

ADMINISTRATIVE APPEALS BOARD

Administrative Appeal No. 32 of 2005

BETWEEN

CHEUNG KWAI-CHUNG APPELLANT

and

THE PRIVACY COMMISSIONER RESPONDENT
FOR PERSONAL DATA

Coram : Administrative Appeals Board

Date of Hearing: 28 February 2006

Date of handing down Decision with Reasons : 18 April 2006

DECISION

1. This is an appeal by the Appellant against the decision of the Privacy Commissioner for Personal Data ("PCO") by letter dated 6 May 2005 refusing to carry out an investigation initiated by a complaint lodged by the Appellant on 26 February 2005 on the ground that there was no *prima facie* case of contravention of *Principle 3-use of personal data* ("Principle 3") under *Schedule 1* to the Personal Data (Privacy) Ordinance, Cap 486 ("Ordinance").

Factual background

2. The relevant facts are as follows.

3. The Appellant was employed as an AHCO by the Food and Environmental Hygiene Department ("FEHD") since 4 December 1995. At all times prior to 2 September 2003, he has always had 2 part-time jobs: (a) as an Auxiliary police and (b) an instructor for Communities Service Orders with the Social Welfare Department.

4. The appellant required the permission of the FEHD to engage in such part-time employments. As stated above, he has always had permission from the FEHD. In 2002, the Appellant suffered from 2 injuries in the course of his employment. First, on 24 April 2002, he injured his left shoulder, and secondly, on 13 December 2002 his right hip. On 2 September 2003, his application for continuation in such part-time employment was refused.

5. The evidence before the Board reveals that the FEHD refused his application for part-time employment after considering his sick leave records. In essence, the FEHD considered that his sick leave record was such that his injures had not fully recovered.

6. The Appellant was dissatisfied with that decision and lodged a complaint to the Equal Opportunities Commission ("EOC"). In the course of responding to that complaint, the FEHD disclosed to the EOC more than 80 sick leave certificates provided by the Appellant from 1999.

7. The Appellant took the view that such disclosure was contrary to the purpose for which his personal data in the sick leave certificates were collected and lodged his complaint to the PCO on 26 February 2005.

8. By letter dated 6 May 2005, the PCO refused to carry out an investigation on the ground that there was no *prima facie* case of breach of Principle 3. On 23 May 2005, the Appellant lodged his appeal to this Board.

Grounds of appeal

9. The Appellant appealed against the decision of the PCO on 2 grounds set out in this Notice of Appeal dated 23 May 2005:

(a) The FEHD supplied to the EOC personal data beyond what was requested; and

(b) the disclosure was contrary to the purpose for which the personal data was originally collected.

10. At the hearing of this appeal, the Appellant submitted that the main issue is the FEHD's disclosure of his sick leave records before his injuries in 2002, which he contended was unrelated to his application for part-time employment. He also submitted to the Board by way of argument that he also suffered a serious injury in 1998 for which he was given a long period of sick leave but the FEHD did not refer to that injury or his sick leave records before 1999.

11. Another point raised by the Appellant before the Board was that the PCO was mistaken in thinking that the sick leave certificates did not reveal the medication prescribed to him, when the certificates clearly stated the prescribed medication.

12. The PCO responded to the Appellant's complaint as follows:

(a) It was contended that from the information provided by the Appellant and the FEHD, the FEHD considered the Appellant's sick leave records before and after his 2002 injuries. The PCO was not aware of the Appellant's injury in 1998.

(b) The PCO considered that the personal data contained in the sick leave certificates were collected for the purpose of human resources management by the FEHD, and the use of such data in considering the Appellant's application for part-time employment was a purpose directly related to the purpose of collection within Principle 3.

(c) Further, since the Appellant lodged a complaint against the FEHD to the EOC, the FEHD was entitled to disclose to the EOC the data considered by the department in coming to the decision complained against in response to the complaint.

(d) Lastly, the PCO pointed out that from the *information supplied by the Appellant*, which did *not* include the sick leave certificates, it was not able to ascertain that the FEHD did

disclose to the EOC the medication prescribed to the Appellant.

Decision

13. Having considered all materials before the Board, the Board is of the view that the PCO did not act in error in refusing to investigate into the Appellant's complaint.

14. The Board agrees with the PCO that the personal data contained in the sick leave certificates were clearly collected by the FEHD for the purpose of human resources management, which must include using the data for determining the Appellant's application for part-time employment. The Board also considers that the FEHD was entitled to disclose such personal data to the EOC in response to the Appellant's complaint.

15. The Board is not concerned with the correctness of the FEHD's decision. It is only concerned with whether the disclosure of personal data in question by the FEHD to the EOC contravened any relevant principles under the Ordinance. The Board agrees that the only relevant principle is Principle 3 and there is no contravention of such principle.

16. The Board does not consider that the PCO has made any error in relation to whether the sick leave certificates revealed the medication prescribed to the Appellant. The Board notes that the PCO did not suggest that the sick leave certificates did not reveal the medication prescribed: the PCO's point was that the information supplied by the

Appellant did not reveal the medication prescribed and that the PCO was not supplied with copies of the sick leave certificates. Given the reasons stated in paragraphs 14 and 15 above, the Board does not consider it necessary for the PCO to have asked for copies of the sick leave certificates before coming to its conclusion.

17. Accordingly, the appeal is dismissed.

A handwritten signature in black ink, appearing to be 'JAT Sew-tong', written in a cursive style.

(JAT Sew-tong, SC)

Deputy Chairman

Administrative Appeals Board