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Press Release

**Law Reform Commission Makes Proposals
for Protection of Personal Data**

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

The Commission'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 Commission's recommendations are based on the internationally recognised data protection principles.

The recommendations, which are contained in a report published today, included:

- (1) The Commission recommend the appointment of a Privacy Commissioner to oversee the proposed scheme of data protection. Funding would be provided by an additional levy of not more than \$100 on those seeking business registration.
- (2) There should be legal regulation of all data relating to the individual, whether factual or judgmental, true or false, and regardless of how stored. Both automated and non-automated data will be covered, provided that the data are reasonably readily retrievable.
- (3) All personal data, regardless of the level of retrievability, must be protected by reasonable security safeguards.
- (4) An individual should have the right to obtain copies of, and correct personal data about him. In doing so, he will be helped by the written declaration of data purposes which all data holders will have to lodge with the Privacy Commissioner. In certain circumstances when the individual has suffered damage he may be entitled to compensation.
- (5) Only personal data that are necessary for, or directly related to, the functions of the data collector should be obtained from the individual or a third party. To ensure that the collection process is fair, the individual should be informed at the time he provides the data of the use to be made of the data and the classes of persons to whom the data will be disclosed.

- (6) Personal data should not be used or disclosed by organisations for purposes other than those specified, except with the individual's consent or where a statutory exception is stipulated.
- (7) Before an adverse decision is made on the basis of data relating to an individual, he must be given the opportunity to correct the data, except where the prospective decision relates to a contract.
- (8) The Privacy Commissioner's approval should be required for investigative data matching programs involving the comparison of data to identify discrepancies with a view to taking adverse follow-up action.
- (9) Personal data used for certain purposes should be exempt from some or all of these requirements. The only total exemption recommended is for personal data used by an individual solely for personal or domestic purposes. Partial exemptions are recommended for data purposes such as the detection of crime and public safety.

The Commission's report is the result of over 4 years' work by the Commission and a sub-committee chaired by Mr. Justice Mortimer. The sub-committee published initial proposals for consultation in March 1993. The Commission's report follows detailed consideration of the comments made to the sub-committee. Comments were received from a wide range of organisations, including government departments, business corporations, professional organisations and community groups. International experts also contributed. Only two out of over 80 submissions opposed a law regulating personal data.

A public opinion survey conducted last year on behalf of the Commission by Hong Kong University found there was general support for personal data.

The Commission's report emphasises the increasing extent of personal data use. Mr. Justice Mortimer pointed out that a study in Sweden in 1986 estimated that each individual is included in between fifty and three hundred personal registers. 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 report says 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.

The Commission's report also expresses concern at misuse of data, and points out that an Australian investigation revealed the illicit sale of commercially valuable confidential personal data on a massive scale.

The Commission argue that there is no reason to suppose that those problems do 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 purposes.

Already 27 jurisdictions have enacted legislation to legally enforce these standards.

The Commission 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 used of data about them, and to ensure that Hong Kong is not shut out of the international exchange of personal data.

The Commission says that 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.

It is expected that from 1996 the European Union will require its member states to control the transfer of personal data to countries lacking adequate legal protection on its use. The Commission argues that if Hong Kong does not introduce the necessary legislation, the territory's status as an international trading centre could be affected.

The Commission's report will be passed to the Secretary for Home Affairs for consideration with a view to implementation

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Note to Editors:

A copy of the Law Reform Commission's report on reform of the law relating to the protection of personal data and its summary will be available at GIS press boxes later today (Thursday).