

**PRESS RELEASE BY THE INDEPENDENT POLICE COMPLAINTS COUNCIL [“THE COUNCIL”]**

1. The leakage was first reported in the papers on 10<sup>th</sup> March, 2006. The Council and the Secretariat published their report in relation to the incident on 8<sup>th</sup> April, 2006 [“the 8<sup>th</sup> April, 2006 Report”].
2. By letter dated 18<sup>th</sup> September, 2006, the Privacy Commissioner sent to the Council his report [“the Commissioner’s Report”] and an Enforcement Notice directing the Council to take various steps within 28 days after the date of such notice.
3. On 5<sup>th</sup> October, 2006, the Council sent to the Privacy Commissioner a Position Statement setting out the Council’s stance vis-a-vis the findings in the Commissioner’s Report and his decision to serve on the Council the Enforcement Notice.
4. The stance of the Council as set out in its Position Statement may be summarised as follows:
  - (a) In considering the Commissioner’s Report, a clear distinction should be drawn between the Council and the Secretariat. The Secretariat is a free-standing Government agency staffed by civil servants and acts in accordance with rules and regulations applicable to all Government Departments.
  - (b) The Council notes that after 7 months of investigation, the Privacy Commissioner has not made any criticism against the Council or the Secretariat that they had in any way suppressed or omitted any relevant material facts in the 8<sup>th</sup> April, 2006 Report.

- (c) In relation to the dispute between the Council/the Secretariat on the one hand and EDPS/Mr. Y on the other :
- (i) On the issue as to whether or not Ms. X had expressly informed Mr. Y that the data given to him were actual confidential data : the Privacy Commissioner found that he has no reason to doubt the truthfulness of Ms. X's testimony in respect of her encounter with Mr. Y. The Privacy Commissioner further indicated that he is not convinced that Mr. Y was not aware that the data given by the Secretariat were actual data of CAPO's cases.
  - (ii) On the issue whether Mr. Y was aware of the confidential nature of the data : Mr. Y has now expressly admitted before the Privacy Commissioner that he was aware that the data contained personal data, including names, dates, ages, addresses, etc.
  - (iii) On the issue whether Mr. Y or EDPS had made an explicit request for "test data" : the Privacy Commissioner found that EDPS had not explained that "test data" meant "dummy" or sanitized data.

The Council supports these findings of the Privacy Commissioner which illustrate the wholly untenable stance hitherto maintained by EDPS/Mr. Y.

5. The Report made various findings in relation to the treatment of the personal data. The Council accepts those findings in so far as they relate to the Secretariat. The Report had, however, erroneously associated the Council with such findings and compounded such error by serving the Enforcement Notice on the Council. The Council is of the view that :
- (a) the Commissioner erred in law. He failed to have regard that the acts in issue were committed by civil servants and the Government is prima facie liable for those acts under section 65(1) of Personal Data (Privacy) Ordinance.

- (b) the Commissioner has failed to observe the basic principle of fairness. He failed to give members of the Council an opportunity to be heard in accordance with section 43(5) of the Personal Data (Privacy) Ordinance and in the process condemned persons who were not even Council members when the act(s) in issue were committed.
  - (c) the Commissioner has demonstrated a total inability to appraise the role of and a reluctance to take on the Government on the issue of privacy. Despite his alleged concern on respect of personal data by Government departments, the Commissioner did not consider at all the role of Government in relation to the leakage.
6. The Council does, however, share the concern of the Privacy Commissioner that every step should be taken to ensure that the leakage of personal data would never be repeated again. Despite its strong objections to the validity of the Enforcement Notice, the Council had, with close participation by the Secretariat and other Government Departments, complied with the Enforcement Notice on 16<sup>th</sup> October, 2006. Clear and detailed directives are now in place in the Secretariat regulating the careful treatment of personal data.
7. The primary focus should now be on the interests of the victims of the leakage incident. The Council had interviewed various victims and relayed their difficulties to the Government. The Council urges the Government to speed up its response in mitigation of the victims' loss.

## Addendum

1. The Council has sight of the Commissioner's Press Release at about 4 p.m. this afternoon.
2. The Council wishes to make the following observations on the Commissioner's stance as reflected in his Press Release.
3. The Commissioner has either misunderstood or misrepresented the Council's stance as outlined in its Position Statement.
4. As cited by the Commissioner, "data user" means "any person who either alone or jointly in common with other persons, controls the collection, holding, processing or use of the data". The principal stance of the Council is that the Commissioner failed to consider whether the Government was the data user in relation to the leakage incident. The Commissioner avoided this issue and sought to place the burden as a matter of convenience on the Council.
5. The Commissioner continues to miss the point in relation to his obligation under section 43(5) of the Personal Data (Privacy) Ordinance. That section places a duty on him to give an opportunity to be heard to any person who he may criticize in any report of his at the point of time when "it appears to the Commissioner that there may be sufficient grounds for him to make any report ...that may criticize or adversely affect any person". Prior to 18<sup>th</sup> September, 2006, none of the Council had been afforded that opportunity at the point of time when the Commissioner determined that there were sufficient grounds to criticize those Council members and to issue the Enforcement Notice against them.
6. The Commissioner adverted to correspondence with the Secretariat which were copied to the Chairman of Council. Those correspondence relate to investigation by the Commissioner. Such correspondence reflects the stance of the Council that the Commissioner must be given complete access to any information he sought in furtherance of his investigation. The Commissioner had however failed to appreciate that when his investigation reached the

point when it appeared to him that he had grounds to criticize, he had to give the Council members an opportunity to be heard.

7. Given these circumstances, there is no force in the Commissioner's assertions that at no stage during the investigation did the Council "state the Council members were separate and distinct from the Secretariat" or that "At no stage during the investigation did [the Council] deny that it was the relevant data user".

26 October 2006