

ADMINISTRATIVE APPEALS BOARD

APPEAL NO. 27/1998

BETWEEN

WONG KWOK MUI ENOCH

Appellant

and

PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Coram : Administrative Appeals Board

Date of hearing : 25th June 1999

Date of Delivery of Decision : 5th July 1999

DECISION

The appeal

This is an appeal by Ms Wong Kwok Mui Enoch (“Ms Wong”) against the Privacy Commissioner for Personal Data (“the Commissioner”) who refused to investigate a complaint lodged by her against Mr Leung Ting (“Mr Leung”), the Chairman of the International Wing Tsun Association (“the Association”). The Association is a martial arts association.

The Complaint

The complaint is that on 15th October 1998 at a meeting held at the office of the Association, Mr Leung disclosed the personal data of Ms Wong to the persons present at the meeting. The data were supplied by Ms Wong to

Mr Leung in a letter dated 14th October 1998. In this letter Ms Wong complained about the fees that she had to pay to become an instructor.

Ms Wong stated that she had strong reservation about paying certain fees. The letter concluded by stating that :

“At the present economic downturn, together with the fact that :

- (1) my mother is being unemployed;
- (2) my grandmother is seriously ill and each life saving injection costs \$500.
- (3) my family member is cheated for signing a guarantee to help a friend borrow money from loan shark company. The company had sent the last but not the least ‘threatening letter’ for debt payment.

I have to be careful about the use of money as a precaution for sudden change in the future. I hope you would understand.”

Mr Leung admitted that the letter was read out at the meeting.

The meeting was called by him in order to deal with the following matters :

1. The Master (Master Lee) of Ms Wong had complained about her conduct. Ms Wong had deliberately refused to make payment of a number of items of fees. She used improper means to obtain the certificate as a junior grade assistant instructor.
2. She deliberately persuaded another female member to refuse to pay the fees for promotion and membership.
3. She repeatedly attempted to force her Master to dismiss a male member whom Ms Wong accused of sexual harassment.
4. Without the permission of the Association, Ms Wong changed the rules of the Association and distributed the rules.

Mr Leung, in order to ensure that no misconduct was committed by his members and to maintain the reputation of the Association, called the meeting in accordance with the traditional martial art rules. The meeting was described as a “同人審裁大會”. He asked Master Lee to notify Ms Wong to attend the meeting. Ms Wong, however, did not attend the meeting but instead only sent him the letter dated 14th October 1998 by fax. In order to ensure that Ms Wong would receive fair treatment in her absence, the letter from her was read out at the meeting so that the matter could be adjudicated upon by the members.

After investigation, the Commissioner decided that there was no *prima facie* case of the breach of the *Personal Data (Privacy) Ordinance* (“the *Ordinance*”), and refused to carry out further investigation.

Duty to investigate

Under the *Ordinance*, a duty is imposed on the Commissioner to carry out an investigation when he receives a complaint : s.38. This section is subject to s.39(2) which gives the Commissioner a discretion not to carry out the investigation if, having regard to all the circumstances of the case, either one of the following four factors is present :

- (a) the complaint, or a complaint of a substantially similar nature, has previously initiated an investigation as a result of which the Commissioner was of the opinion that there had been no contravention of a requirement under this Ordinance;

- (b) the act or practice specified in the complaint is trivial;
- (c) the complaint is frivolous or vexatious or is not made in good faith;
or
- (d) any investigation or further investigation is for any other reason unnecessary.

In *Mou Pui Hong v. Privacy Commissioner for Personal Data*

(Administrative Appeal No.10 of 1998), the Appeals Board stated that the starting point is that the Commissioner is required by the *Ordinance* to carry out the investigation where a complaint has been received. This statement is not weakened in any way by not referring to s.39(2) because it was not a relevant consideration in that case : the Commissioner had chosen to carry out the investigation but decided not to issue an enforcement notice.

The Commissioner in this case considered that s.39(2)(d) is applicable because there is no *prima facie* case of infringement of the data protection principles. The appeal is concerned solely with the question whether the Commissioner's decision is justified.

Purpose of the meeting

The meeting was video-taped and the tape was supplied to the Commissioner. According to the Commissioner who viewed the tape, the meeting was devoted to resolve the following issues, all of which related to Ms Wong :

1. The dispute arising from her allegation against a fellow student for sexual harassment.
2. As a result of this incident, new rules for the Association were promulgated by her.
3. The promotion fees and related issues raised in her letter.

Ms Wong complained that the Commissioner had failed to consider that at the meeting Mr Leung had denounced her for drafting the rules and Mr Leung had questioned the establishment of Master Lee's own Wing Tsun club.

It is clear from the video tape which was played at the hearing of the appeal that the matters relied upon by the Commissioner were discussed. Likewise, the two matters relied upon by Ms Wong were also discussed at the meeting. Mr Leung admitted that one of the purposes of holding the meeting was about Master Lee setting up his own club.

Ms Wong's knowledge

Ms Wong informed the Appeals Board that she was aware the meeting was to be held but she denied that she had knowledge that the purpose of the meeting was to discuss the matter relating to her non-payment of fees. She stated that the real purpose of the meeting in fact was held by Mr Leung to confront Master Lee for setting up his own club. She said that on 14th October 1998, Master Lee telephoned her and asked her to attend the meeting to help him out because he was accused of setting up a club of his own. She refused

on the ground that she had already withdrawn from the club. A few days earlier, she had received a demand from Master Lee to pay fees. She queried the fees and asked for documents relating to the fees. At the telephone conversation with Master Lee, she asked again for the documents. Master Lee asked her to contact Mr Leung directly. She then wrote the letter of 14th October 1998.

It is clear that the non-payment of fees by Ms Wong was made known to be one of the items of discussion at the meeting. According to the written statement of one Miss Chu Suk Kuen, that prior to the meeting Master Lee had informed her to attend the meeting and told her it was "to try" Ms Wong for not paying the fees. Mr Chui Kam Wah, a witness called by Ms Wong, stated that on the day of the meeting, Master Lee had asked him and Ms Wong to attend the meeting. Master Lee told him that the meeting was about matters relating to the sexual harassment complaint, the setting up of his own club and the non-payment of fees by Ms Wong. Mr Chui had informed Ms Wong the purposes of the meeting. Mr Chui also attended the meeting.

Despite the denial by Ms Wong, it is clear that she was fully aware of the purposes of the meeting. She chose not to attend the meeting and wrote the letter instead. The letter was marked "urgent" and was a response to the discussion of her non-payment of fees at the meeting. It is too much of a coincidence and we do not accept that on the eve of the meeting Ms Wong

wrote the letter simply because Master Lee had told her to get the documents relating to fees from Mr Leung.

In this letter Ms Wong objected to the fees. She considered them to be unreasonable and she gave the reasons. However, she went further and provided the personal data, namely her family situation, and asked for understanding from Mr Leung. Mr Leung did not ask Ms Wong to provide the letter or the personal data. This is an unsolicited personal data furnished voluntarily by her.

Principle No.3

However, even for unsolicited personal data, they must not be used for any purpose other than the purpose for which the data were to be used at the time of their collection. The relevant principle is Data Protection Principle No.3 which provides that :

- “ Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than –
- (a) the purpose for which the data were to be used at the time of the collection of the data; or
 - (b) a purpose directly related to the purpose referred to in paragraph (a).”

The purpose of the meeting was to deal with Ms Wong's non-payment of fees. The purpose of Ms Wong sending the letter was to state

her position on the non-payment of fees. Mr Leung, at the meeting, stated that :

“Since Wong Kwok-mui is not here, the story may be one-sided, but I wonder if anybody would speak on her behalf. Actually, there is one more page to her fax, maybe later someone would tell her the situation, and she might think I missed out one page, leading to complications. Read it out so as to show fairness.”

The letter including the personal data was read out at the meeting. The letter was used for the very purpose in which it was intended to be used, namely as part of Ms Wong's representation why the fees should not be paid. In our view Ms Wong had given her consent for the letter being used this way. There was no misuse of her personal data and no breach of Principle No.3.

Tape edited

The Appellant complained that the tape had been edited and the Commissioner should carry out further investigation. It is apparent that there were interruptions, cuts and repeats in the tape. However, the gist of the matter is that the question of the non-payment of fees by Ms Wong was indeed one of the topics discussed at the meeting. Whether the tape was edited or not has no bearing on this part of the case. The real complaint about the edited tape is that there were non-members present at the meeting and they were not shown on the tape. Ms Wong could only identify two such persons, namely Mrs Lee, the wife of Master Lee and a lady who handed out documents at the meeting. Mrs Lee gave evidence at the hearing. We are satisfied that

Mrs Lee is a member of the Association. In any event, as the meeting was also about the conduct of her husband, she obviously had a personal interest to attend as well. The other lady who was present was not a mere spectator. She assisted in the distribution of documents.

We are satisfied that the overwhelming majority of the persons attending the meeting were members of the Association. They were present to deal with matters concerning the Association. The presence of one or two non-members but who actually had a role to play in the meeting does not affect the decision that Principle No.3 was not breached.

Embarrassment to Ms Wong

As to the embarrassment caused to Ms Wong as a result of her personal data being disclosed at the meeting, this is a consequence of the data being disclosed. However, if the data were properly disclosed in the first place, the fact that Ms Wong was embarrassed would not render the disclosure improper. In other words, this is not a relevant consideration.

Principle No.4

The Commissioner further referred to Principle No.4 which provides that :

“ All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorized

or accidental access, processing, erasure or other use having particular regard to—

- (a) the kind of data and the harm that could result if any of those things should occur;
- (b) the physical location where the data are stored;
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data are stored;
- (d) any measures taken for ensuring the integrity, prudence and competence of persons having access to the data; and
- (e) any measures taken for ensuring the secure transmission of the data.”

In our view, Principle No.4 has no application to this case. As apparent from its wording, the object of this principle is to ensure that personal data are properly kept and stored. In any event, there had been no unauthorized use of the data.

Conclusion

In our view, the Commissioner was correct in deciding not to carry out a further investigation because there was clearly no *prima facie* case of any breach of the *Ordinance*. The appeal is accordingly dismissed.



The Hon Mr Justice Cheung
Deputy Chairman,
Administrative Appeals Board