

Note 21: *The data user returns should contain the prescribed information, such as the kinds of personal data held by the data user and the purposes for which they are used.*

7.41 **Audit has recommended that the Secretary for Constitutional and Mainland Affairs should:**

- (a) **consider requiring the PCPD to return the earmarked fund to the Government, if there is no firm plan to implement the DURS in the near future; and**
- (b) **if the PCPD is allowed to keep the earmarked fund, take appropriate measures to ensure that the fund is not used for other purposes without the CMAB's prior consent.**

Response from the Administration

7.42 The **Secretary for Constitutional and Mainland Affairs** accepts the audit recommendations. He has said that:

- (a) since 2004, the PCPD has come up with plans and initiated discussions with target data users to be included in the DURS, with a view to taking forward the DURS proposal. In view of the actions and plans undertaken by the PCPD to take forward the DURS proposal, the PCPD has not been asked to return the earmarked fund so far;
- (b) the CMAB supports the immediate action taken by the PCPD to restore the earmarked fund, and to direct its staff not to use the fund for any purpose other than the DURS and only with the CMAB's concurrence; and
- (c) in view of the PCPD's engagement in compliance issues and other pressing commitments, the CMAB will, in consultation with the FSTB, work out an appropriate arrangement for the PCPD to return the earmarked fund to the Government.

Staff performance appraisals

7.43 Staff performance appraisal is an important element of human resource management. According to the PCPD's Performance Appraisal Policy, the PCPD is committed to establishing a fair and uniform appraisal system. The PCPD relies on the results of the appraisals to:

- (a) plan for staff development; and

- (b) manage staff reward issues such as performance-based increment, promotion, and offer of a new contract of service.

Audit observations and recommendation

7.44 The PCPD has established cycles for conducting staff performance appraisals to ensure the timely completion of the appraisals. However, Audit's scrutiny of a sample of 38 staff appraisal reports revealed delays in completing the appraisals. The following are examples of such delays and the undesirable consequences:

- (a) ***Salary increments.*** The results of staff performance appraisals provide a formal basis for determining whether salary increments should be granted to the staff concerned. Audit found that, in 16 cases, the staff performance appraisals were seriously delayed, resulting in a corresponding delay in granting salary increments to the staff concerned and, consequently, a need for back pay of the salary increments. The average period of delay (and the corresponding back-pay period) in these 16 cases was 4.3 months; and
- (b) ***Contract renewal.*** The results of staff performance appraisals provide a formal basis for determining whether to renew the contract of an officer. In this regard, Audit found that, in three cases, the PCPD renewed the contracts of the officers concerned, without completing the staff appraisal reports for the relevant periods. In one case, for instance, the appraisal report for the relevant period was not completed until five months after contract renewal.

7.45 **Audit has recommended that the PCPD should take measures to ensure the timely completion of staff performance appraisals.**

Response from the PCPD

7.46 The PCPD accepts the audit recommendation and is taking action to implement it. The **Commissioner** has said that, notwithstanding that the appraisal reports were not fully completed in the three cases when the contracts of employment were renewed, the offer letters for the contract renewal were all signed by him. He had duly considered the suitability of the officers in question before making the offers.

PART 8: PERFORMANCE REPORTING IN CONTROLLING OFFICER'S REPORT

8.1 This PART examines the reporting of the PCPD's performance in the CMAB's COR, and suggests areas for improvement.

Guidelines on performance measurement

8.2 The FSTB has issued guidelines on the performance measures to be included in the CORs. According to the guidelines:

- (a) when developing performance measures, Controlling Officers should focus on "targets" measured preferably in terms of outcome (versus output or input) and should apply the most relevant performance indicators that measure economy, efficiency and cost-effectiveness of the resources deployed; and
- (b) the targets should indicate the extent to which operational objectives are being achieved. They should highlight changes in the cost-effectiveness with which results are being achieved. In this respect, unit cost or productivity indicators should be provided.

Performance reporting of the PCPD

8.3 In the 2009-10 COR of the CMAB, a number of performance targets and indicators regarding the PCPD are promulgated. Appendix G shows the details.

Audit observations and recommendations

8.4 From Appendix G, it can be seen that:

- (a) there are no *outcome indicators*. For example, there is no indicator on the number/percentage of complaint cases that are satisfactorily resolved, say, through mediation or formal investigations. There is also no indicator on the number of recommendations given, contraventions found, and warning/enforcement notices served. In Audit's view, these are important indicators of how effective the PCPD is in handling complaints and carrying out investigations;

- (b) there are no *unit cost or productivity indicators* to measure the economy, efficiency and cost-effectiveness of the resources deployed by the PCPD. For example, there is no indicator on the average unit cost, or time taken, to complete a simple or complicated complaint case;
- (c) there are no indicators on the PCPD's *promotional activities*, although the PCPD has a statutory duty to promote awareness and understanding of the provisions of the PDPO; and
- (d) there are no indicators on the PCPD's performance in *approving and issuing codes of practice* for the practical guidance of data users, although the PCPD has a statutory duty to promote and assist bodies representing data users to prepare codes of practice.

8.5 For the purpose of the CMAB's COR, Audit has recommended that the Secretary for Constitutional and Mainland Affairs should, in consultation with the PCPD:

- (a) **develop outcome indicators to help measure how effective the PCPD is in performing its duties;**
- (b) **develop productivity indicators to help measure the economy, efficiency and cost-effectiveness of the resources deployed by the PCPD;**
- (c) **include in the COR performance indicators on the PCPD's promotional activities; and**
- (d) **include in the COR indicators on the number of codes of practice or guidelines approved/issued by the PCPD.**

Response from the Administration

8.6 The Secretary for Constitutional and Mainland Affairs accepts the audit recommendations. He has said that:

- (a) in April 2009, the CMAB requested the PCPD to consider, in the context of its review of performance pledges, developing indicators to measure outcome and efficiency. These include indicators on the number/percentage of complaint cases settled by mediation or formal investigation and the average unit cost, or time taken, to complete a complaint case; and

- (b) the CMAB will work with the PCPD to develop appropriate outcome and productivity indicators for inclusion in the COR, taking into account the PCPD's operations and the practices of its overseas counterparts. In consultation with the PCPD, the CMAB will include in the COR performance indicators on the PCPD's promotional activities and the number of codes of practice or guidelines approved/issued by the PCPD.

Response from the PCPD

8.7 The **Commissioner** has said that, in consultation with the CMAB, the PCPD will develop the performance indicators referred to in paragraph 8.5, with a view to better measuring the economy, efficiency and effectiveness of its performance.

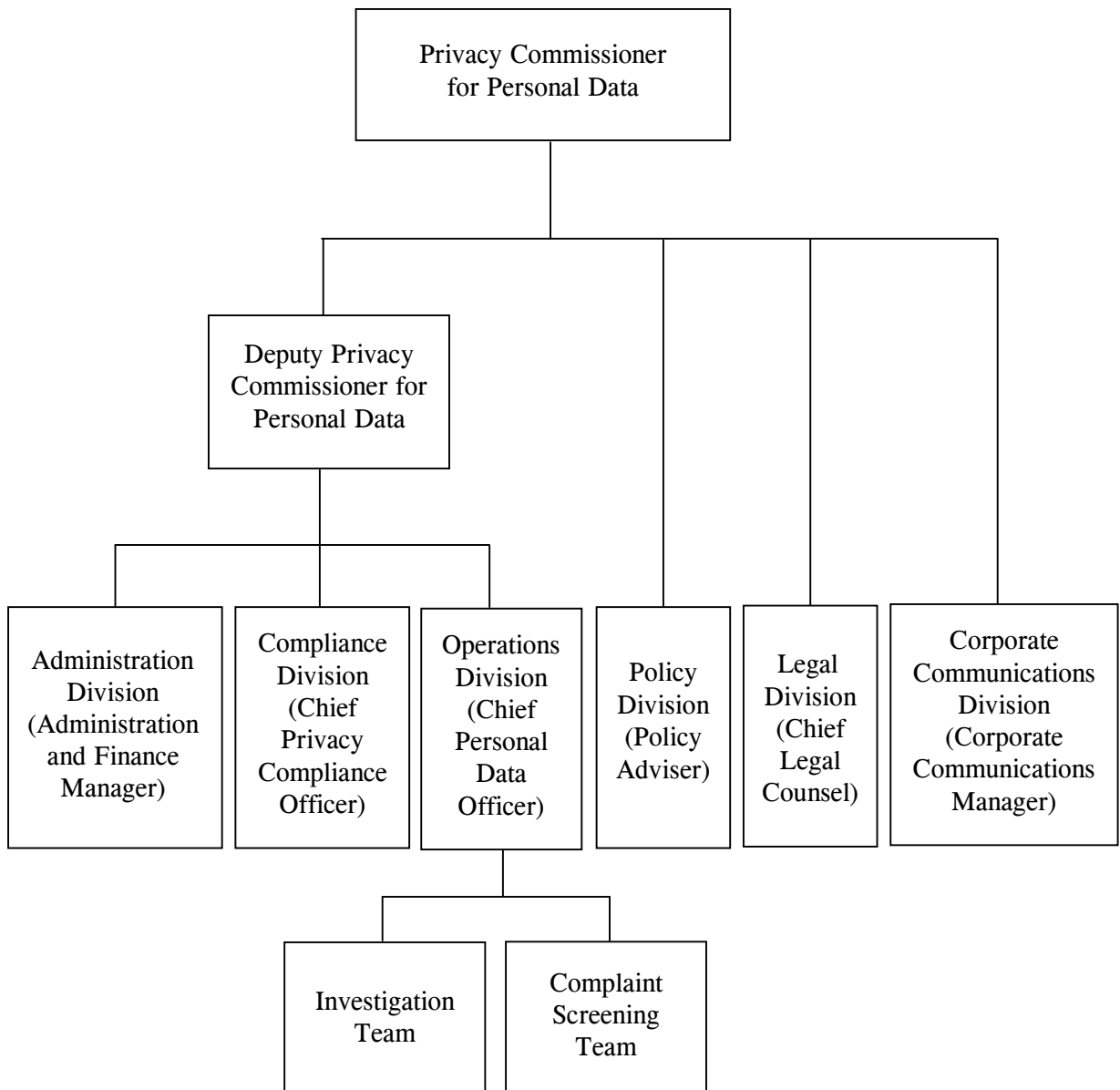
Functions and powers of the Commissioner

The Commissioner shall:

- (1) monitor and supervise compliance with the provisions of the PDPO;
- (2) promote and assist bodies representing data users to prepare codes of practice for guidance in complying with the provisions of the PDPO, in particular the data protection principles;
- (3) promote awareness and understanding of, and compliance with, the provisions of the PDPO, in particular the data protection principles;
- (4) examine any proposed legislation (including subsidiary legislation) that the Commissioner considers may affect the privacy of individuals in relation to personal data and report the results of the examination to the person proposing the legislation;
- (5) carry out inspections, including inspections of any personal data systems used by data users which are departments of the Government or statutory corporations;
- (6) for the better performance of his other functions, undertake research into, and monitor developments in, the processing of data and computer technology in order to take account of any likely adverse effects such developments may have on the privacy of individuals in relation to personal data;
- (7) liaise and cooperate with any person in any place outside Hong Kong:
 - (a) performing in that place any functions which, in the opinion of the Commissioner, are similar (whether in whole or in part) to any of the Commissioner's functions under the PDPO; and
 - (b) in respect of matters of mutual interest concerning the privacy of individuals in relation to personal data; and
- (8) perform such other functions as are imposed on him under the PDPO or any other enactment.

Source: The PDPO

**Office of the Privacy Commissioner for Personal Data
Organisation chart
(1 July 2009)**



Source: PCPD records

Personal Data (Privacy) Advisory Committee
Terms of reference

The terms of reference of the Advisory Committee are to advise the Commissioner upon any matter relevant to the privacy of the individual or otherwise relevant to the operation of the PDPO, including the giving of advice on policy matters in relation to:

- (a) the preparation and approval of codes of practice that give practical guidance on compliance with the provisions of the PDPO;
- (b) activities to promote awareness and understanding of, and compliance with, the PDPO, including the issuing of guidance material;
- (c) legislation, existing and proposed, that may affect the privacy of individuals in relation to personal data;
- (d) the carrying out of inspections of personal data systems;
- (e) the handling of enquiries and complaints, and conduct of investigations;
- (f) the use of enforcement powers and the instigation of criminal proceedings in relation to alleged breaches of the PDPO;
- (g) data user returns, including specification of classes of data users required to submit returns to the Commissioner;
- (h) the approval of matching procedures;
- (i) the setting of fees and specification of forms;
- (j) technological developments that may affect the privacy of the individual in relation to personal data; and
- (k) the transfer of personal data to places outside Hong Kong, including the specification of jurisdictions as having a comparable level of protection for privacy in relation to personal data.

Source: PCPD records

Appendix D
(para. 6.8 refers)

Wines brought to events

Date	Amount (\$)	Particulars
(a) 11 September 2007	856	The Commissioner and the CCM, in their official capacities, attended a 25th anniversary celebration dinner hosted by a professional association. The PCPD bought two bottles of wine at \$428 each for them to bring to the event as a gesture of goodwill.
(b) 11 May 2007	498	The Commissioner, in his official capacity, attended a gala dinner hosted by an association of hoteliers. The PCPD bought one bottle of wine at \$498 for him to bring to the event as a gesture of goodwill.
(c) 28 March 2007	530	The Commissioner, in his official capacity, attended an annual dinner hosted by a professional federation. The PCPD bought two bottles of wine at \$265 each for him to bring to the event as a gesture of goodwill.
(d) 15 December 2006	396	The Commissioner, in his official capacity, attended an annual dinner hosted by a professional association. The PCPD bought two bottles of wine at \$198 each for him to bring to the event as a gesture of goodwill.
(e) 8 December 2006	396	The CCM, in her official capacity, attended a 24th anniversary celebration dinner hosted by a professional association. The PCPD bought two bottles of wine at \$198 each for her to bring to the event as a gesture of goodwill.
(f) 19 December 2005	464	The Commissioner, in his official capacity, attended an annual lunch hosted by a professional association. The PCPD bought two bottles of wine at \$232 each for him to bring to the event as a gesture of goodwill.

Source: PCPD records

Appendix E
(para. 7.4 refers)

Audit's assessment of the PCPD's accommodation needs

(A) Officer		Number of staff	Standard per staff (m ²)	Total (m ²)
Eligible for a cellular office	Government equivalent rank			
Commissioner	Directorate Grade Point 5	1	38.2	38.2
Deputy Commissioner	Directorate Grade Point 3	1	24.2	24.2
Chief Legal Counsel	Directorate Grade Point 1	1	20.2	20.2
Legal Counsel	Government Counsel	3	14.7	44.1
CPDO	Chief Executive Officer	1	10.0	10.0
Chief Privacy Compliance Officer	Chief Executive Officer	1	10.0	10.0
Information Technology Adviser	Chief Executive Officer	1	10.0	10.0
Policy Adviser	Chief Executive Officer	1	10.0	10.0
Eligible for a shared cellular office	Government equivalent rank			
Personal Assistant/Executive/Secretary	Personal Secretary/ Senior Personal Secretary	4	7.1	28.4
Sub-total				195.1
Additional 10% circulation area for cellular offices				19.5
In open plan	Government equivalent rank			
A&FM	Senior Executive Officer	1	7.7	7.7
SPDO	Senior Executive Officer	5	7.7	38.5
PDO	Executive Officer I	9	7.0	63.0
APDO	Executive Officer II	7	7.0	49.0
CCM	Senior Executive Officer	1	7.7	7.7
Corporate Communications Officer	Executive Officer I/II	2	7.0	14.0
Assistant Administration Manager	Executive Officer I	1	7.0	7.0
Official Language Officer	Official Language Officer	1	7.0	7.0
Administrative Executive	Executive Officer II	1	7.0	7.0
Legal Executive	Law Clerk	1	6.3	6.3
Finance Officer	Clerical Officer	1	5.6	5.6
Information Technology Officer	Senior Clerical Officer	1	7.0	7.0
Assistant Clerical Officer	Assistant Clerical Officer	2	5.6	11.2
Administrative Assistant	Clerical Assistant	4	5.3	21.2
Office Assistant	Office Assistant	2	2.0	4.0
Assistant Technical Support Officer	Assistant Clerical Officer	1	5.6	5.6
Motor Driver	Motor Driver	1	—	—
Sub-total				261.8

Appendix E
(Cont'd)
(para. 7.4 refers)

(B) Common ancillary areas	Number of unit	Standard per unit (m²)	Total (m²)
In cellular offices			
Conference room/Classroom for 50 persons	1	75.0	75.0
Meeting room	1	15.0	15.0
Interview room	2	6.5	13.0
Local area network server room	1	10.0	10.0
Pantry	2	6.0	12.0
Library with 12 bookcases and a table	1	14.0	14.0
Sub-total			139.0
Additional 10% circulation area for cellular offices			13.9
In open plan			
Reception area	1	10.0	10.0
Computer unit	1	1.2	1.2
Printer unit	2	1.2	2.4
File and general storage for 55 staff	N.A.	77.0	77.0
General office furniture and equipment for 55 staff	N.A.	12.0	12.0
Sub-total			102.6
Total			731.9
Say			732.0

Source: PCPD records and the Government's Accommodation Regulations

**Data User Registration Scheme
(Developments since 2000)**

As at July 2009, the DURS had not yet been implemented. The following is a summary of the developments since 2000:

- (a) **Year 2000.** In June 2000, the PCPD said that details of the DURS project had not been finalised. It had to keep the unspent balance for two more years;
- (b) **Year 2003.** In August 2003, the PCPD said that, in view of resource constraints and priority of other commitments, the DURS would not be implemented within a short period of time. The HAB asked the PCPD to review the project schedule. The HAB said that, if it was unlikely that the project would proceed within a reasonable time frame, the PCPD should return the unspent balance to the Government;
- (c) **Year 2004.** By February 2004, the unspent balance had dropped to \$3.8 million. The HAB considered that it was necessary to set a target date for settling the unspent capital subvention to avoid any possible challenge about the PCPD's financial management and the HAB's monitoring role. The HAB said that, if it turned out that the subvention could not be spent on the DURS by the target date, the PCPD should return the subvention to the Government. In August 2004, the PCPD said that it planned to start with the registration of data users in the public services, the financial industry and the Internet industry. It would launch a consultation exercise with these sectoral users in 2005-06. If the outcome was supportive, the PCPD would deploy the fund for computer installation in 2006-07;
- (d) **Year 2005.** In August 2005, the PCPD said that it had initiated discussions with the Internet industry on the DURS;
- (e) **Year 2006.** In February 2006, the PCPD said that a feasibility study on the DURS would soon be launched. In August 2006, the PCPD said that it decided to commence an in-house feasibility study on the DURS, and that the tender exercise for the procurement of computer hardware and software for the DURS would soon commence;

- (f) **Year 2007.** In March 2007, the PCPD said that it intended to invite tenders for the installation of the DURS in April 2007. The HAB asked the PCPD to await the outcome of the discussion of the LegCo Panel on Home Affairs on the matter, before proceeding with the tendering exercise. The HAB (and subsequently the CMAB) opined that to enable fruitful discussion at the Panel, certain issues (e.g. the concerns of target sectors) would need to be addressed. As the public sector was a target sector, in June 2007, a meeting was held between the PCPD and a number of government bureaux and departments to discuss implementation details of the scheme. The HAB suggested that the PCPD should provide them with explanatory notes and guidelines for compiling a data user return. The HAB also asked the PCPD to touch base with other target sectors;
- (g) **Year 2008.** The CMAB followed up with the PCPD on various occasions on the provision of explanatory notes and guidelines to government bureaux and departments for compiling a data user return. In October 2008, the CMAB reminded the PCPD of the need to further consult the Advisory Committee when it had drawn up the detailed DURS proposal; and
- (h) **Year 2009.** By July 2009, the unspent balance had further decreased to \$3.2 million because of the usage of the fund mostly for procuring computer items not specifically related to the DURS. In response to Audit's enquiries, the PCPD/CMAB informed Audit that:
- (i) the PCPD had not yet consulted the LegCo Panel on Home Affairs. The HAB suggested that the PCPD should touch base with the stakeholders (i.e. target sectors) to better understand their concerns and problems before consulting the LegCo Panel on its DURS proposal;
 - (ii) the PCPD had briefed a number of government bureaux and departments in June 2007. They sought clarifications on how to comply with the requirements of the proposed DURS, and a specimen data user return prepared by a department was discussed. They also requested explanatory notes and guidelines from the PCPD to enhance their understanding of the DURS; and
 - (iii) the HAB further requested the PCPD to include some cost-benefit analyses on the proposal. Because the PCPD had been engaged in some compliance issues and had manpower constraints, there had not been further progress in the matter.

Source: CMAB and PCPD records

Performance targets and indicators of the PCPD

(A) Performance targets

	Service standard	Target
(1)	Acknowledge a complaint within two working days of receipt	95 %
(2)	Closing a complaint case within 180 days of receipt	92 %
(3)	Call back to a telephone enquiry within two working days of receipt	95 %
(4)	Acknowledge a written enquiry within two working days of receipt	95 %
(5)	Substantive reply to a written enquiry within 28 days of receipt	95 %

(B) Performance indicators

- (1) Number of enquiries received
- (2) Number of complaints received
- (3) Number of complaints brought forward
- (4) Number of complaints for disposal (i.e. (2) + (3))
- (5) Number of investigations completed
- (6) Number of investigations in progress (i.e. (4) – (5))
- (7) Number of consent applications for matching procedure
- (8) Number of inspections of personal data systems
- (9) Number of compliance checks
- (10) Number of self-initiated investigations

Source: CMAB's 2009-10 COR

Acronyms and abbreviations

A&FM	Administration and Finance Manager
Advisory Committee	Personal Data (Privacy) Advisory Committee
APDO	Assistant Personal Data Officer
APPA	Asia Pacific Privacy Authorities
Audit	Audit Commission
CCD	Corporate Communications Division
CCM	Corporate Communications Manager
CMAB	Constitutional and Mainland Affairs Bureau
Commissioner	Privacy Commissioner for Personal Data
COR	Controlling Officer's Report
CPDO	Chief Personal Data Officer
DPOC	Data Protection Officers' Club
DURS	Data User Registration Scheme
FSTB	Financial Services and the Treasury Bureau
GLD	Government Logistics Department
HAB	Home Affairs Bureau
LegCo	Legislative Council
m ²	Square metres
MAA	Memorandum of Administrative Arrangements
OSA	Overseas subsistence allowance
PAW	Privacy Awareness Week
PCPD	Office of the Privacy Commissioner for Personal Data
PDO	Personal Data Officer
PDPO	Personal Data (Privacy) Ordinance
SPDO	Senior Personal Data Officer
SWOT	Strengths, weaknesses, opportunities and threats