

ADMINISTRATIVE APPEALS BOARD
ADMINISTRATIVE APPEAL NO.11 OF 2008

BETWEEN

HO KAM MOON (何錦滿)

Appellant

and

PRIVACY COMMISSIONER FOR
PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

Date of Hearing: 9 July 2008 and 23 October 2008

Date of handing down Decision with Reasons: 16 December 2008

DECISION

Background facts

1. The Appellant was a client of Bright Smart Securities International (HK) Limited (“**Bright Smart**”). He complains that on 20 October 2006, Mr. Lee Pak (“**Mr Lee**”) of Bright Smart instructed his subordinate, Ms Lam Yuet-ling (“**Ms Lam**”), to improperly distribute his account statement to another client (the “Third Party”) of Bright Smart, thereby infringing his right of privacy. According to the Appellant, Mr Lee did the aforesaid because of some previous dispute between the two of them.

2. On 19 March 2007, the Appellant lodged a complaint with the Respondent against Bright Smart for improperly disclosing his personal data to the Third Party.

3. The Respondent carried out certain preliminary investigation into the Appellant's complaint. Both Mr Lee and Ms Lam denied the Appellant's allegation.

4. According to the Appellant, he also made a complaint against Bright Smart to one Mr Fung of Apple Daily. For this reason, the Respondent contacted Mr Fung in the course of his investigation. Apparently, Mr Fung told the Respondent that he had once contacted Bright Smart over the phone and Bright Smart had admitted that it had mistakenly sent the Appellant's account statement to another client of Bright Smart. However, Mr Fung stated that he did not have any record of his telephone conversation with Bright Smart and could not recall the name of the person who made the admission.

5. By a letter dated 5 March 2008, the Respondent informed the Appellant that it had decided not to carry out any further investigation of his complaint against Bright Smart on the ground that, having regard to all the circumstances of the case, any investigation or further investigation was unnecessary.

6. The Appellant was not satisfied with the Respondent's decision. He took the view that he had not been fairly treated by the Respondent and had been discriminated against. He also considered that the Respondent ought to have come to the conclusion that his complaint against Bright Smart had been substantiated, in view of Bright Smart's aforesaid admission to Mr Fung. Accordingly, on 23 March 2008, the Appellant lodged an appeal to this Board against the decision of the Respondent.

First Hearing on 9 July 2008

7. At the first hearing of this appeal on 9 July 2008, the Appellant indicated that he wished to subpoena Mr Fung to give evidence on his behalf. For this reason, the Board decided to adjourn the hearing to give the Appellant an opportunity to look for the contact details of Mr Fung so that he might be subpoenaed to give evidence.

Adjourned Hearing on 23 October 2008

8. By the time of the adjourned hearing on 23 October 2008, the Appellant was still unable to provide the Board with the contract details of Mr Fung, and the Appellant indicated that he was content to proceed with the appeal without calling Mr Fung to give evidence.

9. At the adjourned hearing, the Appellant stated that he did not intend to pursue the complaint against Mr Lee that he had deliberately instructed Ms Lam to improperly distribute his account statement to the Third Party, but maintained that Ms Lam did as a matter of fact give his account statement to the Third Party, and wished Bright Smart to clarify whether it was due to Ms Lam's negligence that she did so.

Discussion

10. S.39(2)(d) of the Personal Data (Privacy) Ordinance ("Ordinance") provides as follows –

"The Commissioner may refuse to carry out or continue an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case – (d) any investigation or further investigation is for any other reason unnecessary."

11. The reasons for the Respondent's decision not to further investigate the Appellant's complaint were, in summary, as follows:-

(1) On the basis of the existing evidence, the Appellant's allegations could not be established conclusively.

(2) Even if Ms Lam did wrongly distribute the Appellant's account statement to the Third Party, her conduct might have been negligent but not deliberate.

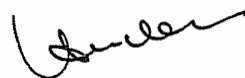
(3) In any event, the Appellant's complaint was an isolated incident. There was no evidence that Bright Smart was in the habit of disclosing its clients' information

to third parties in a similar manner. Hence, further investigation of the Appellant's complaint would unlikely lead to any significant benefit to the public. In view of the Respondent's limited available resources, it was decided that the Appellant's complaint should not be further investigated.

12. For the purpose of deciding this appeal, the Board does not consider it necessary to make a finding as to whether Ms Lam did, as a matter of fact, mis-delivered the Appellant's account statement to the Third Party, but is prepared to proceed on the basis that she did. Even so, the Board agrees with the Respondent's assessment that further investigation of the Appellant's complaint on the facts of this case will unlikely lead to any significant benefit to the public, and that the Respondent was entitled, in the exercise of his discretion under S.39(2)(d) of the Ordinance, not to continue or carry out any further investigation of the Appellant's complaint against Bright Smart.

Conclusion

13. Accordingly, the appeal is dismissed. The Board does not consider that the Appellant has conducted his case in a frivolous or vexatious manner. Hence, notwithstanding Bright Smart's application for costs against the Appellant, there will be no order as to costs.



(Mr Anderson Chow Ka-ming, SC)

Deputy Chairman

Administrative Appeals Board