ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEAL NO. 20/2019

BETWEEN

TSUI KIN CHUNG — Appellant

and

PRIVACY COMMISSIONER FOR PERSONAL DATA — Respondent

Coram: Administrative Appeals Board
Mr Cheung Kam-leung (Deputy Chairman)
Mr Tommy Fung Hei-wai (Member)
Mr Jeremy Tse Wing-ho (Member)

Date of Hearing: 31 December 2019

Date of Handing down Written Decision with Reasons: 7 May 2021

DECISION

---

1. The present appeal arose out of the decision of the Privacy Commissioner for Personal Data ("**the Respondent**") against further investigating the Appellant's complaint against Judiciary in relation to a law report published by Thomas Reuters Hong Kong Limited ("**Thomas Reuters**"), the publisher of *Hong Kong Law Reports and Digests*.

Background

2. This appeal has a checkered history. The Appellant was the losing party in various Lands Tribunal proceedings. Following his unsuccessful attempt to obtain leave to appeal from the Lands Tribunal, the Appellant sought but failed to obtain leave from the Court of Appeal. Some 3 months after his application had been turned down by the Court of Appeal, on 25 June 2016 the Appellant sought to file a Notice of Motion to apply for leave to appeal to the Court of Final Appeal. On 29 June 2016, the Registrar of the Court of Final Appeal declined to accept the filing of the Notice of Motion.

3. The Appellant sought to challenge the Registrar's and the Court of Appeal's decisions by way of judicial review (HCAL 121/2016). On 13 September 2016, the Hon Au-Yeung J. dismissed the Appellant's application for leave to commence judicial review proceedings. He then filed a Notice of Appeal to the Court of Appeal against the decision of the Hon Au-Yeung J. (CACV 188/2016). Master Lai made certain directions in respect of the Appellant's appeal. The Appellant was not satisfied with those directions and he lodged another appeal against Master Lai's directions. In the meantime, he requested that the appeal to be dealt with on paper without a hearing. In view of the fact that another case that might have some bearing on the appeal was due to be heard by the Court of Final Appeal, the Court of Appeal was minded to stay the Appellant's appeal pending the judgment of the Court of Final Appeal. A hearing was fixed on 8 November 2016 for consideration of that course. The Appellant objected to such a course and set out his objection in his fax of 30 October 2016. He further stated in another fax of 1 November 2016 that he would not attend the hearing of 8 November 2016. In his absence, the Court of Appeal ordered that the Appellant's appeal be stayed pending the determination of the Court of Final Appeal in the other case.

4. The judgment of the Court of Appeal was reported in *Hong Kong Law Reports and Digests* by Thomas Reuters under the citation [2016] 5 HKLRD 757 ("**the Report**"). The Appellant took the view that certain parts

of the report were inaccurate and made various attempts to have what he considered inaccurate parts of the Reports corrected. Prior to the complaint that gave rise to the present appeal, the Appellant had lodged five complaints against Thomas Reuters and the Judiciary with the Respondent. However, despite his unceasing efforts, he failed to have the Report corrected in the way he desired. For ease of reference, the five complaints are briefly summarised as follows:

(1) 1st Complaint (Respondent's case no.201700701; AAB No.5/2017)

The Appellant alleged that Thomas Reuters made three inaccurate statements in the headnote part of the Report.[1] By a letter dated 24 March 2017, the Respondent informed the Appellant of his decision not to pursue the complaint further. The Appellant then lodged an appeal to the Administrative Appeals Board (AAB No.5/2017). However, the appeal was subsequently abandoned by the Appellant.

(2) 2nd Complaint (Respondent's case no.201703271; AAB No.14/2017)

The Appellant complained against Thomas Reuters for refusing to comply with his data correction request to delete three parts of the Report that to him were inaccurate. The

---

1 The three statements said to be inaccurate are: (1) "*P, acting in person, appealed against directions of the Master concerning the preparation of the appeal bundles*"; (2) "*This was an appeal by the applicant against directions given by the Master. The facts are set out in the judgment*"; (3) *The faxing of letters to the court was not a proper substitute for the filing of documents. If P wished to advance objections, he should have attended the hearing or lodged written submissions in advance by filing hard copies at the Registry.*"

Respondent refused to pursue the complaint any further. The Appellant then took the matter to the Administrative Appeals Board (AAB No.14/2017). The appeal was also not pursued.

(3) 3rd Complaint (Respondent's case no.201704122)

The Appellant complained against Thomas Reuters for failing to establish and make available privacy policies and practices in relation to the processing of personal data in particular his personal data in the Report. The Respondent also decided against investigating into the complaint.

(4) 4th Complaint (Respondent's case no.201807902; AAB No.11/2018)

The Appellant's complaint was that Thomas Reuters had failed to comply with a data access request submitted by him. In his request, the Appellant requested to obtain copies of his personal data contained in "*the documents in relation to [the Report] submitted to Lam VP for review and His Lordship feedback or otherwise (including but not limited to letters, memo etc.) ...*" The Respondent decided against pursuing the complaint. The Appellant then took the matter to the Administrative Appeals Board (AAB No.11/2018). He contended that Thomas Reuters was a data user within the meaning of the Personal Data (Privacy) Ordinance because it possessed his personal data on behalf of the Judiciary. The Board dismissed the Appellant's appeal with the following findings:

"(a) ... [The headnote and catchwords of the Report] include nothing concerning any personal data of the

Appellant which is not already contained in the Judgement itself..."

"(b) ... the Judiciary had exercised complete control over the use of personal data contained in the Judgement and appeared in the Headnotes..."

"(c) The whole matter could be viewed objectively as though the Judiciary through the Court of Appeal compiled the Headnotes... including any personal data contained therein; but instead of doing the job itself, the Court commissioned another person, i.e. [Thomas Reuters] to accomplish the job on the Court's behalf.

(d) ... in the context of the PDPO, especially section 2(12), the use of personal data in the Headnotes ... would be used by the Judiciary exclusively. [Thomas Reuters] only used the personal data, if any, on behalf of the Judiciary..."

(5) 5th Complaint (Respondent's case no.201811034; AAB No.4/2019)

The Appellant complained against the Judiciary for failing to comply with his data access request submitted on 31 May 2018. By the request, the Appellant requested copies of his personal data contained in "*the documents in relation to the seeking of views of the Judiciary by [Thomas Reuters] on the reported judgment of 'Tsui Kin Chung v Registrar of Court of Final Appeal' under the citation of [2016] 5 HKLRD 757 in HKLRD according to contract and practice (including but not limited to letters from the publisher, written opinions of the trial judge, replies from the Judiciary and etc.*" The documents requested by the

Appellant in this request were exactly the same as those requested by him in a previous request served on Thomas Reuters. When the Appellant did not get what he wanted, he filed a complaint with the Respondent. By a letter dated 24 January 2019, the Respondent informed the Appellant that it would not pursue the complaint any further.

5. On 19 October 2018, the Appellant made another data access request with the Judiciary for a copy of his personal data contained in the Report. After receiving a copy of the Report from the Judiciary, the Appellant filed a data correction request with the Judiciary on 29 March 2019. In the data correction request, the Appellant referred to several items that he considered incorrect and requested the Judiciary to delete the following 3 underlined sentences:

(1) "*Before the hearing, P faxed to the Court a letter with objections to such a course and did not attend the hearing.*" **(Item 1)**

(2) "*Held, staying the appeal, that:*

...

(2) The faxing of letters to the Court was not a proper substitute for the filling of documents. If P wished to advance objections, he should have attended the hearing or lodged written submissions in advance by filing hard copies at the Registry. Notwithstanding, P's fax was treated as his submissions despite his absence from the hearing without proper explanation, but this indulgence would not be granted in future ..." **(Item 2)**

(3) *"In proceedings to challenge the decision of the Registrar of the Court of Final Appeal by reference to the finality provisions in s.14AB of the High Court Ordinance (Cap. 4), P,*

acting in person, appealed against directions of the Master concerning the preparation of appeal bundles.

...

Appeal

This was an appeal by the applicant against directions given by the Master. The facts are set out in the Judgment." ("**Item 3**")

6. By a letter dated 6 May 2019, the Judiciary replied that it would not comply with the Appellant's data correction request because the Judiciary was not satisfied that the personal data to which the Appellant related were inaccurate.

7. The Appellant then lodged a complaint with the Respondent on 7 May 2019. After considering the complaint, the Respondent decided not to investigate the complaint any further. The Appellant then lodged the present appeal to this Board.

8. There is only one ground of appeal in the Appellant's Notice of Appeal dated 5 August 2019, namely:

"Whether [the Report] contains the inaccurate personal data?"

9. Attached to the Notice of Appeal is a document entitled "Grounds of Appeal". There are in it some technical arguments in relation to the difference between a review and an appeal. The latter being a hearing on the merits, the Appellant argues that this Board is entitled to decide the matter *de novo* and not bound by the reasons given by the Respondent or its decision. The Appellant is no doubt correct that an appeal is a hearing on the merits (see *Li Wai Hung Cesario v AAB* CACV 250/2015). However, the main question remains whether the Respondent is correct in coming to the view that the relevant parts of the Reports are not incorrect and deciding that the Judiciary is not bound to delete or correct the 3 items.

10. We shall now consider the Appellant's complaint about the 3 items being inaccurate.

Item 1

11. The Appellant argues that the use of the word "and" in Item 1 makes the description of the sequence of events "completely illogical". He wanted to clarify that he "*did not attend the hearing before the hearing*" and considered that the sentence does not accurately describe what had happened.

12. Indisputably, the Appellant did not attend the hearing on 8 November 2016. We do not consider the sentence in question an inaccurate one. In fact, it is an accurate description of what had happened. Therefore, the Respondent cannot be said to be wrong in coming to the conclusion that the Judiciary was not wrong in refusing to correct Item 1.

Item 2

13. The Appellant argues that the Court did not make any ruling on the filing of documents. Hence, the part in underline should not appear under the *Held* part. He is also unhappy with the use of the word "indulgence".

14. In our view, notwithstanding the various linguistic or editorial issues taken by the Appellant, Item 2 is a correct summary of paragraphs 6 to 9 of the judgment. As a matter of fact, the Court did grant indulgence to the Appellant (by treating his letter by fax as written submissions) despite the failure on his part to comply with the Rules. The word "indulgence" was actually used by the Court of Appeal in the judgment dated 8 November 2016 (see paragraph 8). In our opinion, the Respondent is no doubt correct in deciding that the Judiciary was not obliged to correct Item 2.

Item 3

15. The Appellant considered that Item 3 should be deleted as he did not appeal against the directions given by the Master in relation to the preparation of the appeal bundle.

16. It is not in dispute that the Appellant had lodged an appeal against Master Lai's directions given on 26 September 2016 concerning the filing of the appeal bundle. Indeed, it is stated in paragraph 1 of the judgment that "*This appeal was brought to the attention of this Court because of the applicant's disagreement with the directions of the Master in the preparation of the appeal bundles. He lodged an appeal on 18 October 2016 against the directions given by the Master on 26 September 2016.*" Be that as it may that the hearing on 8 November 2016 was fixed primarily for the purpose of dealing with the stay of proceedings issue, there is nothing wrong for the editor of the Report to include a reference to the Appellant's objection to the Master's direction in the headnote to give the readers of the Report more details about the background. Furthermore, although one may rewrite the sentence "*This is an appeal by the applicant against directions given by the Master.*" in some different ways to draw the readers' focus to the main issue, namely the stay of proceedings issue, the statement in question does not contain any inaccurate personal data of the Appellant. The Judiciary cannot be said to be wrong to rely on section 24(3)(b) of the Personal Data (Privacy) Ordinance and refuse to comply with the Appellant's data correction request.

Section 25 Personal Data (Privacy) Ordinance ("the Ordinance")

17. A lot has been said about the application of s.25 of the Ordinance. The Appellant argues that s.25 applies and that a note should be attached to the Report. The Appellant's argument is in our view misconceived. S.25 deals with situations where unverifiable or not readily verifiable assertions of facts concerning the data subject are involved. In this case, the 3 items do not involve any such facts about the Appellant. Items 1 and 3, both of which

are based on undisputed facts, did not contain any expression of opinion within the meaning of s.25 of the Ordinance. Items 2 and 3 are merely summary of the judgment. Neither Thomas Reuters nor the Judiciary gave any expression of opinion in relation to the Appellant's personal data throughout the course of reporting and publishing of the Report.

18. The Respondent also sought to rely on s.51A of the Ordinance and argued that personal data held by a court, a magistrate or a judicial officer in the course of performing judicial functions is exempt from the provisions of the data protections principles and Parts 4 and 5 and sections 36 and 38(b). The Board considers that it is unnecessary and indeed may not be desirable to make a ruling on the argument on this occasion. Suffice it to say that s.25 does not apply in this case.

Conclusion

19. In our opinion, the Respondent's decision to terminate further investigation of the Appellant's complaint against the Judiciary was properly made. The appeal is therefore dismissed.

20. This Board does not make any order as to costs.

(signed)
(Mr Cheung Kam-leung)
Deputy Chairman
Administrative Appeals Board