

Report No. 53 of the Director of Audit — Chapter 9

OFFICE OF THE PRIVACY COMMISSIONER FOR PERSONAL DATA

Summary

1. The Office of the Privacy Commissioner for Personal Data (PCPD) is a statutory body responsible for overseeing the enforcement of the Personal Data (Privacy) Ordinance (PDPO — Cap. 486). The PCPD is headed by the Privacy Commissioner for Personal Data (Commissioner). Since July 2007, the Constitutional and Mainland Affairs Bureau (CMAB) has taken over from the Home Affairs Bureau as the housekeeping bureau of the PCPD. The PCPD is funded mainly by recurrent subventions from the Government. For 2009-10, recurrent subventions amount to \$44.5 million. As at 1 July 2009, the PCPD had 55 staff. The Audit Commission (Audit) has recently conducted a review of the PCPD's activities.

Corporate governance

2. *Strategic planning.* 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. However, the PCPD does not have a structured strategic planning process. Putting in place such a 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.

3. *Committee meetings.* The Personal Data (Privacy) Advisory Committee has a statutory duty 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. Audit found that the 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. In the absence of formal rules, there was insufficient assurance that meetings were always properly conducted.

4. *Audit has made recommendations to the PCPD to address the issues concerning strategic planning and committee meetings.*

Complaint management

5. **Long outstanding cases.** The PCPD processes, on average, around 1,100 complaint cases a year concerning alleged breaches of PDPO requirements. Audit found that, while the vast majority of the cases were closed within 180 days of receipt of the complaints, some remained outstanding for a long time. For example, as at June 2009, there were 33 long outstanding cases which, on average, had been outstanding for 426 days. *Audit has recommended that the PCPD should make increased efforts to clear the long outstanding cases, although they represent a small percentage only of the total number of cases handled.*

6. **Refusal notices.** 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”, serve a refusal notice on the complainant to inform him of the refusal and the reasons for the refusal. Audit’s analysis indicated that, prima facie, this requirement was not met in many cases. 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. *To address this concern, Audit has recommended that the PCPD should 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.*

Promotional activities

7. **Budgetary control.** Audit selected some promotional events organised by the PCPD for case study. Audit found that the budgetary control process at the event level did not meet Audit’s expectation of a good budgetary control process. *To improve the process, Audit has recommended that the PCPD should: (a) compile a Promotional Events Manual that sets out clearly the budgetary control requirements for officers in charge of the events to follow (including the requirements to submit timely budget proposals and expenditure reports for the Commissioner’s approval and monitoring); and (b) require the Administration Division, when processing requests for payment, to make reference to the approved budget, and not to pass a payment if it would cause the budgeted amount to be exceeded.*

8. **Individual expenditure items.** Audit has identified some promotional expenditure items that are worthy of discussion, as follows: (a) venue/food/beverages; (b) honoraria for artists; (c) service of an entertainment company; (d) backdrop production; and (e) cash prizes. These expenditure items can be costly and discretionary in nature. Take cash prizes for example, the PCPD spent \$45,000 on cash prizes for two competitions in a Hotel Privacy Campaign held in 2006. For one competition, five winners were each

given a cash prize of \$5,000. For another competition, 10 winners were each given \$2,000. There was no documentation of the basis, or criteria, on which the amounts of prizes were determined. *To ensure the prudent use of public funds, Audit has recommended that the PCPD should set clear guidelines to guide future decisions on the aforesaid expenditure items.*

Overseas duty trips

9. **Overall expenditure.** To keep abreast of developments in personal data protection work in different parts of the world, the PCPD participates in international and regional gatherings of privacy authorities and officers. 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.

10. **Audit case studies.** Audit selected three overseas duty trips made in recent years for case study. The main audit findings are: (a) for the UK trip (July 2006), the PCPD did not act expeditiously to secure the free accommodation offered by the event organiser and, as a result, it had to spend \$9,900 on hotel charges; (b) the Commissioner was overpaid an amount of \$670, due to the mistaken use of a higher rate for calculating the overseas subsistence allowance payable to him for the UK trip; (c) in connection with his Canada trip (September 2007), the Commissioner was subsequently granted time off for four days, two of which he had not earned; and (d) for the Singapore trip (February 2009), the expenditure met the “moderate and conservative” principle. *Audit has made recommendations to the PCPD to address the issues.*

Hospitality expenditure

11. **Overall expenditure.** Expenditure on hospitality 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. The amounts of hospitality expenditure, incurred by the PCPD, 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.

12. **Farewell dinners for Commissioners.** The PCPD held farewell dinners for the two former Commissioners in September 2001 and January 2005 (which cost the PCPD \$24,000 and \$23,400) respectively. Audit has reservations about the appropriateness of using public funds for the purpose. Furthermore, in Audit’s view, at an average cost per person of \$650 and \$750 respectively, the expenditure incurred on the two occasions did not meet the “moderate and conservative” principle.

13. ***Wines brought to events.*** There were instances where PCPD officers, when attending events hosted by other organisations in their official capacities, brought wines to the events as a gesture of goodwill. In Audit's view, the 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.

14. ***Meals exceeding financial limit.*** In respect of a hospitality lunch, the cost exceeded the per-person limit by 29%, but reimbursement for the full amount was made without an acceptable explanation, and there was no documentation of the business purpose of the lunch.

15. *Audit has made recommendations to the PCPD to address the aforesaid issues on hospitality expenditure.*

Other administrative issues

16. ***Office accommodation.*** The main audit findings are: (a) the PCPD's rented area of 1,154 m² exceeded Audit's assessed needs, using the government accommodation standards as a benchmark, by 422 m² (or 58%) which cost about \$143,500 per month in rental; (b) there was no documentation indicating that the PCPD had carried out a comprehensive assessment of its needs for office space, before taking up the existing leases to rent a total office space of 1,154 m²; (c) compared with the government standards, the PCPD's practice regarding the provision of cellular offices for its staff was more generous; and (d) the PCPD entered into a supplemental lease for office space of 126 m² in anticipation of creating 16 new posts but, as it turned out, funds were only available for creating 8 posts progressively, resulting in an over-provision of office space. *Audit has made recommendations to the PCPD to address the issues.*

17. ***Use of office car.*** The PCPD operates an office car to provide transport service for the Commissioner and for PCPD staff. The audit findings revealed a need for the PCPD to ensure that: (a) the purposes of car journeys are stated in the vehicle log books; and (b) the office car is used in accordance with laid-down guidelines. *Audit has recommended that the PCPD should take action accordingly.*

18. ***Procurement of office car.*** Audit found that, in 2003-04, the PCPD purchased its office car without the Administration's approval for the necessary virement of funds between recurrent and capital subventions and, in so doing, breached the relevant requirements of the Memorandum of Administrative Arrangements. *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 the office car.*

19. **Capital subvention for computer installation.** In March 1999, the PCPD had an unspent capital subvention balance of \$5 million for the installation of office computer systems. The Administration agreed to let the PCPD keep the \$5 million then “earmarked” for implementing the Data User Registration Scheme (DURS). As at July 2009, Audit noted that the DURS had not yet been implemented, but the PCPD had spent \$1.23 million of the earmarked fund on computer items not specifically related to the DURS. The PCPD explained to Audit that: (a) this was due to 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; and (b) it was a case of spending money appropriately but debiting the expenditure against the wrong account. To address Audit’s concern, the PCPD returned \$1.23 million to the earmarked fund, by transferring an equivalent amount from its general reserve. *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.*

20. **Staff performance appraisals.** The PCPD has established cycles for conducting staff performance appraisals to ensure the timely completion of the appraisals. However, Audit found instances of delays in completing the appraisals with undesirable consequences. For example, in 16 cases, Audit found that 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. *Audit has recommended that the PCPD should take measures to ensure the timely completion of staff performance appraisals.*

Performance reporting in Controlling Officer’s Report

21. In the 2009-10 Controlling Officer’s Report of the CMAB, a number of performance targets and indicators regarding the PCPD were promulgated. However, there were no indicators to measure outcome and productivity. There were also no indicators on the PCPD’s promotional activities, and on its performance in approving and issuing codes of practice for the practical guidance of data users. *Audit has recommended that the Secretary for Constitutional and Mainland Affairs should, in consultation with the PCPD, take action to develop such performance indicators.*

Response from the PCPD and the Administration

22. The PCPD and the Secretary for Constitutional and Mainland Affairs accept the audit recommendations.

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