

ADMINISTRATIVE APPEALS BOARD
ADMINISTRATIVE APPEAL NO. 22/2017

CORRIGENDUM

The Decision made by this Board on 6 April 2018 has the following amendment:

- (1) Page 17, paragraph 58, line 2: "... which do affect the Board's decision herein." should be changed to read "... which do not affect the Board's decision herein."

Dated this 23rd day of May 2018.

(signed)

(Mr Erik Ignatius SHUM Sze-man)

Deputy Chairman

Administrative Appeals Board

ADMINISTRATIVE APPEALS BOARD
ADMINISTRATIVE APPEAL NO. 22/2017

BETWEEN

LEE CHUN HO

Appellant

and

PRIVACY COMMISSIONER FOR
PERSONAL DATA

Respondent

Coram: Administrative Appeals Board
Mr Erik Ignatius Shum Sze-man (Deputy Chairman)
Mr Nelson Cheng Wai-hung (Member)
Miss Angelina Agnes Kwan (Member)

Date of Hearing: 13 March 2018

Date of Handing down Written Decision with Reasons: 6 April 2018

DECISION

A. Introduction

1. This is a unanimous decision of the Board.

2. On 13 July 2017, the Appellant lodged a complaint (the “**Complaint**”) with the Respondent’s Office, against TransUnion Limited (“**TransUnion**”) for collecting, retaining, using and disseminating his address history and contact number history without his consent.

3. The Deputy Privacy Commissioner for Personal Data, after considering all the circumstances of this case, decided not to pursue the Complaint further pursuant to section 39(2)(d) of the Personal Data (Privacy) Ordinance and paragraph 8(e) of the Respondent’s Complaint Handling Policy (the “**Decision**”). The Appellant was informed of the Decision and its supporting reasons by e-mail on 8 September 2017.

4. Dissatisfied with the Decision, the Appellant appeals to this Administrative Appeals Board.

B. Background

5. On 11 July 2017, the Appellant obtained a copy of his credit report from TransUnion and found that the report contained his address history and contact number history. The Appellant considered that such data was irrelevant for credit providers to assess his credit worthiness.

6. In the next few days, the Appellant expressed his discontent by sending e-mails to various organizations including the Hong Kong Monetary Authority (“**HKMA**”), TransUnion and the Respondent’s Office.

7. The crux of the Appellant's complaint was that the amount of personal information in terms of the said data contained in his credit report and their retention periods were excessive.

8. On 12 July 2017, TransUnion, in response to the Appellant's complaint, invited the Appellant to file a "Personal Data Correction" form for following-up. TransUnion also provided answers to the Appellant's credit reporting questions regarding:

- a. the data retention period for closed credit card and personal loan accounts;
- b. the data retention period for record of enquiries made by TransUnion's members; and
- c. TransUnion's right to collect and provide individual credit enquiries made by TransUnion's members under the Code of Practice on Consumer Credit Data (the "**Code**") issued by the Respondent's Office.

9. On 13 July 2017, HKMA replied to the Appellant's complaint to it to the effect that the operation of TransUnion has to comply with the Code. Given that the Code is administered and enforced by the Respondent's Office, HKMA suggested the Appellant to divert his questions to the Respondent's Office.

10. On 13 July 2017, the Appellant sent another e-mail to TransUnion and copied it to the Respondent's Office. The e-mail once again complained that

amount of information on his credit report was excessive. Two examples were given by the Appellant to illustrate his concern, namely

- a. an entry regarding his office address which was over 5 to 10 years;
and
- b. an entry of telephone number which he no longer used and had totally forgotten.

11. In reply, TransUnion urged the Appellant to complete a Personal Data Correction form again.

12. In a later reply, TransUnion further elaborated that its operations were Code abiding:

- a. pursuant to clause 2.4.1A and 3.6.7 of the Code, TransUnion can retain previously used addresses and phone numbers on one's credit report for as long as there are other consumer credit data related to one contained in the database of TransUnion;
- b. pursuant to clause 2.6 of the Code, whenever a credit provider provides to a credit reporting agency ("**CRA**") any consumer credit data disputed by the individual to whom such data relates, this shall be accompanied by an indication of the existence of the dispute. If at any subsequent time the dispute has ended, the credit provider shall as soon as reasonably practicable update the data held by the CRA accordingly;

- c. pursuant to clause 2.14.1 of the Code, the credit provider shall, before making such access, take such steps as may be reasonably practicable in the circumstances to notify the individual;
- d. pursuant to clause 2.14.2 of the Code, the credit provider shall, upon making such access, create, and thereafter keep for a period of 2 years; and
- e. TransUnion has developed best practices in data security to safeguard business and personal records and has been commissioning independent compliance audits annually to safeguard the personal data privacy rights of individuals.

13. On 14 July 2017, the Appellant e-mailed TransUnion and demanded TransUnion to confirm whether its data collection and storage practices were excessive. TransUnion replied on the same day.

14. In a later e-mail of even date, the Appellant accused the HKMA for denying its “responsibility to protect the public interest of all Hong Kong people and Hong Kong banking reputation”. He also alleged that the Respondent’s Office did not regulate TransUnion stringently. The Appellant maintained that the amount of personal and credit data collected by TransUnion was excessive.

15. The Appellant continued to engage in discussions with the HKMA, TransUnion and the Respondent’s Office by e-mails from 15 July to 24 July 2017.

16. In response to the Appellant's emails dated 12, 13 and 14 July 2017, the Respondent's Office affirmed the commencement of an investigation on 25 July 2017.

17. The Respondent's Office, having perused further information provided by the Appellant via phone and e-mails, formally accepted the Appellant's case as a complaint under section 37 of the Personal Data (Privacy) Ordinance (the "PDPO") on 15 August 2017.

18. On 8 September 2017, the Respondent's Office, having considered all the circumstances of this case, decided to exercise the Commissioner's power under PDPO to cease pursuing the Appellant's complaint further.

19. The gist of the Respondent's findings and reasons were that TransUnion had not contravened the Code and the requirement of PDPO by rejecting the Appellant's request for deletion of his address history and contact number history.

20. As stated above, the Appellant lodged a Notice of Appeal on 29 September 2017 with this Board against the Respondent's Decision.

C. The Appellant's grounds of appeal

21. The essence of the grounds of appeal is the retention of excessive personal data with no limit of time for such retention relating to the Appellant's address history and contact number history which the Appellant considered to be unnecessary.

22. In his oral submission to this Board, the Appellant also alleged that the Code or the Respondent as the regulator of the Code has sacrificed the personal data privacy rights of a consumer to financial business efficacy.

23. The Appellant provided this Board with his grounds of appeal in the form of a letter to the Secretary of the Board, accompanied with selected correspondence in association with HKMA, TransUnion and the Respondent's Office, his credit report dated 11 July 2017 and his written reply to the Respondent's opposition. The Board will not set out all the submissions made by the Appellant herein. Suffice it to state that the Board has duly considered all of the Appellant's submissions both in writing and made orally.

D. The Respondent's submissions to the Board

24. The Respondent summarized the Appellant's appeal into two grounds to which summary the Board agrees:

Ground 1: Address history and contact number history have nothing to do with one's credit risks.

Ground 2: Address history and contact number history are kept by TransUnion without any time limits.

25. For Ground 1, the Respondent accepted and agreed with the explanation provided by TransUnion that the address history and contact number history are necessary identifiers to be included in a credit report. Hence, there is no excessive retention or use of the said data fields by TransUnion as alleged by the Appellant.

26. For Ground 2, clause 3.6.7 of the Code empowers TransUnion to keep the address history and contact number history for as long as there is other consumer credit data related to the individual data subject contained in the database of the CRA.

27. According to the credit report submitted by the Appellant, there was still consumer credit data in it. Therefore, the Respondent's decision that TransUnion has not kept the address history and contact number history of the Appellant longer than is necessary for the fulfillment of the purpose for which the data is or is to be used (i.e. identifier) was properly made.

28. Finally, the Respondent submitted that the Respondent duly exercised his discretion not to pursue further the Appellant's complaint and that the Decision has been properly arrived at. Therefore, the present appeal is unmeritorious.

29. Similarly, for the purpose of the present Decision the Board is not going to set out all the submissions of the Respondent which have all been considered by the Board.

E. Representatives at the Appeal Hearing

30. The Respondent's representative for this appeal was Ms Christine Chan, the Personal Data Officer. The legal representative of the Respondent was Ms Catherine Ching. The Appellant appeared in person at the appeal hearing.

F. Relevant law and policy

31. Pursuant to section 21(1)(j) of the Administrative Appeals Board Ordinance (Cap 442) (the “**Ordinance**”), this Board can confirm, vary or reverse the decision that is appealed against or substitute therefor such other decision or make such order as it may think fit.

32. Under section 3 of the Ordinance and section 29(ca) of the Schedule of the Ordinance, this Board has jurisdiction to adjudicate a decision of the Privacy Commissioner for Personal Data to terminate an investigation initiated by a complaint under section 39(3A) of the PDPO.

33. Principle 1 of Schedule 1 Data Protection Principles (“**DPP**”) of the PDPO provides:

Principle 1—purpose and manner of collection of personal data

- (1) Personal data shall not be collected unless—
 - (a) the data is collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
 - (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and
 - (c) the data is adequate but not excessive in relation to that purpose.
- (2) Personal data shall be collected by means which are—
 - (a) lawful; and
 - (b) fair in the circumstances of the case.
- (3) Where the person from whom personal data is or is to be collected is the data subject, all practicable steps shall be taken to ensure that—
 - (a) he is explicitly or implicitly informed, on or before collecting the data, of—

- (i) whether it is obligatory or voluntary for him to supply the data; and
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and
- (b) he is explicitly informed—
- (i) on or before collecting the data, of—
 - (A) the purpose (in general or specific terms) for which the data is to be used; and
 - (B) the classes of persons to whom the data may be transferred; and
 - (ii) on or before first use of the data for the purpose for which it was collected, of—
 - (A) his rights to request access to and to request the correction of the data; and
 - (B) the name or job title, and address, of the individual who is to handle any such request made to the data user,

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data was collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data is exempt from the provisions of data protection principle 6.

34. Principle 2(2) of Schedule 1 DPP of the PDPO provides:

Principle 2—accuracy and duration of retention of personal data

...

- (2) All practicable steps must be taken to ensure that personal data is not kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is or is to be used.

...

35. Under section 39(2) of the PDPO, the Respondent has discretionary power to refuse carrying out or to terminate an investigation initiated by a complaint:

(2) The Commissioner may refuse to carry out or decide to terminate 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.

...

36. According to section 8(e) of item B of the Complaint Handling Policy of the Respondent, the Respondent can exercise the discretion to terminate an investigation if there is no *prima facie* evidence of any contravention of the PDPO.

8. Section 39(1) and (2) of the [PDPO] contain various grounds on which the Commissioner may exercise his discretion to refuse to carry out or decide to terminate an investigation. In applying some of those grounds, the PCPD's policy is as follows:

...

e. after preliminary enquiry by the PCPD, there is no *prima facie* evidence of any contravention of the requirements under the [PDPO];

...

37. In accordance with section 21(2) of the Ordinance, this Board in the exercise of its powers under section 21(1)(j) shall have regard to any statement of policy lodged by the Respondent with the Secretary to the Board under section 11(2)(a)(ii), if it is satisfied that, at the time of the making of the

decision being the subject of the appeal, the Appellant was or could reasonably have been expected to be aware of the policy.

38. The Appellant took no issue with the Complaint Handling Policy of the Respondent.

G. Discussion

G1. Ground 1: Address history and contact number history have nothing to do with one's credit risks.

39. The Appellant submitted that the inclusion of his full address history and contact number history in his credit report was excessive. He stressed at the hearing repeatedly that it would not help a credit provider in assessing the credit risks in a loan application.

40. In both his oral and written submissions, the Appellant asserted that many financial institutions only require up-to-date contact details from their clients. Hence, there is no practical need to list the full address history and contact number history in one's credit report. The Appellant therefore claimed that the amount of personal data kept as stated above is not only excessive, but also done at the expense of personal privacy.

41. Having considered the matter this Board agrees with the Respondent's view that the address history and contact number history in a credit report could be relevant in the context to serve the purpose of assisting to identify the individual concerned in the credit report.

42. TransUnion, as a CRA, is in the first place permitted by the Code to collect personal data including *inter alia* address history and contact number history. In addition, TransUnion's consumer credit reference service is required to comply with DPP 1 in Schedule 1 of the PDPO and clause 3.1.1A of the Code, that is, personal data must be collected in a lawful and fair way, directly related to a function/activity of the data user. Data subjects must be notified of the purpose and data collected should be necessary but not excessive.

43. To illustrate the purpose of the data collection and the necessity to keep them, the Respondent submitted that because a customer may use different identification documents when applying for different loans, supplementary personal data, *inter alia*, the address history and contact number history could be used to identify a particular consumer and thus is relevant.

44. The Appellant attempted to rebut the above submission. He asserted that even with the said assistance rendered by the address history and contact number history, their presence still cannot guarantee a unique identification of a particular consumer.

45. The Board considers that the proper way to look at the matter is whether the data may be relevant in the context of identification of the person and not whether the data must be relevant or definite use. So far as the accuracy of identification process would be enhanced if the contact number history is included in the report that is enough to show that such data is relevant.

46. The Appellant also pointed out that TransUnion being a private company and that its business is a commercial private business which is almost a

monopoly in Hong Kong as there is no competitor, there is no reason why the Code should benefit its business at the expense of protection of personal privacy.

47. First of all, the Code safeguards all data users, data subjects and CRA regardless of whether they are private businesses, public organizations or government departments. Secondly, the fact that the business of TransUnion is in reality a monopoly as a commercial reality does not concern the design and formulation of the Code. Thirdly, the Code is a product of prolonged processes of drafting, consultation and finalization having regard to and balancing the apparently competing and conflicting interests of stakeholders, which include that of personal data subjects, the credit providers and the well-being of the finance sector of Hong Kong which is in the public interest to maintain. In the Board's view and decision so long as the relevant guidelines and rules in the Code have a reasonable and rational underlying objective and logic it is to be duly recognized.

48. The above is supported by a previous Board's decision in *X v Privacy Commissioner for Personal Data*, Administrative Appeal No. 15/2015 (17 November 2015), at §7, shed light on the above matter:

“This Board agrees with the Respondent's submission that the Code is the product of striking a balance between public interest and private interest. ... It is not the function or within the jurisdiction of this Board to rewrite the Code or to review it. If one wants the relief of rewriting the Code, or challenging its validity, such relief must be sought elsewhere. To a certain extent the privacy of an individual is eroded but it is besides the point for two reasons. Firstly by the nature of credit report, the privacy of the individual concerned must be inevitably be touched upon. The only issue is to what extent the credit history should be contained

in the report. In this regard the Code as issued by the Respondent according to the [PDPO] just serves the purpose of balancing the conflict of interests between credit agencies and credit providers on the one hand, and the individuals concerned on the other. The Code has its general application and there is no unfairness specifically directed to X.” (Emphases added)

49. This Board agrees entirely with the observations and conclusion of the Board hearing the case in the above decision.

50. The Appellant reiterated that some of his address history and contact number history in his credit report are variants or duplicates of others. Its presence is likely due to different data formats utilized by different data users who contribute the Appellant’s personal particulars to TransUnion.

51. A simple solution is to correct the Appellant’s data by filling out a Personal Data Correction form and return it to TransUnion. Nonetheless, the Appellant never did it to have them duly amended. In any event that point is quite irrelevant to the essence of this appeal.

52. By reason of the matters above, the 1st ground of appeal has no merit and is dismissed.

G2. Ground 2: Address history and contact number history are kept by TransUnion without any time limits.

53. The Appellant complained that TransUnion has kept his address history and contact number history for too long and without any time limits.

54. At the hearing, the Respondent provided explanation to the above argument by drawing the Board's attention to clause 3.6.7 of the Code:

“3.6.7 general particulars of an individual: for as long as there are other consumer credit data related to the individual contained in the database of the CRA.”

55. Consequently, according to the Code so long as there is still consumer credit data information contained in the Appellant's credit report, the report should come with the personal particulars of the Appellant for the purpose identified hereinabove. The Board finds that the rationale behind the above paragraph in the Code is supported by the conclusion the Board reaches in relation to dismissing the first ground of appeal and further so long as such data are relevant to should have been kept by the data user, there is a justification for the same to be so kept when there is other data of the subject kept by the user. The Board should add that it is not the function of this Board to review or re-write the Code for the reasons given hereinabove.

56. In the premises, for the reasons stated above the subject data are kept for a valid reason in accordance with the Code and it is clear that TransUnion has not contravened the Code and the requirements of the PDPO since there are other data of the Appellant still kept by TransUnion and no request for deletion of all the Appellant's data has ever been made. It could not be said that TransUnion was wrong or contravened the PDPO or the Code by rejecting the Appellant's request for deletion of his address history and contact number history only.

57. For the above reasons, the Appellant's 2nd ground of appeal also fails.

H. Other Matters

58. The above is sufficient to dispose of the Appeal. However, the Board would like to add the following incidental observations which do affect the Board's decision herein.

59. The Appellant brought up at the hearing that most people will keep some kind of banking accounts or credit cards until they pass away, hence their personal particulars in practice can never be deleted because their credit accounts will always have credit information of their banking accounts or credit cards. Although the Board has come to a decision in relation to the two grounds of appeal with a dismissal of both, it may be advisable for the Respondent to revisit and review the relevant Code as to the time limit of retention of the personal general particulars of the data subject in the context, especially in relation to history of contact to see if the current Code will give rise to legitimate concerns and worries of data subjects.

60. During the hearing, the Board also learned that the Respondent's Office has not sought any clarification or answer to the Complaint from TransUnion during its investigation. The Board could understand the grievances of the Appellant in that there was lack of communication between the Respondent's Office and TransUnion during the investigation process. Without going into details, the Respondent should have sought to contact the complaineé formally for an official answer or clarification so that they would form part of the answer to the Complaint such that it would not be seen by the public and the complainant that the Respondent was speaking for the complaineé.

61. The Board was informed at the hearing that the Respondent's Office currently does not have a publicized and formal process of review of their decisions by persons not involved in the decision-making process within the Commission itself whereas some other regulatory bodies do have a formal process review panel or formal complaint escalation procedures. The Respondent's legal representative informed the Board that currently a senior officer will be appointed to handle such matter of internal review. This Board noted that the Decision appealed against in this Appeal was signed by the Deputy Privacy Commissioner for Personal Data. The Board considers that it may be useful to have a formal and publicized review process by independent personnel when there is a request for review so that the complainant will find that his/her grievance is treated seriously which will enhance confidence in the process. The above matter being an internal, structural and procedural mechanism of the work of the Respondent, it is best left to the Respondent for their consideration and review.

I. Conclusion

62. For the reasons stated herein, this appeal is dismissed. The Decision is affirmed and there will be no order as to costs.

63. Lastly, we thank all parties and legal representative for their assistance.

(Signed)

(Mr Erik Ignatius SHUM Sze-man)

Deputy Chairman

Administrative Appeals Board