

Views of the Hong Kong Bar Association

on Arrangements for Issuing Certificates of Particulars of Motor Vehicles Consultation

Introduction

1. By a letter dated 12 July 2011 the Transport Department invited the Hong Kong Bar Association to give its views on proposals to amend the current legislative provisions on the provision of Certificates of Particulars of Motor Vehicles by the Commissioner of Transport (the “**Commissioner**”).
2. The proposals and the rationale for them are set out a consultation paper issued by the Transport Department in July 2011 (the “**Consultation Paper**”).
3. The consultation period is due to end on 11 September 2011 and it is proposed to introduce legislative amendments to implement the proposed changes into the Legislative Council in the 2011/2012 legislative year.

Current Position

4. All vehicles used on the roads of Hong Kong are required to be registered with the Commissioner save as otherwise provided for under the Road Traffic Ordinance (Cap 374).
5. Pursuant to Regulation 4(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap 374, sub leg E) (the “**Regulations**”), the Commissioner is required to maintain a register of vehicles (the “**Register**”) containing the particulars specified in the Schedule 1 to the Regulations (the “**Schedule**”).
6. Pursuant to Regulation 4(2) of the Regulations, the Commissioner is obliged (on payment of the prescribed fee) to “supply to any person making application for any particulars in the Register in respect of a vehicle a certificate stating such particulars.”
7. The Commissioner has no discretion as to whether or not provide the particulars so long as the prescribed fee is paid.

8. The particulars to be entered in the Register as provided for in the Schedule include:
- (1) the full name of the registered owner, which may be a natural person or a corporate body;
 - (2) the full residential address of the owner if a natural person and the full address of the registered office of the owner if a corporate body; and
 - (3) the “identity document” of the registered owner, i.e. the Hong Kong identity card number or passport number of the registered owner if a natural person and the business registration number of the registered owner if a corporate body.

The Consultation Paper refers to the foregoing as the “personal particulars”.

9. The remaining particulars in the Schedule are particulars of the vehicle, including its registration mark, engine number and chassis number, and “any other particulars required by the Commissioner”. The Consultation Paper refers to these particulars as the “vehicle particulars”.

Objectives of the Proposed Changes

10. As stated in the Consultation Paper (at paragraph 2), the objectives of the proposed changes are to:
- (1) enhance privacy protection; and
 - (2) ensure that the personal data of registered vehicle owners contained in the Register are used properly.

Proposed Changes

11. The proposed changes are as follows.
- (1) *Purpose of the Register*: it is proposed to specify in the Regulations that the purpose of the Register is “to allow any member of the public to ascertain the particulars of a registered vehicle”.
 - (2) *Limitation on release of personal particulars*: it is proposed that provision be made that “vehicle particulars” are to be provided in a certificate upon receipt of an application and the payment of the prescribed fee but “personal particulars” are to be provided in the certificate only if the applicant:

- (a) is the registered owner of the vehicle concerned;
 - (b) presents a written consent of the registered owner of the vehicle concerned;
or
 - (c) declares to the Commissioner that such information (i.e. the “personal particulars”) would “only be used for certifying the identity of the registered vehicle owner in specified scenarios” as set out in Annex C to the Consultation Document (the “**Specified Scenarios**”).
- (3) *Sanction:* it is proposed to provide that it shall be an offence for a “Certificate applicant”, i.e. an applicant for “personal particulars” making the declaration referred to in item (2)(c) above, to use the personal particulars of the registered owner for purposes other than the purposes that have been declared to the Commissioner with a maximum penalty upon conviction of a fine at level 2 (currently \$2,000 to \$5,000) and 6 months imprisonment.
12. It is proposed that the above changes apply to the registered particulars of all vehicle owners whether they are natural persons or corporate bodies.
13. The Specified Scenarios (pursuant to which it is proposed the Commissioner would release the personal particulars of registered vehicle owners upon the declaration of the application and without the consent of the owners) are as follows:
- (1) insurance claims: for the purpose of making an insurance claim “in respect of any casualty, loss or damage ... arising from [a] traffic accident or incidents where [a] criminal offence is committed or otherwise involving or caused by the use or presence of a particular vehicle”;
 - (2) compensation: for the purpose of “Seeking compensation for any casualty, loss or damage ... arising from [a] traffic accident or otherwise involving or caused by the use or presence of a particular vehicle”;
 - (3) rectification of improper presence of a vehicle: for the purpose of “Rectifying the act of unauthorized entry or improper presence of a particular vehicle, without demanding insurance or compensation”;
 - (4) recovery of fees/fines/charges: for the purpose of “Recovering overdue fees, fines or charges for services provided to a particular vehicle”;

- (5) legal proceedings involving the vehicle: for the purpose of “Instituting and conducting any civil or criminal proceedings ... involving or caused by the presence of a particular vehicle”;
- (6) safety recalls: for the purpose of “Facilitating the identification of the registered vehicle owners for safety recalls of the vehicles in question”.

Comments

General Comments

14. Issues raised by the use of information obtained from public registers, including in particular information relating to individuals, are not peculiar to the Register. They are common to all public registers, including the public registers of businesses, companies and land ownership.
15. Insofar as the information obtained from a public register constitutes personal data, as that term is defined in the Personal Data (Privacy) Ordinance (Cap 486) (the “PDPO”), its subsequent use is already controlled by the PDPO, including in particular (but not exclusively) data protection principle 3 (“DPP3”) in Schedule 1 of the PDPO. If the current control of the use of personal data obtained from public registers provided for in the PDPO is not considered to be adequate, this is a matter that ought to be addressed *generally* and not on a piecemeal basis by imposing restrictions in relation to one public register (the Register) as proposed by the Consultation Paper.
16. As a matter of fact, the PDPO is currently the subject of a major proposed overhaul by way of the Personal Data (Privacy) (Amendment) Bill 2011 (the “Bill”) further to public consultation exercises conducted over the last few years. The fact that there are no proposed amendments to the PDPO in the Bill directed *specifically* at the control of the use of personal data obtained from public registers suggests this is not a source of public concern *per se*.¹
17. On the other hand, the Bill does contain proposed new provisions to control the sale of personal data in general that (if enacted) would give individuals the right to prevent and opt-out from the sale of their personal data by third parties (clause 21 of the Bill refers).
18. No exception is provided for in these provisions for personal data that are “sold” by government bodies when charging for the provision of personal information contained in public registers controlled by them. The Bill does, however, provide for the Chief Executive in Council to grant exemptions from the requirements concerned (in proposed new section

¹ While the PDPO currently does not have specific provisions in relation to public registers, personal data privacy laws in some other jurisdictions do: e.g. the New Zealand Privacy Act 1993 and the New South Wales Privacy and Personal Information Act 1998.

35G of the PDPO in clause 21 of the Bill). It may be that it is intended to grant such an exemption for public registers in general (but, if so, this should be made clear by the Government). In any event, however, there is an apparent lack of co-ordination between this consultation exercise on proposals to restrict access to and use of “personal particulars” in the Register and the exercise to amend the PDPO by way of the Bill.

Specific Comments

Proposed Change (1): Purpose of the Register

19. Specification of the purposes for which personal data are collected is a requirement of data protection principle 1 of the PDPO (Schedule 1 refers). Where personal data are made available for access in any public register (not just the Register), specifying the purposes for which they are made available would assist in limiting the subsequent use of the data by persons accessing the public register to those purposes in accordance with DPP3.
20. The proposal for a statement of the purpose of the Register is, however, unsatisfactory. What is required is a statement of the purposes for which the information (including in particular the personal data) in the Register are made available for public access instead of (or in addition to) a statement of the purpose of the Register as such.
21. In any event, although the proposed statement of the purpose of the Register purports to be exhaustive, it is clearly not since it makes no reference to the Commissioner’s own purposes in maintaining the Register, such as to facilitate the collection of first registration tax.

Proposed Change (2): Limitation on Release of Personal Particulars

22. The application of the proposed restrictions on access to and use of the “personal particulars” in the Register of registered vehicle owners that are corporate bodies does not follow from the avowed objects of the proposed changes to enhance privacy protection and ensure that personal data obtained from the Register are used “properly”. The right to respect for privacy is a right of individuals (natural persons) and the term “personal data” is defined in the Personal Data (Privacy) Ordinance (Cap 486) (the “PDPO”) by reference to data relating to individuals (natural persons) (and this is the approach of personal data privacy laws generally).
23. In any event, the proposed declaration system restricting access to the “personal particulars” in the Register is too rigid and limited in scope to be workable. It would, for example, wholly prevent access to the “personal particulars” for journalistic purposes (without the consent of the owners). This would be a disproportionate restriction on journalistic freedom.

24. Even if this particular objection were met by adding a Specified Scenario which permitted access to the “personal particulars” in the Register for “journalistic purposes”, the underlying defect of inflexibility would remain. We doubt it is possible to devise an exhaustive list of the acceptable (specific) uses of the “personal particulars” in the Register as is attempted in the proposed declaration system. On the other hand, while it would be possible to provide for the Commissioner to have a discretion to allow access to the “personal particulars” in the Register for “any other purpose the Commissioner considered to be justified in the particular circumstances of the case”, we doubt whether the Commissioner would welcome the administrative burden of having to exercise such a discretion or find it practicable to do so.
25. The PDPO (in common with data protection legislation in other jurisdictions) avoids the problem of undue rigidity/inflexibility over the uses for which personal data may be used by permitting the use of personal data for the purposes for which the data were collected and directly related purposes, as well as providing for exemptions from the restrictions on use for public interest purposes (including disclosure to journalists). This tried and tested approach that works in practice is preferable to attempting to impose control over the use of “personal particulars” in the Register by way of a list of specific permitted uses.
26. If one of the concerns prompting the current proposals is the fact that the Commissioner has no discretion to prevent access to the “personal particulars” of individuals (which include their residential addresses) whose safety or wellbeing may be at risk or whose family members’ safety or wellbeing may be at risk, e.g. because they are the subject of threats, this shortcoming can be addressed by making provision for a suppression mechanism.²
27. One minor linguistic point: the references to “casualty, loss and damage” in Specified Scenarios (1) and (2) would be better expressed as “loss and damage, including personal injury and property damage”.

Proposed Change (3): Sanction

28. The proposed offence/sanction as framed does not accommodate the possibility of an overriding public interest in using personal particulars obtained from the Register for a purpose that is different from the one stated in the proposed declaration.
29. For example, suppose an applicant were to declare that “personal particulars” were required in order to seek compensation (pursuant to Specified Scenario (2)) and subsequently wished to supply the personal particulars to the Police in order to report an alleged criminal offence. It would be an offence under the proposed sanction for the applicant to do so unless he

² For an example of such a mechanism see s 58 of the New South Wales Privacy and Personal Information Protection Act 1998: http://www.austlii.edu.au/au/legis/nsw/consol_act/papipa1998464/s58.html.

reapplied to obtain the same information with a declaration pursuant to Specified Scenario (5) “legal proceedings involving the vehicle”, which would be unnecessarily cumbersome.

30. In any event, however, it would never be permissible to supply personal particulars obtained from the Register to a journalist in the public interest (e.g. to expose wrongdoing) because such disclosure is not catered for in any of the Specified Scenarios. This is so even though the PDPO permits the disclosure of personal data (collected for an unrelated purpose) to a journalist if the disclosing party has reasonable grounds to believe (and reasonably believes) the publishing or broadcasting of the data is in the public interest (s 61(2) of the PDPO refers).
31. The fact there are (currently) no criminal sanctions for breach of the use limitation provisions of DPP3 may have had a role in prompting the proposals under consideration (but the Bill provides for criminal sanctions for breaches of the proposed new provisions restricting the sale of personal data and the use of personal data for direct marketing). However, if criminal sanctions against “misuse” of personal data obtained from public registers are justified they should be applied generally (via the PDPO) instead of singling out misuse of personal data obtained from the Register for special treatment.
32. All that is required in order to prevent the proposed declaration provisions in the Consultation Paper from being abused (if they are proceeded with) is to make it an offence to make a false declaration (knowingly or recklessly).
33. Control of the subsequent use of personal particulars that constitute personal data can be left to the general provisions of the PDPO on this (including the general provisions on the control of the sale of personal data and the use of personal data for marketing proposed in the Bill if enacted).

Dated this 12th September 2011

Hong Kong Bar Association

