

ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEAL NO. 14 of 2012

BETWEEN

LEUNG HO YIN

Appellant

and

PRIVACY COMMISSIONER

FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

Date of Hearing: 22 November 2012

Date of Handing down Written Decision with Reasons: 18 December 2012

DECISION

1. This is an appeal ("the Appeal") by the appellant Mr. Leung Ho Yin ("the Appellant") to this Administrative Appeals Board ("the Board") against the decision ("the Decision") of the Privacy Commissioner for Personal Data ("the Commissioner") given on 30 March 2012 (p.277-279 of the Appeal Bundle) in respect of a complaint ("the subject Complaint") lodged by the Appellant with the Commissioner on 9 January 2011.

The subject Complaint

2. On 22 December 2010, the Appellant lodged with the Commissioner a complaint (“the previous Complaint”) against another party. The statutory provision for such a complaint is in section 37 of the Personal Data (Privacy) Ordinance (“the PD Ordinance”). A complaint can be made under section 37 against any act or practice which “may be a contravention of a requirement under this Ordinance”.
3. By a letter dated 22 December 2010 to the Appellant (pp.177-183 of the Appeal Bundle), the Commissioner acknowledged receipt of the previous complaint. The following was also stated in the letter:

“Due to the high volume of cases we are now handling, it may take some time for your case to be thoroughly considered by this Office. Our case officer would be in contact with you in due course if you are required to provide further information or assistance.

Please be advised that it is voluntary for you to supply to us your personal data. All personal data submitted will only be used for purposes which are directly related to this complaint ...

Please find enclosed herewith our Complaint Screening Flow Chart for your reference...”

4. This question appeared in the Complaint Screening Flow Chart: “Is the complainant willing/able to provide ID copy to the Office/present ID card in person for verification?”. If the answer to this question was “No”, the Flow Chart indicated that the Commissioner would not process the relevant complaint any further (and thus there would not be an investigation by the Commissioner under section 38 of the PD Ordinance).
5. By a letter dated 30 December 2010 (pp. 184-190 of the Appeal Bundle), the Commissioner requested the Appellant to provide certain information relating to his complaint. This letter again contained the following statements:

“Please be advised that it is voluntary for you to supply to us your personal data. All personal data submitted will only be used for purposes which are directly related to this complaint.”

A copy of the "Complaint Handling Policy" was also attached to this letter for the Appellant's reference. There was nothing in the "Complaint Handling Policy" relating to the above-mentioned question from the Flow Chart.

6. The Appellant lodged the subject Complaint, this time against the Commissioner, by an email to the Commissioner on 9 January 2011 (p. 191 of the Appeal Bundle), alleging that the Commissioner was in breach of the Data Protection Principles "by obtaining **excessive** information in the course of their complain handling [sic] process" (emphasis added). The Appellant referred to the above-mentioned question and answer in the Flow Chart and stated:

"... providing ID copy / present ID copy SHALL NOT be there only way(s) for the complainant to identify himself/herself. For example, the complainant may identify himself/herself through digital signature."

7. Reading the subject Complaint (giving it the widest possible construction), the relevant requirements under the PD Ordinance that could be alleged to have been contravened might be Principle 1(1) and (2) of the Data Protection Principles set out in Schedule 1 of the PD Ordinance. In particular, it is stated under Principle 1(1)(c) that "Personal data shall not be collected unless ...the data are adequate but not excessive in relation to that purpose".

The Commissioner's reasons for the Decision

8. By a letter dated 31 January 2011 (pp. 196-197 of the Appeal Bundle), the Appellant was informed by the Commissioner, amongst other things, that the Commissioner's Office was revising the Complaint Screening Flow Chart so as to convey a clearer message to the complainants on how the Office would handle their complaints.
9. According to the Commissioner, on 11 February 2011, the Commissioner's Office revised the Complaint Screening Flow Chart and the Complaint Handling Policy. In particular, the relevant question in the flow chart ("the new Flow Chart") was changed to "Complainant's proof of identity" without mentioning ID card, and in the Complaint Handling Policy ("the new Policy") a new paragraph 4(b) was added: "the complainant should provide his/her proof of identity by either producing his/her identification document (such as Hong Kong Identity Card) in

person, or by sending copy of the document to the PCPD for verification”, referring to a Hong Kong identity card as an example without limiting to just this type of identity document.

10. Further, in fact, the Commissioner did accept the Appellant’s digital signature as the identification requirement for the purpose of processing the previous Complaint.
11. Relying on the aforesaid, the Commissioner was of the view that “no better result could be achieved by a full investigation” of the subject Complaint and decided not to pursue the subject Complaint.

The Appellant’s main argument in this Appeal

12. At the hearing before the Board, the Appellant’s main argument was that the new Flow Chart and the new Policy still do not refer to verification of identity by a digital signature because such a signature cannot exist as a copy to be sent and cannot be submitted in person (as it exists electronically only). Thus, the Appellant contends that the relevant wording of the new Policy should read “copy of document” instead of “copy of the document”.
13. It should be noted that this argument of the Appellant is not the same as the subject complaint, namely the Commissioner has contravened the PD Ordinance by seeking to obtain excessive information for processing a complaint. The Appellant is rather contending that the present wordings of the New Policy are unacceptable because they seem to exclude digital signatures.

Any possible contravention, in the light of the new Flow Chart and the new Policy?

14. The Commissioner’s Office is a statutory body charged with the important task of investigating, if appropriate, a complaint lodged with it under section 37 for possible contravention of the PD Ordinance. Processing or investigating such a complaint is a serious and important matter both for the complainant and the party being complained. Verification of the identity of the complainant is an important matter.

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15. Thus, it is important that the complainant should provide reliable evidence of identification. A Hong Kong identity card contains data which is vital and reliable for identification, and is probably the most convenient means of identification for most complainants (because all complainants are likely to possess one).
 16. Moreover, the risk of any misuse of data collected from an identity card is likely to be much less in the case of the Commissioner than, say, a commercial entity. The Board is of the view that the risk with the Commissioner is minimal.
 17. The Board is of the view that collection of data through the request of a Hong Kong Identity Card is not excessive for the purpose of identification in processing a section 37 complaint.
 18. The Board is clearly of the opinion that taking a complainant's Hong Kong identity card or its copy for processing a section 37 complaint is not an excessive or unfair collection of data, and cannot be a contravention of any requirement of the PD Ordinance.
 19. Therefore, the Decision and the Commissioner's reasons for the Decision are correct.
 20. In any event, the Board observes that the subject Complaint is made on the footing that there was a collection of data by the Commissioner in the letter from the Commissioner's Office dated 22 December 2010. However, as the contents of the letter demonstrate, the Commissioner's Office was not seeking to collect any data in that letter from the Appellant. In those circumstances, the Board does not see how the enclosure of the Flow Chart to the letter could amount to a collection of excessive information.

Whether the new Policy excludes digital signature

21. As mentioned earlier, the Appellant contends that the wordings of the new Policy have the effect of excluding verification of identity by a digital signature.
22. However, as pointed out earlier, this issue is different from the subject Complaint and is therefore not relevant in this Appeal. This Appeal is not concerned with other issues such as whether the new Policy should be expressed in a more detail

fashion, or whether other means of verification of identity should be accepted in the new Policy.

23. In any event, the new Policy does not specify the type of identification acceptable to the Commissioner; it only names one example (the Hong Kong Identity Card). Read as a whole, the Board does not consider the new Policy to exclude verification of identity by digital signature, just as it has not excluded (though also not named as an example) passports, driving licence (which have been accepted by the Commissioner, as the Respondent's Counsel so informed the Board), and other proper identification means. That has been reflected in actual practice depending on the circumstances of the individual case. The Board was informed at the hearing that since the establishment of the Office of the Privacy Commissioner for Personal Data, the Appellant has been the only complainant using digital signature for the purpose of identity verification. Moreover, as mentioned earlier, the Commissioner has in fact accepted the Appellant's digital signatures as proof of his identity.
24. Thus, even if the Appellant's contention is relevant in this Appeal, the Board considers that there is no merit in it.

Conclusion

25. The Board unanimously agrees with the Decision, and unanimously dismisses the appeal.

(Signed)

(Mr Chan Chi Hung, SC)

Deputy Chairman

Administrative Appeals Board