

ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEALS NO. 24 OF 1999

Between:

TSO YUEN SHUI

Appellant

- and -

PRIVACY COMMISSIONER FOR PERSONAL DATA

Respondent

Corum: Administrative Appeals Board

Date of Hearing: 12th and 22nd January 2000

Date of Handing
Down: 8th March 2000

DECISION

The Appeal

This is an appeal by Mr. Tso Yuen-shui ("the Appellant") against the decision of the Privacy Commissioner for Personal Data ("the Commissioner") contained in his letter of 15th July 1999. The appeal hinges on certain Minutes of Meeting held at the office of Ms Lucia Lei on 4th November 1991 ("the Minutes") which the Appellant regards as a very crucial piece of document. He produced a copy of it. He appealed on the following grounds:

- (a) The method of investigation by the Commissioner was flawed.
- (b) The interpretation of the meaning of “personal data” was wrong.
- (c) The Commissioner failed to take note of the mediation carried out by the Labour Department and also the copy Minutes produced at that time.

In his appeal the Appellant requested for the following reliefs:

- (a) To summon Mr Lee Hon-yin to testify whether the contents of the copy Minutes produced by the Appellant were genuine, accurate and correct;
- (b) To declare that the information contained in the Minutes falls within the definition of “personal data”;
- (c) To summon Labour Department to attend this Board to identify the documents that were handed over during the mediation;
- (d) To ask Mr Lam Wing-hong, Assistant Privacy Commissioner for Personal Data, to answer the two suspicious points raised in the Appellant’s letter of 11th February 1999; and
- (e) Based on items (a), (b), (c) and (d) above, to direct the Commissioner to issue an enforcement notice to the Hospital

Authority pursuant to Section 50 of the Personal Data (Privacy) Ordinance (“the Ordinance”).

Procedure

We heard the appeal in two days. If Mr Ho for the Commissioner had not made some concession, we needed not go to the second day of the hearing for the reasons we shall give later. The Appellant came before this Board with a lot of grievances. He felt that he was cheated, that someone had deliberately concealed the Minutes and that the Hospital Authority without good reason failed to produce the Minutes in accordance with the law. It was against this background we conducted the hearing. The Board is a quasi-judicial body and we are empowered to take evidence and hear the case *de novo*.

The Appellant gave evidence on oath and was cross examined by Mr Ho. The Respondent called three witnesses including Ms Eva Cheng (鄭慧敏), Ms Mabel Ng (吳美寶) and Mr Kenneth Leung (梁顯義). Before the Respondent’s case commenced, another witness, to whom a witness notice was sent at the request of the Commissioner, gave evidence as a witness summoned by the Board. She was Ms Lucia Lei, (利潔儀), a key witness to the whole case.

Lucia Lei

Ms Lei was a senior hospital manager of Ruttonjee Hospital for the relevant period up to the end of March 1993 and was then succeeded by Ms Eva Cheng, the Respondent’s 1st witness. On 4th November 1991

Ms Lei had a meeting at her office with the Appellant who was then employed as boiler attendant. Also in the presence of the Hospital Engineer, Mr Lee Hon-yin, he complained that "some people had concealed the fact rather than tackled the problem." Later, the Appellant, for reasons which this Board was not told, could no longer work in the Hospital. There were some disputes which brought the Labour Department to intervene. A copy of the Minutes was produced to the Labour Department. The Appellant claimed that Mr Mak Hung-kae, the Assistant Commissioner for Labour, could verify this. We have no reason to doubt this.

The key issue is where was the original and where Ms Lei had kept the Minutes of the said meeting of 4th November 1991. Ms Lei informed us that she did not remember the meeting. After examining a copy of the Minutes at the hearing, she verified that the Minutes was prepared by her and the signature thereon was hers. It was her practice that after preparation of the Minutes she did not file it personally. She put it in the "out" tray for the clerk to collect and file it. She was very certain that the Minutes would be filed by the clerk in one of the working files in the repair and maintenance section. It would not go to the personal file of any particular person. Having examined its contents which related to the operation of the boiler, the Board finds truth in what Ms Lei told us that it would not be kept in the Appellant's personal file. Ms Lei, the Board finds, is an honest and truthful witness. She did not regard the meeting and the Minutes so important that she had to pay special attention to them.

The Appellant's Complaint

The Appellant had applied to the Hospital Authority via Ruttonjee Hospital for papers connected with his personal information. He was supplied with two huge bags of copy documents. Among those copy documents the Appellant could not find the Minutes. The Appellant complained to the Commissioner that the Hospital failed to produce the said Minutes. The Commissioner after investigation found that there was no case to issue an enforcement notice. He now appeals against the Commissioner's decision.

Issues For This Case

According to the papers before us and the submission made by the Appellant, the Board has identified three issues:

- (a) Whether the Minutes fall within the meaning of "personal data";
- (b) Whether the Hospital Authority or its officer had concealed the Minutes; and
- (c) Whether the Commissioner had properly performed its duty and failed to issue notice of enforcement pursuant to Section 50 of the Ordinance.

Personal Data

As stated above, we do not think the Minutes would go to the personal file of the Appellant. The reason is simple that the meeting was about certain incident which happened to the boiler, and also its

related maintenance and repair. Although the Appellant complained that someone had concealed certain fact, the subject matter of the whole discussion was not about a particular person as no name was mentioned but about the boiler. We see no reason that the Minutes would go to the Appellant's file. Neither do we think that the information contained in the Minutes could be classified as personal information.

However, Mr Ho for the Commissioner indicated that for the purpose of this appeal, and emphasized for the purpose of this appeal only, the Commissioner did not dispute the Minutes being classified as personal data. Had he not made such concession we would have stopped the hearing. As the Appellant was acting in person and had obtained no legal advice, we would feel sorry for him had we discontinued the hearing in the middle of the case for technical reason only, particularly when we generally believe that he was an honest and upright person with a long history of grievances. Mr Ho continued with his case.

Ms Eva Cheng

Ms Cheng was the Respondent's 1st witness. She succeeded Ms Lei as the senior hospital manager. She told us that during the handover period, Ms Lei did not mention anything about the 4th November 1991 meeting and the Minutes. To them it was not an important matter. Because of this, we believe that Ms Cheng genuinely did not remember the contents of the conversation she later had with the Appellant.

For the same reason, there were some details and the sequence of events, which Ms Cheng failed to explain and seemed to contradict each other. The assessment of the credibility of a person does not solely depend upon her answers to questions. We have to look at her demeanour, her motive, her background and all circumstances of the case. We see no reason why Ms Cheng had to conceal the document. It is no surprise to us if the document was lost or misplaced and could not be found. The document has outlived its usefulness.

Ms Mabel Ng

She was the legal counsel of the Hospital Authority and confirmed that the Hospital Authority did not have a copy of the Minutes in its possession. We believe what she told the Board.

Mr Kenneth Leung

He was senior personal data officer in charge of investigation of the Appellant's complaint. The Appellant severely attacked the method of service of a letter requesting Ms Lei to attend an interview to assist investigation by the Commissioner. On 24th May 1999 the Commissioner's Office sent the letter by ordinary post. It met with no response. We were told that it was the standard practice of the Commissioner's Office to send the letter again by hand delivery. On this occasion an office assistant attended Ms Lei's home address and found no one there. Instead of effecting personal service, she inserted the letter into Ms Lei's home letter box. There was no further follow-up action. Mr Ip Cho-yin, member of this Board, rightly enquired whether the Commissioner asked for Ms Lei's telephone number or other means

of communication. The witness' answer was negative and this completely exposes the deficiency of the so-called standard practice. The Board does not intend to go further than the aforesaid comment and advises the Commissioner's Office to consider improvement.

Conclusion

The Board accepted Mr Leung's explanation that by that time he had sufficient materials for the Commissioner to make his findings and draw his conclusion. If we were in the position of Mr Leung, we would have done the same and would not carry out further investigation. If we were the Commissioner, we would have drawn the same conclusion that no one in Ruttonjee Hospital or in the Hospital Authority had deliberately concealed the Minutes. For this, we do not find that the Commissioner had failed to perform his duty. Neither do we think it right to issue any enforcement notice.

For reasons we have given we find no ground for the appeal and have to dismiss it.

The Reliefs Applied For

This Decision will not be regarded as complete if we do not deal with the different reliefs that have been set out at the beginning of this Decision.

(a) Summon Mr Lee Hon-yin

It is not within the jurisdiction of this Board to decide: whether the Minutes produced are genuine and whether the

contents accurately and correctly reflect what had discussed in the meeting on 4th November 1991. In fact, no one before us disputed the contents of the Minutes. The Appellant in the second day of hearing expressly told the Board that he withdrew the request to summon Mr Lee Hon-yin.

(b) Whether the Minutes and their contents fall within the definition of “personal data”. We have made our observation.

(c) Summon Labour Department

We find it unnecessary to do so as it does not help this appeal. In fact, the officers of the Labour Department did attend the hearing but were excused from further attendance after the parties had agreed to include certain letters as part of the appeal bundle.

(d) Ask Mr Lam Wing-hong, the Assistant Privacy Commissioner for Personal Data, to answer the two suspicious points raised. We find no reason for asking him to testify as the investigation was carried out by Mr Kenneth Leung who had given evidence before us.

(e) We consider it not right to issue any enforcement notice against the Hospital Authority or Ruttonjee Hospital in this case.

We understand the sentiment of the Appellant; he wanted to get the truth. The Board has its limitation: we are constrained by time

and resources and our power is governed by legislation. We have to stop our investigation somewhere. We are living in a free democratic society where a high standard of transparency is required in respect of operation and administration of public bodies like the Hospital Authority and the Office of the Privacy Commissioner for Personal Data. They are subject to critical examination which we have done during the hearing. It is worthwhile the time, expenses and effort of all concerned. We feel grateful to the Appellant for bringing this case to us.



(Christopher C CHAN)
Deputy Chairman
Administrative Appeals Board