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[Note: Office of the Privacy Commissioner for Personal Data has edited this Decision in accordance with the direction of the Administrative Appeals Board]

ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEAL NO. 24/2013

BETWEEN

VICTOR F. C. MOUNGER

Appellant

and

**PRIVACY COMMISSIONER FOR
PERSONAL DATA**

Respondent

**Coram: Administrative Appeals Board
Ms Cissy Lam King-sze (Deputy Chairman)
Mr Thomas Cheng Kin-hon (Member)
Professor Cheung Siu-yin, MH (Member)**

Date of Hearing: 16 January 2014

Date of Handing down Written Decision with Reasons: 11 March 2014

DECISION

Background of the Appeal

1. This appeal arises from a complaint under the Personal Data (Privacy)

Ordinance, Cap.486 (“the Ordinance”) by the Appellant against Autotoll Limited (“Autotoll”).

2. Autotoll is the service provider of the Electronic Toll Collection System (“the ETC System”) in Hong Kong. It allows the manual in-lane toll collection process to be automated so that motorists do not have to stop and pay cash at toll booths. Instead, the toll is deducted from a pre-paid account.

3. On the application form for an account with Autotoll, an applicant is required to supply various personal data which includes: (1) the applicant’s name, (2) telephone number, (3) correspondence address, (4) Hong Kong Identity Card (“HKIC”) number, (5) HKIC copy, (6) vehicle registration mark and vehicle type, (7) a copy of the vehicle registration document or vehicle licence, and (8) email address.

4. The Appellant took the view that it was unnecessary for Autotoll to collect any of the aforesaid data (except vehicle type), and on 3 May 2012, he lodged a complaint with the Office of the Privacy Commissioner for Personal Data (“the Commissioner”).

5. After enquiries with the Appellant and Autotoll, the Commissioner decided not to pursue the Appellant’s complaint further, pursuant to section 39(2)(d) of the Privacy Ordinance, and, by letter dated 31 July 2013, informed the Appellant of his decision (“the Decision”).

6. Dissatisfied with the Decision, the Appellant lodged his appeal to us on 3 September 2013.

7. The Commissioner filed his Statement relating to the Decision on 15 November 2013, and on 25 November 2013, the Appellant, by his written response, withdrew his appeal against the Decision in relation to name, telephone number, correspondence address and vehicle registration mark.

8. At the hearing before us, the Appellant confirms that his appeal is now confined to the collection of HKIC number (and ergo, the HKIC copy).

Relevant provisions of the Ordinance and Code of Practice

9. Data Protection Principle 1(1) (“DPP1(1)”) in Schedule 1 to the Ordinance

provides:

- “(1) Personal data shall not be collected unless-
- (a) the data is collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
 - (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose;
- and
- (c) the data is adequate but not excessive in relation to that purpose.”

10. Under “the Code of Practice on the Identity Card Number and other Personal Identifiers” (“the Code”) issued by the Commissioner:-

- (1) By paragraph 2.3.3.3, a data user should not collect the HKIC number of an individual except to enable the present or future correct identification of, or correct attribution of personal data to, the holder of the HKIC, where such correct identification or attribution is or will be necessary to safeguard against damage or loss on the part of the data user which is more than trivial in the circumstances.
- (2) By paragraph 2.3.4.1, a data user should not collect the HKIC number of an individual except to enable the present or future correct identification of, or correct attribution of personal data to, the holder of the HKIC, where such correct identification or attribution is or will be necessary (as per paragraph 2.3.3) and to be inserted in a document executed or to be executed by the holder of the HKIC, which document is intended to establish or to evidence any legal or equitable right or interest or any legal liability on the part of any person, other than any right, interest or liability of a transient nature or which is trivial in the circumstances.
- (3) By paragraph 3.2.2.3, a data user should not collect a copy of a HKIC except where the collection of the HKIC number of the individual by the data user is permissible under Part II of the Code, and the copy of the HKIC is collected furthermore by the data user as the means to collect or check the HKIC number of the individual, who has been given the alternative of physical production of his HKIC in lieu of collection of such copy by the data user but has chosen not to do so.

11. A breach of the Code will give rise to a presumption of contravention against the data user under section 13 of the Ordinance.

12. Section 39(2)(d) of the Ordinance provides that the Commissioner may refuse to carry out or decide to terminate an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case “any investigation or further investigation is for any other reason unnecessary”.

13. Part (B) Paragraphs 8(e) of the Commissioner’s Complaint Handling Policy (Fifth Revision) (“CHP”) provides that an investigation or further investigation may be considered unnecessary if after preliminary enquiry by the Commissioner, there is no prima facie evidence of any contravention of the requirements under the Ordinance.

Function and Activity of Autotoll

14. As aforesaid, Autotoll is the service provider of the ETC System in Hong Kong. It covers all the 12 toll roads and tunnels throughout Hong Kong. The ETC System was introduced by the Hong Kong Government in 1992/1993, but Autotoll is not a government owned or related business.

15. In March 2012, there were more than 250,000 electronic toll tags issued by Autotoll, and about half of the vehicles passing through the toll roads and tunnels used the ETC System. As of 1 January 2014, the number of tags issued has increased to 280,000.

16. Apart from the basic ETC service, Autotoll provides a number of value-added services, including membership of the “Autotoll Club”, “Autopark” and the “Caltex fuel discount offer and payment service”. An applicant is at liberty to opt out these services. In addition, an applicant may choose to apply for the “Guangdong Unitoll Service” at an additional fee.

17. Over 80% of the account holders of Autotoll subscribe to just the basic ETC Service. We shall focus our discussions on such account holders, as it is the basic ETC Service that the Appellant wishes to subscribe to.

18. Any person can apply for the ETC Service for a vehicle, whether or not he is

the registered owner of that vehicle.

19. To apply for the service, an applicant has to fill in an application form. There are various copies of the application form in the Appeal Bundle ("AB"). It is agreed that we shall use the most updated version ("the Application Form") at AB317-333.

20. By the "*Declaration and Signature*" on the Application Form, an applicant signs and declares, inter alia, that he warrants that the information set out in the Application Form is true and correct and authorise Autotoll to verify it from any ~~source in a justifiable manner; and he agrees to be bound by~~ "*the Terms and Conditions for use of Autotoll Electronic Toll Collection Services*" ("the T&C").

21. A copy of the T&C may be found at AB334-336. As far as is relevant, we shall adopt the definitions stipulated therein.

22. Proper Installation of Tag : Clause 3.2 of the T&C prescribes that the Account Holder shall install the Autotoll Tag at the specific location within the Specified Vehicle in accordance with the installation instructions provided by Autotoll from time to time. This is important because if not properly installed, especially for vehicles with special coating windscreens, the Tag cannot be detected, in which event when the Specified Vehicle passes through an Autotoll booth, the toll is not deducted and Autotoll will have to follow up with the Account Holder for payment afterwards. If the Tag is not detected, a red light signal will show up at the toll booth and a video will be taken of the vehicle in question by the tunnel or toll road operator to enable follow-up action.

23. Tags Not Transferable : Clauses 3.3 and 3.4 of the T&C are clear that the Autotoll Tag shall only be used in relation to the Specified Vehicle and an Account Holder cannot transfer the Autotoll Tag to any vehicle other than the Specified Vehicle without Autotoll's approval. So, if a person owns two vehicles, even vehicles of the same type, he must apply for two separate Tags, with the ensuing Tag Deposit and monthly Administrative Fee for two accounts instead of one.

24. If an Account Holder replaces a Specified Vehicle with another vehicle, he cannot simply transfer the Tag to the new vehicle. He must inform Autotoll forthwith for appropriate amendments. This is particularly important if the new

vehicle is of a different vehicle type as the toll charged by some of the tunnels and toll roads can vary according to the vehicle type; generally speaking, the larger the vehicle, the higher the toll.

25. Undercharge Tolls : Each Specified Vehicle is issued with its unique Autotoll Tag, which has a particular Radio Frequency Identification Number ("RFIN"). When a Specified Vehicle with a valid Autotoll Tag passes through an Autotoll lane, the Tag will send out the RFIN to the tunnel and toll road operators identifying the type of vehicle passing through and the corresponding toll is deducted. At the same time, an overhead device will display the vehicle type for which the toll is paid. This is visible to relevant staff of the tunnel or toll road operator, who can then check whether the Autotoll Tag for the particular vehicle type is correctly applied.

26. Take for example, if an Account Holder has a tag for private car, removes it and puts it on his heavy goods vehicle ("HGV") and drives through the Western Harbour Tunnel, then when the HGV passes through the toll booth, the toll applicable to private car is deducted. The overhead display will say that a private car has passed through. But the tunnel staff may see that it is actually an HGV that has passed through. He will then check the information on the Tag and notify Autotoll. Autotoll will follow up with the Account Holder and, we are told, most of the time the Account Holder will own up and pay up the difference.

27. [... Part redacted for this publication ...]

The undercharge may have carried on for some time before it is detected. When detected, Autotoll will ask to see the vehicle registration document of the vehicle in question and see when it was acquired. Autotoll will then check the transaction record of the relevant Autotoll Tag to see how many transactions have been done since the acquisition and require the Account Holder to reimburse the difference for each transaction. [... Part redacted for this publication ...]

(see paragraph 54 below).

28. Service Fees & Prepaid Amount : By clauses 6.2, 7.1 and 8.1 of the T&C, on the Commencement Date, i.e. the date of issue of the Autotoll Tag or the date of Tag Activation, the Account Holder shall pay into the Prepaid Account: (1) the Administration Fee for the first month, currently at \$35 per tag per month, (2) the Tag

Deposit, currently at \$150 per tag, and (3) the Prepaid Amount. The Prepaid Amount varies according to vehicle type, ranging from \$500, for private car and taxi, to \$3,000, for HGV and container vehicle.

29. The Account Holder can settle the first payment of the Prepaid Amount by cheque, cash or credit card. For subsequent payments, the Account Holder may elect to top up by autopay (by completing the Direct Debit Authorization included in the Application Form) or manually. Over 80% of the Account Holders elect to top up by autopay.

30. Duty to Maintain the Prepaid Amount : By Clause 8.3 of the T&C, the Account Holder agrees that in the event the balance of the Prepaid Account (excluding the Tag Deposit) is below the Minimum Balance (i.e. one-third of the Prepaid Amount), he shall forthwith transfer an amount not less than the Prepaid Amount into the Prepaid Account.

31. For autopay top-up, whenever the balance of the Prepaid Account falls below the one-third minimum, Autotoll will send instructions to the authorised bank to transfer the full Prepaid Amount into the Prepaid Account.

32. For manual top-up, an Account Holder can check his account status online or by phone, or he may receive a monthly statement by post (an optional service at a fee). He can top up by PPS, cash or cheque. If he fails to top up in time and the balance falls below the one-third minimum, the Account Holder will receive an "Email Low Balance Alert" free of charge, or an "SMS Low Balance Alert", an optional service at a fee. In addition, when a Specified Vehicle passes through an Autotoll lane, various light signals will show to indicate the account status – "green" for normal, "green plus yellow dollar sign" where the account balance is below the one-third minimum, and "red plus dollar sign" if there is a negative account balance.

33. A customer can continue to enjoy Autotoll's services even where his account balance has fallen below the one-third minimum. Autotoll will continue to deduct toll and other service fees from the Prepaid Account pending top-up.

34. Negative Balance in cases of manual top-up : A negative balance will arise if a customer fails to top up in time. When a negative balance arises, Autotoll will call

the Account Holder to remind him to top up [... Part redacted for this publication ...]

35. Negative Balance in cases of autopay top-up : A negative balance can arise even in the case of autopay top-up if a payment instruction is rejected. In autopay top-ups, at the end of the day on which the account balance is reduced below the one-third minimum, Autotoll will send a payment instruction to the Account Holder's bank for payment. But Autotoll will not be alerted immediately if a payment instruction is not accepted. There will be a time gap [... Part redacted for this publication ...]. In the meantime, the defaulting customer can continue to debit from his account and accumulate a negative balance.

36. Negative Balance in cases of top-up by cheque : Similarly in the case of manual top-up by cheque, there will be a time gap [... Part redacted for this publication ...] before Autotoll is notified that the cheque is not honoured. A negative balance can accrue in the meantime.

37. When a payment instruction is rejected, whether by autopay or by cheque, for good customer service, Autotoll will likewise seek to contact the Account Holder and give him time to settle the overdue sums before invalidating his account.

38. The Appellant contends that, instead of tolerating negative balances, Autotoll can simply invalidate the Tag as soon as a negative balance is reached. Autotoll explains that this is not feasible. As per Autotoll's Written Representations at paragraphs 6.1 and 6.2 (AB57):-

“6.1 In order to avoid unnecessary disruption of services to the Autotoll Users, instead of invalidating the Autotoll Account of an Autotoll User as soon as there is a negative balance in the account, Autotoll chooses to remind the Autotoll Users and give them a few chances to top-up before actually invalidating their Autotoll Accounts. This is because in the experience of Autotoll, most of these Autotoll Users only fail to top-up unintentionally. According to statistics compiled by Autotoll, around two-thirds of Autotoll Users who have negative balance do top-up their Autotoll Accounts after they have been reminded.

6.2 Under the agreements between Autotoll and the tunnel and toll road operators, once an Autotoll Account has been invalidated, Autotoll will cease to be responsible for the tolls incurred by the related tag and the tunnel or toll road operators will need to recover the unpaid tolls direct from any Autotoll User who continues to use the toll lane after his Autotoll Account has been invalidated. In addition to the unpaid toll, some tunnel or toll road operators will also impose an administration fee on these Autotoll Users. If Autotoll adopts a zero credit policy and invalidates all Autotoll Accounts as soon as they reach negative balance, the tunnel and toll road operators will have to spend a lot of time and effort; which would not have been necessary, to prosecute Autotoll Users who have no intention of avoiding payment of the tolls. Furthermore, the Autotoll Users may end up having to pay more in the form of administration fee, which again would not have been necessary.”

39. We accept these explanations. As a matter of good customer service, we do not think Autotoll can be criticised for not invalidating an account as soon as a negative balance arises.

40. In any event, even if Autotoll were to adopt a so-called zero credit policy, negative balances can still accrue before Autotoll is notified that an autopay instruction is rejected or a cheque payment is not honoured, or they can accrue from undercharge tolls undetected before the account is invalidated.

41. Invalidation of account : Autotoll will remain liable to the tunnel and toll road operators for any unpaid toll prior to invalidation of the Autotoll Tag. After invalidation, the tunnel and toll road operators will have to rely on their by-laws to recover against the vehicle owner, who may or may not be the responsible Account Holder.

42. Some of the Appellant’s argument mistakenly equate Autotoll with the tunnel and toll road operators. It is important to bear in mind that they are totally different business operations.

43. Recovery of the outstanding balances : Representatives of Autotoll tell us that [... Part redacted for this publication ...] Autotoll resorts to debt collecting agents.

44. In addition, Autotoll maintains a “bad debt list” and will reject fresh applications from any person with outstanding debts. We are told that there are such applications once or twice a month.

Our Decision

45. Now that the Appellant no longer disputes the collection of an applicant's name, telephone number and address, the first question we ask is – Are these not sufficient to enable Autotoll to correctly identify an Account Holder without his HKIC number? As asked by a member of the Board, what is the real chance of two persons with the same name, same telephone number and same address?

46. Autotoll’s answer is that while HKIC number is unique and constant, name, telephone number and address are not. A person can change his telephone number and address without informing Autotoll, and there is no means for Autotoll to find out. Nor can Autotoll find out if an applicant has or has not provided his full name in the absence of verification by the HKIC.

47. The Appellant suggests that Autotoll can trace the Account Holder with the vehicle registration document. This is assuming that the Account Holder and the registered owner of the vehicle are one and the same person, which may not be true in every case.

48. In the Code, under paragraph 2.3.3.3, the Commissioner gives the example of a driver in a motor accident saying that the driver may collect the HKIC number of the other party to facilitate a future claim. Equally the driver will have the registration number of the other party’s vehicle and can obtain the registration document if necessary, but no one would disagree that he can collect the HKIC number of the other party so that there is no mistake as to the identity of the other party involved in the accident. We accept that the one sure way for Autotoll to positively identify an Account Holder is by his HKIC number.

49. Our next question is – Is positive identification necessary? Autotoll has identified five instances where they say positive identification is necessary:-

- (1) To follow up and recover undercharge tolls and negative balances.

- (2) To reject fresh applications from delinquent Account Holders – to do so, Autotoll need to be able to positively cross check the identity of an applicant against the bad debt list.
- (3) To consolidate and set off accounts of the same Account Holder – by Clause 8.8 of the T&C, Autotoll may without notice combine or consolidate the outstanding balance on the Prepaid Account with any other account the Account Holder maintains with Autotoll and set-off the liability in one account with the credit in another; to do so, Autotoll need the HKIC number to verify with certainty that the accounts do indeed belong to the same Account Holder.
- (4) To make refund to an Account Holder upon termination of his account.
- (5) To authenticate the identity of the Account Holder before divulging any information relating to his account on the phone or online.

50. As to the last reason given, we are told that when Account Holders ring up or log onto their accounts online, they seldom remember their account number or Tag number, but they will always remember their HKIC number, so that the most convenient way to authenticate the identity of an Account Holder is by his HKIC number. We have little doubt that this is true, and indeed, as pointed out by a member of the Board, many Account Holders would be happy to use their HKIC numbers for authentication to avoid inconveniences and to ensure that there is no unauthorised access to their accounts. On the other hand, we agree with the Appellant that authentication can be done using other information, such as date of birth or password. As it is a measure taken for the protection of the Account Holders, for those who do not wish to provide their HKIC numbers, they should have the option to use alternative information instead.

51. For the refund of deposit and remaining balance upon termination of an account, the refund is normally done by cheque made out to the Account Holder. It is only in the few cases where an Account Holder requests Autotoll to pay the cheque to a different name that verification of the Account Holder is required. Such verification can be done as and when such a request is made. It does not justify the collection of HKIC number at the opening of an account.

52. For the right to consolidate and set off multiple accounts, while this appears to be a useful tool to deal with negative balances, representatives of Autotoll frankly admit to us that this right was never exercised. As such, while we do not dismiss it as a possible justification, we do not feel we can rely on it.

53. We now turn to the first two reasons relating to undercharge tolls and negative balances and the maintenance of the bad debt list. Much has gone into the argument whether the sums involved are or are not “trivial”. Ms. Chan for the Commissioner told us that in assessing the loss and damage under paragraph 2.3.3.3, the Commissioner would look at three things:

- (1) Amount of potential loss per customer;
- (2) The worst case scenario;
- (3) Total loss, potential as well as actual.

54. Autotoll provides the following figures (Written Representation, paragraphs 7.3 & 7.4, AB 59):

“7.3 In 2012, the highest amount owed to Autotoll on an Autotoll Account of an individual is HK\$14,294. Furthermore, in 2012, the monthly average number of Autotoll Account of individuals with negative balance exceeding HK\$1,000 is 10.33 and the average outstanding amount for Autotoll Accounts of individuals with negative balance exceeding HK\$1,000 is HK\$1,852.

7.4 In addition to amount incurred pending the top-up of the Autotoll Account, the unauthorised transfer of the tag by an Autotoll User to a vehicle of a class with higher toll will also result in amounts due to Autotoll. These amounts could be quite large if this goes undetected for a long period of time. For the period between 2009 and 2012, the number of Autotoll Accounts of individuals where the total undercharged toll exceeded HK\$5,000 is 14 and the average amount outstanding on these Autotoll Accounts is HK\$10,438 with the highest amount being HK\$28,777.”

55. In addition, according to Autotoll’s letter dated 21 February 2013 (AB179), “the monthly average total negative balance (including those above \$1,000 as well as

below) owed ... by individuals in 2012 is HK\$341,000 and the average number of account with negative balance (of any amount) was \$3,459 per month.”

56. In the course of inquires with Autotoll, the Commissioner had used the sum of \$1,000 as the benchmark. This is because in two previous investigations, the Commissioner had adopted the view that a damage or loss of \$1,000 / \$800 was trivial. Those investigations concerned the Octopus Rewards Program run by Octopus Rewards Limited (“ORL”) (Investigation Report R10-9866) and the MoneyBack Program run by the A.S. Watson (Group) HK Limited (“Watsons”) (Investigation Report R12-3890). Both were reward programs devised as part of a marketing campaign to market and promote products of businesses within the group or associate businesses. The loss or damage were in connection with bonus points and reward dollars redeemable for goods and services. It was said in the ORL investigation that a maximum loss of \$1,000 Reward Dollars was trivial. In the Watsons Investigation, to earn a redeemable cash value of \$800, a customer would need to accumulate a purchase of \$200,000 at Watsons within 2 years. The benefits conferred by the program was considered trivial and transient in nature.

57. It is immediately apparent that the collection of data in those cases were for purposes very different from those in our present case. Here, the data are not collected in order to market the ETC service, but to enable the proper running of the ETC service, namely the proper and timely collection of toll from the responsible Account Holders.

58. The nature of the loss and damage is also very different. If a customer is not able to claim his bonus points or reward dollars because he has chosen not to provide the necessary data for the service provider to positively identify him, that is a loss that a customer may well choose to bear to preserve his privacy. But it is no analogy to say that a business should be compelled to suffer loss of revenue because the customers could choose not to disclose their data.

59. The Appellant has prepared a “Summary of Statistics” which he says demonstrates that the loss and damage suffered by Autotoll is only trivial. Apart from the question whether the estimates made by the Appellant are or are not accurate, we do not think that one should approach paragraph 2.3.3.3 of the Code by merely counting dollars and cents. The nature of the loss and damage is equally, if not more,

important. The Appellant asks why draw the line at the arbitrary figure of \$1,000. Why not use \$700, or \$1,100 or \$1,200 or some other much higher figure? Indeed, we agree it is inappropriate to draw the line by adopting an arbitrary figure. The line should be drawn by distinguishing genuine commercial loss essential to the very operation of the service of a service provider from artificially created loss such as bonus points and cash rewards.

60. The collection of undercharge and unpaid tolls go right to the heart of Autotoll's business. Autotoll remains liable to the tunnel and toll road operators for all undercharge and unpaid tolls incurred before an account is invalidated. It is vital to the business of Autotoll that it can collect the same from the Account Holders.

61. Toll charges are relatively low in Hong Kong. If one looks merely at the amount involved, it may look insignificant. Nonetheless it is the very essence of the ETC service that an Account Holder is liable to pay up, be it a few dollars or a few tens of dollars, and Autotoll is entitled to recover every cent from the Account Holder.

62. Moreover, as pointed out by the Commissioner, one must look not only at individual losses, but also at the total loss across the board. Given the large customer base, a small debt per customer can build up to a very substantial sum.

63. At the moment, Autotoll resorts to debt collecting agents and maintaining a bad debt list to deal with Account Holders who are in default. They need positive identification of the delinquent Account Holders to do so. If we disallow them from collecting the HKIC number, they may be forced to take other measures to protect their business interests. This may include the zero credit policy suggested by the Appellant in which event those customers who fail to top up in time by mere inadvertence will suffer and Autotoll may be flooded with complaints of poor customer service. The tunnel and toll road operators will suffer too as they will need to recover directly from the registered vehicle owners (who may or may not be the culpable Account Holders). And if a significant increase in invalidated tags results, the tunnel and toll road operators may no longer be happy to continue the Autotoll lanes as they are now, unmanned and free of barrier. We are not seeking to speculate, but we have to bear in mind that our decision can have far reaching implications on Autotoll's business as well as those of the tunnel and toll road operators. We do not assume any right to interfere with legitimate business operations in the name of data

protection.

64. The Appellant questions why 200,000 plus account holders should be required to supply their HKIC numbers on account of a few wrongdoers. But at present, every applicant is required to provide his HKIC number as proof of identity. There is no sure guide as to what might happen if proof of identity were no longer required.

65. Furthermore, in a civilised and sophisticated society like Hong Kong, one can safely assume that for most businesses, delinquent customers are usually the minorities. Yet it by no means means that businesses should be compelled to tolerate delinquency for the sake of data protection. If a loophole is created whereby wrongdoers, minority it may be in their number, can repeatedly evade their liabilities, small in amount it may be each time, with impunity, then that is no trivial matter.

66. After reviewing Autotoll's figures and mode of operation, the Commissioner accepted that paragraph 2.3.3.3 of the Code was complied with. We agree with the Commissioner's view.

67. For the same reason, we think one should approach paragraph 2.3.4.1 of the Code by examining the nature of the "right, interest or liability" in question. The Application Form together with the T&C contain a whole host of important rights and liabilities. We have examined but a few above. The duty to properly install the Tags, to apply the correct Tag to the Specified Vehicle, to inform Autotoll if the Specified Vehicle is replaced and to maintain the Prepaid Amount are duties which fall squarely on the Account Holder. They are rights and liabilities which are crucial to the proper operation of the ETC service. They are neither transient nor trivial. We find that paragraph 2.3.4.1 of the Code is likewise applicable and complied with.

68. HKIC Copy : The Application Form does not require an applicant to submit his HKIC copy, but Autotoll reserves the right to collect the copy for verification of the applicant's information. A person can apply for an Autotoll account at its sale counter or direct sale venues, or he may apply by post, by telephone or online through the internet. If an application is made in person, then verification is done by checking the applicant's HKIC on the spot. It is only where the application is not made in person that the applicant is required to submit a copy of his HKIC, which will be destroyed after verification. The Commissioner is satisfied that this complies

with paragraph 3.2.2.3 of the Code. We agree.

69. Analogy with Octopus Card : The Appellant has at one stage argued that all that is necessary is for users to pay a deposit for the tag and prepay the toll charges like an Octopus Card, which works effectively without any requirement for personal data. This argument was made before the Appellant withdrew his appeal with regard to the other data. It was not pressed upon us during the hearing. In any event, as we pointed out to the Appellant, it is neither fair nor useful for us to make comparisons between different business operations without the full facts of how both of them operate. Moreover, even from a consumer's point of view, it is apparent that the two operations are quite different. Whereas a user of an Octopus Card is stopped at the turnstile if there is insufficient balance in the card to pay the requisite fare, Autotoll lanes are unmanned and free of barrier. It would defeat the very objective of the Autotoll lane if vehicles with negative balances are stopped, thereby causing obstruction and congestion to other Autotoll users.

Conclusion

70. We recognise that HKIC number is a sensitive data, more so than a person's name or address. While many people are quick to provide their names to service providers, many more would shy away from doing so with their HKIC numbers. We must be vigilant in guarding the collection of HKIC number against any abuse by a data user. The Appellant has every right to question Autotoll's need to collect HKIC number, as well as other data, and put Autotoll to strict proof. Indeed, it is thanks to efforts of right-minded citizens like the Appellant that businesses are constantly kept in check. On the other hand, the need to protect personal data does not take precedence over legitimate commercial interests. In each case, all the circumstances must be considered and the interests of all parties must be weighed and balanced.

71. It is never the intention of the Ordinance to prohibit the collection of data by businesses and service providers. DPP1(1) permits the collection of data provided that the data is collected for a lawful purpose directly related to a function or activity of the data user; the collection of the data is necessary for or directly related to that purpose; and the data is adequate but not excessive in relation to that purpose. The collection of HKIC number and its verification by HKIC copy for the purpose of positive identification of the Account Holders is necessary and not excessive for the

proper operation of the ETC service. There is no contravention of DPP 1(1) or the Code.

72. The Commissioner was right in his decision not to continue the investigation under s.39(2)(d) of the Ordinance. We hereby confirm the Decision and dismiss the appeal.

(signed)

(Ms Cissy Lam King-sze)

Deputy Chairman

Administrative Appeals Board