

Wednesday, March 17, 1993

Public Views Sought on Proposals for Protection of Personal Data

The Privacy Sub-committee of the Law Reform Commission has proposed that the collection and use of information about individuals be legally controlled.

The Sub-committee's recommendations address concern over the increasing extent to which personal information is recorded and passed on. There is also a worldwide trend to introduce legislative protection in this area.

The recommendations, which are contained in a document published today for a three-month consultation, include:

(1) Legal regulation should be introduced in both the public and private sectors of all data relating to the individual, whether factual or judgmental, true or false, and regardless of how it is stored. Both automated and non-automated data will be covered, provided that the data is reasonably readily retrievable.

(2) Only personal data that is necessary for or directly related to the functions of the data collector should be collected. To ensure that the collection process is fair, the individual should usually be informed at the time of the use to be made of the data and the classes of persons to whom the data will be disclosed.

(3) Personal data should not be used or disclosed by organisations for purposes other than those specified in a written declaration lodged with a central agency, except with the individual's consent or where a statutory exception is stipulated.

(4) Legal approval should be required for matching data on the same individual from different databases to identify discrepancies.

(5) An individual should have the right to obtain copies of, and correct, personal data about him. In certain circumstances when he has suffered damage he may be entitled to compensation.

(6) Personal data used for certain purposes should be exempt from some or all of these requirements. A total exemption is recommended for personal data used by an individual solely for personal or domestic purposes. Partial exemptions are recommended for data purposes such as national security, the detection of crime, and public safety.

(7) A regulatory agency should be established to ensure that data users comply with the new legal requirements for personal data. Its funding would be provided by levying organizations seeking business registration an annual fee not exceeding \$100.

While local figures are lacking, in the United States there are approximately 17 separate records on every individual. Decisions are made on the basis of this recorded information and those decisions may adversely affect the individual, such as refusal of a loan or even unjustified criminal investigation.

The chairman of the Sub-committee, Mr Justice Mortimer, pointed out that overseas studies indicated that many of the records of personal data were inaccurate. The criminal history records of one state in the US were found to be accurate and complete in only 20 per cent of cases.

Mr Justice Mortimer said the Sub-committee also expressed concern at misuse of data, and pointed out that an Australian investigation revealed the illicit sale of commercially valuable confidential personal data on a massive scale.

The Sub-committee believed that there was no reason to suppose that those problems did not exist in Hong Kong as they would be common to all countries with advanced computer and telecommunications systems.

To counter these problems, international agencies such as the Organisation for Economic Co-operation and Development and the European Communities Commission have formulated a set of standards to protect personal data.

In essence, these standards amount to a code of fair information

practices intended to ensure that the right information is provided to the right person for the right purpose.

Already 25 countries have enacted legislation to legally enforce these standards.

The Sub-committee has recommended that Hong Kong join their ranks as soon as possible in order to provide individuals with adequate legal protection in relation to collection and use of data about them, and to ensure that Hong Kong is not shut out of the international exchange of personal data.

Existing legal controls are limited. The Hong Kong Bill of Rights Ordinance provides some protection against public sector infringements and some ordinances contain secrecy provisions. Some protection is also provided by the common law duty of confidence, but there is at present no comprehensive legal protection.

The European Parliament has agreed that from 1994, its member states must control the transfer of personal data to countries lacking adequate legal protection on its use. If Hong Kong does not introduce the necessary legislation, the territory's status as an international trading centre could be affected.

The Sub-committee is inviting public comments on the proposals before finalising its recommendations to the Law Reform Commission. Written comments should be sent by June 16, 1993 to Mr Mark Berthold, Secretary of the Sub-committee on Privacy of the Law Reform Commission, 1st floor, Queensway Government Offices, High Block, Central.