

Press release

LCQ9: Public inspection of personal data in government record

Wednesday, February 27, 2013

Following is a question by the Hon Tang Ka-piu and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (February 27):

Question:

Section 49 of the new Companies Ordinance (new CO) enacted last year (not yet in operation at present) allows for the withholding of the usual residential address and the full identification number of an individual (e.g. a director or a company secretary) in a document already registered with the Companies Registry (CR) from public inspection upon application by the individual concerned. Furthermore, section 54 provides that such information in a document registered with CR after commencement of the new CO will not be made available for public inspection. Recently, the two provisions have aroused wide public concerns in the community, which include comments that they will undermine the public's right to know and some members from the labour sector expressing the concern that the two provisions will hinder employees in recovering wages in arrears from their employers. On the other hand, the Government has planned to introduce proposed legislative amendments into this Council within this year to impose certain new restrictions on public inspection of vehicle owners' personal data in the Register of Vehicles. On restricting public inspection of personal data in government records, will the Government inform this Council:

(a) whether it will shelve the drafting of subsidiary legislation for implementing the two provisions, and conduct consultation afresh with the various sectors of the community; if it will conduct consultation afresh, when the consultation will be conducted; if not, of the reasons for that;

(b) in view of the wide public concerns in the community aroused by the two provisions, whether the authorities will conduct consultation afresh with the various sectors of the community on the issue of whether legislative amendments should be made to impose new restrictions on public inspection of vehicle owners' personal data; and

(c) whether it has plans to amend the Land Registration Ordinance (Cap. 128) so as to impose new restrictions on public inspection of property owners' personal data in the Land Register; if so, of the details?

Reply:

President,

The question raised by Hon Tang touches on matters under different policy bureaux. The Administration's consolidated reply is as follows :

In general, a public register should be introduced only where it would serve legitimate purposes. The purposes of a public register should be stated as specifically as practicable in the legislation that establishes it. The data to be collected for or disclosed in a public register should be specified in the relevant legislation and the types of data thus specified should not be more than necessary to fulfill its specified purposes. The bureau/department maintaining the register should take steps to ensure that all persons accessing the register are aware of the specified purposes and the need to confine the subsequent usage of the data to such purposes.

On the other hand, we note that Hon Tang's key concerns are on matters relating to the recovery of wages in arrears. In this regard, the Administration has all along been taking various measures to safeguard employees' wage entitlements. Apart from promotional and publicity efforts, the Labour Department helps employers and employees settle their wage disputes through its conciliation service. Where there is sufficient evidence of an employer wilfully and without reasonable excuse defaulting wage payments, prosecution will be taken out. If an employee is owed wages or related payments by his insolvent employer, the employee may apply for ex-gratia payment from the Protection of Wages on Insolvency Fund in respect of wages in arrears and other payments covered by the Fund.

On part (a) of the question, the new arrangement concerning the inspection of the Companies Register under the new Companies Ordinance (CO) was introduced having regard to the views gathered from a public consultation exercise conducted in 2009-2010, in order to satisfy the public need to access information on one hand and protect the privacy of over one million existing and former directors on the other. We seek to strike a reasonable balance between these two aspects. The new arrangement had been thoroughly scrutinised by the Legislative Council (LegCo) and forms part of the new CO, which was approved by LegCo in July last year. For implementation of the new arrangement, we published in late-2012 the draft Companies (Residential Addresses and Identification Numbers) Regulation, which sets out the proposals concerning application procedures for purging of personal data on existing documents, the types of persons who may apply to the Companies Registry for inspecting the usual

residential address and full identification number as well as the procedures for making such applications.

On the issues raised by the labour sector concerning the recovery of wages in arrears from directors, our consensus with the Bills Committee on Companies Bill is that upon implementation of the new arrangement for inspection of the Companies Register under the new CO, public officers (including the Labour Department and enforcement agencies) will be eligible to apply to the Companies Registry for accessing a director's residential address and full identification number so as to ensure that their work on this front would be unaffected. On the other hand, we note that various sectors have recently expressed views over the new arrangement concerning the inspection of directors' personal data, and that the Privacy Commissioner for Personal Data has reiterated his support for enhancing the protection of personal data on the Companies Register through measures to improve the inspection regime. We are consulting the Commissioner and will continue to listen to views of different parties in formulating the way forward.

Regarding part (b) of the question, at present, the Road Traffic Ordinance (Cap.374) stipulates that all vehicles to be used on a road in Hong Kong must be registered and licensed. According to the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap.374E), the Commissioner for Transport (the Commissioner) shall maintain a register of vehicles. The register of vehicles contains 18 particulars which include registration information of vehicles, and names, addresses and identity documents of registered vehicle owners. Upon application and payment of a prescribed fee (currently \$45), the Commissioner shall supply to any person a Certificate of Particulars of Motor Vehicle (the Certificate) with the 18 particulars of the vehicle concerned stated. The Commissioner has no discretion to withhold the release of such particulars nor power to ask the applicant to provide reasons for obtaining the Certificate.

Since the register of vehicles and the particulars contained are set up and collected in accordance with the Road Traffic Ordinance, the Transport Department in 2003 introduced some administrative measures aiming to remind applicants that all the personal information provided by the Certificate should be used for traffic and transport related matters. Although these administrative measures have provided a certain degree of protection to the personal data of registered vehicle owners, the Certificate issuing system is still prone to abuse. The main reason is that even if the applicant fails to specify the purpose of the application or states whatever purpose, the Commissioner has no discretion to decline to release the particulars being applied for according to the Road Traffic (Registration and Licensing of Vehicles) Regulations.

Against such background, the Administration in 2011 proposed to amend the legislation to improve the issuing mechanism of the Certificate in order to enhance protection of personal data of registered vehicle owners and to ensure that the personal data concerned are properly used.

At the meeting of July 11, 2011, the Administration consulted the LegCo Panel on Transport on the relevant preliminary legislative amendment proposal. Members of the Panel supported the proposal in principle. After the meeting, the Administration conducted a two-month consultation exercise from July 12 to September 11, 2011 to collect views from the public and relevant stakeholders on the proposal.

Currently, having considered all the comments and suggestions received, the Administration is making changes to the relevant proposal to ensure the proper protection of privacy of registered vehicle owners whose personal data are contained in the register of vehicles without compromising the legitimate and reasonable use of others' particulars kept in the register of vehicles by the public. The Administration will report the outcome of public consultation and the latest legislative proposal to the LegCo Panel on Transport in detail at a suitable time.

As regards part (c) of the question, the Land Registry registers instruments related to land and provides land registers and copies of registered instruments for public search under the Land Registration Ordinance (Cap.128) and Land Registration Regulations (Cap.128A). According to the abovementioned relevant Ordinance and Regulations, the particulars recorded in the land registers do not include owner's residential address and identity card number. However, searchers may obtain the information from copies of registered instruments if such information is contained in the registered instruments. The Land Registry has no plan at present to amend the abovementioned relevant Ordinance and Regulations regarding the arrangement for search of land registers and copies of registered instruments for imposing new restrictions.

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