

ADMINISTRATIVE APPEALS BOARD  
ADMINISTRATIVE APPEAL NO. 4/2019

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BETWEEN

TSUI KIN CHUNG

Appellant

and

PRIVACY COMMISSIONER  
FOR PERSONAL DATA

Respondent  
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Coram: Administrative Appeals Board

- Mr Robert PANG Yiu-hung, SC (Deputy Chairman)
- Miss Winky CHAN Wing-ki (Member)
- Mr CHIN Shing-hoi (Member)

Date of Hearing: 4 December 2019

Date of Handing down Written Decision with Reasons: 2 January 2020

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DECISION  
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**INTRODUCTION**

1. The Appellant appeals against the Respondent, the Privacy Commissioner for Personal Data (“PCPD”)’s decision not to further investigate the Appellant’s complaint that his data access request (“DAR”) had been refused by the Person Bound, the Judiciary.

2. After hearing the Appellant, the Respondent and the Person Bound, we dismissed the appeal and made no order as to costs, indicating that we would hand down our reasons later.

## **BACKGROUND**

3. The Appellant was a litigant in person. He was initially the respondent in proceedings in the Lands Tribunal, the details of which are irrelevant for the present appeal. He was not successful in the Lands Tribunal and sought leave to appeal. This was refused both at the level of the Lands Tribunal and the Court of Appeal. He sought to appeal to the Court of Final Appeal (“CFA”). The Registrar of the CFA declined to accept filing of the Appellant’s notice of motion seeking leave to appeal to the CFA, on the grounds that the decision of the Court of Appeal on refusal of leave to appeal was final. The Appellant then sought to commence judicial review application against the Registrar’s Decision. Leave to apply for judicial review was refused.

4. He sought to appeal the refusal of leave to apply for judicial review to the Court of Appeal. On 8 November 2016, the Court of Appeal gave a judgment ordering that the Appellant’s appeal be stayed pending the determination of a certain case in the CFA which had been scheduled to be heard, the outcome of which would materially affect the Appellant’s appeal.

5. That judgment was subsequently reported in the official law reports, with the citation [2016] 5 HKLRD 757. A law report is a compilation of judgments, usually within a particular year. Each of the judgments are reproduced in full, with the addition of a headnote at the beginning of the judgment for the ease of quick reference. The headnote summarizes the facts,

the issues, and the decisions of the Court and are written by editors of the law report concerned.

6. The official reports are compiled by Thomson Reuters Hong Kong Limited (Sweet and Maxwell). Being official reports, before they are published, the publisher will forward a draft to the judge(s) in question so that any mistakes can be corrected before going to print. This includes any mistakes made in the headnote which will not have been prepared by the judge(s).

7. The Appellant was apparently dissatisfied with the report of his judgment in the law report and lodged a complaint with the Person Bound. As part of his complaints, he made a DAR to the Person Bound on 31 May 2018. The DAR is as follows :

*“The Documents that Thomson Reuters (t/a Sweet and Maxwell) (“Publisher”) consulted opinion from Judiciary about TSUI KIN CHUNG v THE REGISTRAR OF COURT OF FINAL APPEAL [2016] 5 HKLRD 757, including but not limited to the correspondence from the Publisher, the Trial Judge’s written opinion, and the reply from the Judiciary”.*

[English translation]

8. The DAR was refused by the Person Bound on the grounds that the material did not constitute personal data of the Appellant.

9. The Appellant then lodged a complaint with the Respondent on 29 July 2018. After investigation, the Respondent on 24 January 2019 concluded that the material requested by the Appellant did not constitute the collection of personal data of the Appellant. Express reference was made to the case of

*Eastweek Publisher Limited & Anor. v. Privacy Commissioner for Personal Data* [2000] 2 HKLRD 83, and refused to further investigate the Appellant's complaint.

## DECISION

10. We have considered the arguments and authorities in the Appellant's Grounds of Appeal and Skeleton Submission, as well as the Statement of the Respondent, as well as the Skeleton Submission of the Respondent and the Person Bound.

11. We note especially the following statements of principle from *Eastweek Publisher Limited & Another v Privacy Commissioner for Personal Data*:

*"..... It is, in my view, of the essence of the required act of personal data collection that the data user must thereby be compiling information about an identified person or about a person whom the data user intends or seeks to identify. The data collected must be an item of personal information attaching to the identified subject, as the abovementioned definitions of "personal data" and "data subject" suggest. (91 I-J)*

.....

*In my view, many of the other provisions of the Ordinance and in the data protection principles can only operate sensibly on the premise that the data collected relates to a subject whose identity is known or sought to be known by the data user as an important item of information. (93 C-D)"*

12. We take the view that any correspondence between the publishers and the judge(s) concerning judgments to be reported does not relate directly or

indirectly to an individual, in the sense that the identity of the parties to a judgment can be considered an important item of information. As we indicated above, a report simply is the judgment of the court, with an added headnote which summarizes the judgment. Correspondence between the publisher and the judge(s) is directed not toward the identity of the individual as an important piece of information, but instead to the correctness of the summary, which simply summarizes the facts, issues and decision of the court as set out in the judgment which is published as a matter of public record on the Person Bound's website. The identity of any party to the judgment is not an important item of information in the correspondence between the publisher and the judge. It is simply irrelevant to such correspondence.

13. We also note the judgment of Saunders J. in *Wu Kit Ping v. Administrative Appeals Board* [2007] 4 HKLRD 849 where the following comments were made :

*“The entitlement is to a copy of the data, it is not an entitlement to see every document which refers to a data subject. [32]*

.....

*It is not the purpose of the Ordinance to enable an individual to obtain a copy of every document upon which there is a reference to the individual ..... [34]”*

14. We take the view that even if the correspondence referred to the Appellant (as it very likely would have, if simply to identify the case and judgment concerned), the correspondence did not contain the data of the Appellant as his identity was not any part of the correspondence.

15. For these reasons we dismissed the appeal.

## COSTS

16. The Respondent asked for costs on the basis that the case had been conducted by the Appellant frivolously and vexatiously. The Person Bound took a similar position.

17. Neither the Respondent nor the Person Bound could point to any conduct in the present case to justify a finding that the Appellant had acted frivolously or vexatiously. Reference was made to previous complaints and appeals arising from the same background.

18. We take the view that although conduct in previous complaints and appeals can be referred to as part of the overall background, we still have to be satisfied that the Appellant has conducted the present appeal in a frivolous or vexatious manner. There is insufficient evidence of such.

19. We note in passing that the Appellant had on his own accord requested a determination on paper, pursuant to section 21(1)(g) of the Administrative Appeals Board Ordinance. However, this was not possible because the Respondent did not consent. If consent had been given, the hearing would not have been necessary.

(signed)

(Mr Robert PANG Yiu-hung, SC)

Deputy Chairman

Administrative Appeals Board