

ADMINISTRATIVE APPEALS BOARD

Administrative Appeal No. 15/2014

BETWEEN

張樹昌

Appellant

and

THE PRIVACY COMMISSIONER

FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

Date of Handing Down Written Decision with Reasons: 25 July 2014

DECISION

A. BACKGROUND

1. By a Notice of Appeal dated 10 April 2014 lodged by the Appellant with the Administrative Appeals Board (“**the Board**”), the Appellant appeals against a decision (“**the Decision**”) dated 20 March 2014 made by the Respondent

(“**the Appeal**”). By the Decision, the Respondent decided that he would, in the exercise of his discretion under section 39(2)(d) of the Personal Data (Privacy) Ordinance, not to pursue the complaint made by the Appellant (“**the Complaint**”) further.

2. By a letter dated 5 June 2014, the Respondent informed the Board that he had decided to withdraw the Decision, and that accordingly he would not file and serve the Statement, Description of Documents and the documents relating to the Appeal. The Respondent further stated that he would contact the Appellant to arrange for the disposal of the Appeal.

3. By a further letter dated 16 July 2014 to the Board (copied to the Appellant), the Respondent informed the Board that the Appellant had refused to withdraw the Appeal and requested the Board to adjudicate on the Appeal.

4. Until and unless an appeal is unconditionally abandoned by an appellant in accordance with the provisions of the Administrative Appeals Board Ordinance (“**the AAB Ordinance**”) (see section 19 thereof), the appeal is not considered by the Board as withdrawn and the Board will have to adjudicate on the same. In this case, since the Appellant has not withdrawn the Appeal in accordance with section 19 of the AAB Ordinance, the Appeal continues to be an appeal before the Board.

5. However, the fact is that the Respondent has withdrawn the Decision. Accordingly, a situation has arisen whereby the subject matter of the Appeal is no longer in existence.

B. SUMMARY DETERMINATION

6. Where the decision under appeal has been reversed by a respondent, the Board has power to make a determination of the appeal summarily in favour of the appellant without a hearing. Section 21(1)(h) of the AAB Ordinance provides as follows:

“For the purpose of an appeal, the Board may-

...

(h) if it appears to the Board that the respondent has reversed the decision appealed against, determine the appeal summarily in favour of the appellant without a hearing and without calling on anyone to attend or to appear before it.”

7. It has been held in AAB No. 10 of 2011, AAB No. 64 of 2011 and AAB No. 4 of 2013 that the Board’s powers under section 21(1) of the AAB Ordinance is exercisable by the Chairman, without the constitution of a 3-members Board. This includes the power exercisable under section 21(1)(h).

C. ORDER

8. In the circumstances of this case, I would accordingly exercise the power under section 21(1)(h) to make a determination of the Appeal summarily in favour of the Appellant without a hearing. As the exercise of this power is made consequential upon the Respondent having reversed or withdrawn the Decision, it is exercised without consideration of the merits of the Appeal, and without hearing the parties.

9. The Appeal is allowed and the Decision is formally set aside.

10. As the present decision is made without consideration of the merits, it is inappropriate for me to make any comments on the merits of the Complaint, or to speculate of the result of the Respondent's investigation.

(signed)

(Mr. Eugene Fung Ting-sek, S.C.)

Acting Chairman

Administrative Appeals Board