

ADMINISTRATIVE APPEALS BOARD
ADMINISTRATIVE APPEAL NO. 2/2017

BETWEEN

LEUNG HO YIN

Appellant

and

PRIVACY COMMISSIONER FOR
PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

Mr Richard KHAW Wei-kiang, SC (Deputy Chairman)

Mr Kenneth LAU Kwai-hin (Member)

Ms TONG Choi-cheng (Member)

Date of Hearing: 18 August 2017

Date of Handing Down Written Decision with Reasons: 28 April 2020

DECISION

A. INTRODUCTION

1. This is an appeal brought by Mr Leung Ho Yin (“**Mr Leung**”) to the Administrative Appeals Board (“**the Board**”) against the decision of the Privacy Commissioner for Personal Data (“**the Commissioner**”) dated 22

December 2016 (“**the Decision**”) whereby the Commissioner decided not to pursue further the complaint lodged by Mr Leung with the Commissioner by email dated 30 September 2016 (“**the Complaint**”) under section 39(2)(d) of the Personal Data (Privacy) Ordinance (Cap 486) (“**the Ordinance**”).

2. In short, Mr Leung received letters in relation to debt collection which were sent by a bank and its collection agent to Mr Leung’s residential address (“**the Address**”). However, such letters related to matters concerning a Ms Chan Man Ling Angel (“**Ms Chan**”) which, according to Mr Leung, had nothing to do with him. It transpired that the bank came to know about the Address from TransUnion Limited (“**TU**”), a credit reference agency which is responsible for collecting and providing to its members (including banks) general personal data of individuals such as their names, addresses, telephone numbers, date of birth, etc. The Complaint was made by Mr Leung against TU relating to its potential contravention of the data retention provisions of the Ordinance by retaining the Address in its database as the residential address of Ms Chan.

3. Whilst the Commissioner is the only respondent named in this appeal, TU is the person bound by the Decision and thus, it has been invited to make representations pertinent to the present appeal. By a letter dated 6 March 2017, TU informed the Board that it did not wish to make any written representations. A representative from TU was nonetheless present at the hearing of this appeal and was invited to make (and did make) oral representations where it deems relevant and appropriate.

B. THE RELEVANT BACKGROUND

4. By an email dated 17 September 2016, Mr Leung wrote to Citibank Hong Kong Limited (“**Citibank**”) and Asia Credit Monitors (“**ACM**”), a debt collection agency engaged by Citibank, to complain as follows:-

“You and your collection agency keep sending letters to my resident address (addressing to someone called “Chan Man Ling Angel”..... I repeatedly returned those letters to you, but the same situation still continues for years (you both keep sending nuisance mails to the address).

I am the property owner of the address since 2010, and there is no one call “Chan Man Ling Angel” resident at that address.

Note: Your collection agency also sent such letter in person (by your staff) at my door, by trespassing the private housing area, without any of the resident granted permitting for entering the tower. The messenger was a strong, tall, non-Chinese Asian guy, which scared my family, and very worry about the safety.

Please confirm by email (or physical post to the address), that you will stop the nuisance action immediately, or provide approach compensation, or I have no way but could only escalate complain to HKMA and the Police.”

5. By an email dated 21 September 2016, Citibank replied as follows:-

“First of all, please accept our profound apology for the unpleasant feelings and inconvenience caused by this incident. Upon receipt of your concern, we have conducted an in-depth investigation. Kindly be informed that we have come to learn of your above

address upon our inquiry to TransUnion Limited (“TU”), a credit reference bureau for the correspondence information of our client, Ms. Chan. Following a land search for the statement address of Ms. Chan, it has been confirmed that you are the current owner of the property and therefore we have ceased all correspondence to Ms. Chan at this address. As we do not own the data contributed to TU, hence, please contact TU for direct address rectification to avoid disturbance from other financial institutions.”

6. Following what Citibank suggested, by email dated 22 September 2016, Mr Leung approached TU and made a request for data correction request as follows:-

*“I am property owner of “[the Address]”
Myself and my family keep approached by Citibank and its collection agency, looking for a person (call “Chan Mei Ling, Angel”, who is unknown to me, and never be resident of my flat since I purchase the property at 2010)
.....
I filed complaint to Citibank, and they replied the address was provided by your company..... Hence, I would request your company to remove the address record (in association with the said “Chan Mei Ling, Angel”) immediately.....”*

7. By an email dated 30 September 2016, TU wrote back to Mr Leung refusing to accede to his request and replied as follows:-

“We refer to your data correction request on September 22, 2016, please be informed that the below address, we cannot remove in our system due to the following reason:

- *Standard Chartered Bank (Hong Kong) Limited confirmed that the address “[the Address]” under Ms. Chan Man Ling*

Angel is correct. If you have any question, you may contact Standard Chartered Bank (Hong Kong) Limited directly

8. Dissatisfied with TU's refusal to accede to his request for data correction, Mr Leung lodged the Complaint on 30 September 2016 against TU for "*its potential breach of PDPO DPP 2, for keeping inaccurate data in its Transunion data, and continue to share the inaccurate data with its members, through TU reports (report readers include banks, who in turn pass the data to collection agency for nuisance activities)*" and requested the Commissioner to investigate into the matter.

9. On 3 November 2016, Mr Leung furnished the Commissioner with further materials in support of the Complaint. In particular, Mr Leung placed reliance on, *inter alia*, (1) the guidance material published by the Information Commissioner's Office in the United Kingdom concerning the types of personal data enabling an individual to be identified; and (2) a publication by University College London on the compilation of an individual's personal data held in different files by a local authority in the United Kingdom in support of his argument that the Address constituted his personal data ("*Given the said address (alone) could easily refer back to me, whom is uniquely identifiable. The piece of address information (in associate with the someone of bad credit) will effectively means "I somehow associate with / living with the Ms. Chan with bad credit". This is data of me. I am the Data Subject.*"). Further, Mr Leung, by his email dated 3 November 2016, contended that a credit report issued by a credit reference agency ought not to be used for the purpose of debt collection, but

should only be used for the purpose of credit evaluation. In this regard, he placed reliance on a letter issued by the Hong Kong Association of Banks (“**HKAB**”) to one Ms Anita Sit, Clerk to Panel on Financial Affairs dated 28 March 2002 (“**the HKAB Letter**”).

10. The HKAB Letter was titled “*LegCo Panel on Financial Affairs; Meeting on 9th April 2002; Proposal on Sharing of Positive Consumer Credit Data*”, the contents of which, insofar as is relevant for present purposes, may be set out as follows:-

“We write to thank the Panel for inviting HKAB to participate in the discussion at the above meeting regarding the industry’s proposal on the sharing of greater positive consumer credit data amongst financial institutions.

We understand from your letter dated 6th March that the Panel would like details of the proposal, including the scope of consumer credit data to be exchanged, use and disclosure of such information, and the measures to be adopted to protect such information. A presentation covering these and other crucial issues will be given by the Chairman Bank’s representative to the Panel at the meeting on 9th April. In the meantime, we have prepared the attached paper giving a high level description of the scope of the positive consumer credit data proposed to be shared by financial institutions.

Briefing Paper

1. After positive data sharing as proposed by the industry is implemented, financial institutions will exchange details of the credit facilities granted to new and existing customers in respect of:

- *credit cards*
- *unsecured personal loans*

- *secured personal loans (e.g. home mortgages and car loans)*

.....

5. Financial institutions will have access to credit reports issued by the credit reference agency for credit evaluation purpose only. This is in line with the access requirements laid down in the Code of Practice on Consumer Credit Data issued by the Privacy Commissioner. The use of such data for marketing purposes is disallowed.”

11. Having investigated into the matter, the Commissioner rendered the Decision on 22 December 2016 as follows:-

*“In respect of your complaint against TransUnion Limited (“**TransUnion**”) for retaining the address – “[the Address]” (the “**Address**”) in its database as the residential address of Ms CHAN Man Ling Angel, our officer has relayed your concern to TransUnion and Standard Chartered Bank that you live at the Address and received dunning letters addressed to Ms Chan from Citibank (Hong Kong) Limited. According to you, you have nothing to do with Ms Chan and she does not reside in the Address.*

2. In response to our enquiry, TransUnion confirmed that “Ms Chan’s residential address (i.e. the Address)” came from Standard Chartered Bank. TransUnion explained that as it considered the Address as Ms Chan’s personal data and included such data under Ms Chan’s profile instead of your profile, it had to refuse to comply with your data correction request regarding the Address.

3. After the intervention by this Office, Standard Chartered Bank had removed the Address from Ms Chan’s profile. In this regard, TransUnion confirmed with this Office that the Address had been removed from Ms Chan’s account information.

4. On 19 December 2016, our officer informed you of the above outcome over the phone. You expressed your view that “a credit

provider is not allowed to use the consumer credit data held by TransUnion for debt collection purposes pursuant to clause 2.9 of the Code of Practice on Consumer Credit Data (the “Code”).

5. For the relevant regulations on “providing of consumer credit data by credit provider to DCA”, you may refer to clauses 2.16 to 2.18 of the Code.

6. Having considered that TransUnion was not compiling information about you when it collected the Address from Standard Chartered Bank and the Address had been removed from the relevant database maintained by TransUnion, we decide not to pursue your complaint further under section 39(2)(d) of the Ordinance. This is in accordance with paragraphs 8(f) and 8(h) of our “Complaint Handling Policy”.....”

12. In other words, the Decision that “*any investigation or further investigation is unnecessary*” pursuant to section 39(2)(d) of the Ordinance was premised on two grounds:-

- (1) The Commissioner considered that TU was not compiling information about Mr Leung when TU collected the Address from Standard Chartered Bank; and
- (2) Alternatively, and in any event, the Address had already been removed from the relevant database maintained by TU and Standard Chartered Bank.

13. On 18 January 2017, Mr Leung lodged the present appeal to the Board pursuant to section 39(4) of the Ordinance.

C. THE GROUNDS OF APPEAL

14. Mr Leung's grounds of appeal can be summarised as follows:-

- (1) The Commissioner should have continued his investigation into the Complaint as the Address stated in Ms Chan's credit report should not have been used for debt collection purposes in the first place on a proper interpretation of Clause 2.9 of the Code of Practice on Consumer Credit Data (Fourth Revision – January 2013) published by the Commissioner ("**the Code**"). This in itself amounted to a serious breach of the Ordinance and Principle 4 of the Data Protection Principles ("**DPP**") as set out in Schedule 1 to the Ordinance ("**Ground 1**");
- (2) The Commissioner should have continued his investigation because the remedial action taken by TU (i.e. the deletion of the Address from Ms Chan's credit report) does not address the underlying systematic problems of TU for (a) failing to entertain Mr Leung's data correction request within 40 days until after the Commissioner's intervention; (b) failing to provide a "dispute flag" in its system to label any disputed information such that data users (i.e. other financial institutions) would know that the accuracy of such information is in dispute; and (c) failing to inform all credit providers, who had accessed Ms Chan's credit report within 12

months immediately preceding the day on which the correction was made, of the correction (“**Ground 2**”); and

- (3) The Address itself is Mr Leung’s personal data and the Commissioner should therefore continue to investigate the Complaint (“**Ground 3**”). As contended by Mr Leung, the fact that the Address was contained within Ms Chan’s credit report / account information in TU’s database does not thereby render the Address Ms Chan’s personal data, as opposed to / to the exclusion of Mr Leung.

15. Pursuant to section 11 of the Administrative Appeals Board Ordinance (Cap 442) (“**AAB Ordinance**”), on 31 March 2017, the Commissioner filed a written statement relating to the Decision (“**the Commissioner’s Statement**”). For the hearing of this appeal, Mr Leung submitted a written statement of response to the Commissioner’s Statement on 28 June 2017 and the Commissioner filed his skeleton submissions on 9 August 2017.

16. Any appeal before the Board should be conducted as a hearing *de novo*. This means that the nature of the hearing before the Board is by way of rehearing on the merits and not simply by way of review: *Li Wai Hung Cesario v Administrative Appeals Board* (unreported, CACV 250/2015, 15 June 2016) at §6.1.

17. We shall therefore proceed to consider the merits of Mr Leung's grounds of appeal in the light of all the materials and submissions made to the Board. In particular, the Board should exercise its own discretion independently and should not fetter its own discretion. The Board has extensive powers under section 21(1) of the AAB Ordinance. Pursuant to section 21(1)(j), it may confirm, vary or reverse the decision that is appealed against: see *A v Administrative Appeals Board & Anor* (unreported, HCMP 985/2017, Kwan and Poon JJA, 21 July 2017) at [33]. Under section 21(1)(m), it may do all things ancillary to the powers conferred by section 21, or reasonably necessary for the discharge of its functions under the AAB Ordinance.

D. ANALYSIS

18. It is necessary to first consider if the Commissioner erred in deciding not to continue the investigation as this is apparently the main plank of Mr Leung's case.

19. Prior to dwelling into an analysis of the merits of the grounds of appeal advanced by Mr Leung, it should be pointed out that it is within the Commissioner's discretion to decide if he should terminate the investigation according to section 39 of the Ordinance.

D1. The Commissioner's Discretion Under Section 39(2)(d) of the Ordinance

20. Section 39(2) of the Ordinance provides as follows:-

“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 –

- (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;*
- (ca) the primary subject matter of the complaint, as shown by the act or practice specified in it, is not related to privacy of individuals in relation to personal data; or*
- (d) any investigation or further investigation is for any other reason unnecessary.”*

21. In accordance with section 39 of the Ordinance, the Commissioner has a wide discretion to decide whether it should carry out or continue an investigation. In particular, under section 39(2)(d), the Commissioner may refuse to carry out or continue 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.

22. On 5 October 2016, the Commissioner sent a letter to Mr Leung acknowledging receipt of the Complaint, with which a copy of the Commissioner’s Complaint Handling Policy (Fifth Revision) was enclosed.

Thus, Mr Leung was or could reasonably have been expected to be aware of the policy at the time the Decision was made and there does not seem to be any dispute in this regard. The Board shall therefore have regard to the Commissioner's Complaint Handling Policy (Fifth Revision) for the purpose of this appeal pursuant to section 21(2) of the AAB Ordinance.

23. Paragraph 8 of part (B) of the Commissioner's Complaint Handling Policy (Fifth Revision) ("**the Handling Policy**"), amongst other things, provides that:-

"8. Section 39(1) and (2) of the Ordinance contain various grounds on which the Commissioner may exercise his discretion to refuse to carry out or decide to terminate an investigation. In applying some of these grounds, the PCPD's policy is as follows:

a)

.....

In addition, an investigation or further investigation may be considered unnecessary if:

e) after preliminary enquiry by the PCPD, there is no prima facie evidence of any contravention of the requirements under the Ordinance;

f) the data protection principles are seen not to be engaged at all, in that there has been no collection of personal data. In this connection it is important to note that, according to case law, there is no collection of personal data by a party unless that party is thereby compiling information about an identified person or about a person whom it seeks or intends to identify;

g)

h) given the conciliation by the PCPD, remedial action taken by the party complained against or other practical circumstances, the

investigation or further investigation of the case cannot reasonably be expected to bring about a more satisfactory result;
.....”

24. In view of the above, the main issue is therefore whether or not the Commissioner was entitled, having regard to all the circumstances of the case, to consider that any further investigation into the Complaint was unnecessary. As mentioned above, according to the Decision, the Commissioner stated that it acted “*in accordance with paragraphs 8(f) and 8(h)*” of the Handling Policy.

25. It is plain from Mr Leung’s email to the Commissioner dated 30 September 2016 that the gravamen of the Complaint against TU is “*for keeping inaccurate data in its Transunion data, and continue to share the inaccurate data with its members, through TU reports (report readers include banks, who in turn pass the data to collection agency for nuisance activities).*”

26. Since the intervention of the Commissioner into the matter after the Complaint was lodged by Mr Leung, the following remedial actions were taken:-

- (1) Standard Chartered Bank, from which TU obtained the Address, had removed the Address from Ms Chan’s profile; and
- (2) Further, TU also confirmed with the Commissioner that the Address had been removed from Ms Chan’s account information.

27. It is noted that the Decision referred to both paragraphs 8(f) and 8(h) of the Handling Policy. It appears that the Commissioner's consideration of the remedial actions voluntarily taken by Standard Chartered Bank and TU relates only to paragraph 8(h) whereas the consideration of paragraph 8(f) relates to Ground 1 which will be discussed below. However, in light of these remedial actions, the Board takes the view that the subject matters of the Complaint lodged by Mr Leung, i.e. the keeping of inaccurate data within TU's database and TU's continued sharing of inaccurate data with its members, have been sufficiently addressed. In the circumstances, the Commissioner was entitled to take the view that any further investigation would not bring about a more satisfactory result (i.e. on the basis of paragraph 8(h) of the Handling Policy alone).

28. In these circumstances, the Board unanimously agrees that it was reasonably open to the Commissioner to come to the view that any further investigation of the Complaint was unnecessary under section 39(2)(d) of the Ordinance. As mentioned above, the Commissioner acted in line with the Handling Policy in reaching the Decision.

29. On this ground alone, the appeal should be dismissed.

30. In view of our conclusion that the Commissioner's decision is justifiable under section 39(2)(d) of the Ordinance, it is not necessary for us to express any view on the other contentions put forward by Mr Leung. This seems consistent with the way in which previous cases of a similar nature have been dealt with by

the Board: see Administrative Appeal No. 47/2004, No. 52/2004 and No. 9/2018.

31. However, for the sake of completeness, we shall proceed to consider Mr Leung's grounds of appeal. In this regard, it appears to us that among the three grounds of appeal advanced by Mr Leung, Ground 3 strikes at the heart of the issues in dispute, i.e. whether or not the Address constituted Mr Leung's personal data as defined in section 2(1) of the Ordinance. We would therefore deal first with Ground 3.

D2. Ground 3

32. Section 2(1) of the Ordinance contains, amongst others, the following definitions:

“data” means “any representation of information (including an expression of opinion) in any document, and includes a personal identifier”

“data subject” in relation to personal data means “the individual who is the subject of the data”

“personal data” means “any data –

- (a) relating directly or indirectly to a living individual;*
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and*
- (c) in a form in which access to or processing of the data is practicable;”*

33. It is not in dispute that the Address constituted “data”. The question is whether the Address constituted the “personal data” of Mr Leung. Whilst the 3 conditions as laid down in paragraphs (a), (b) and (c) of the definition of “personal data” are conjunctive, it is clear from the parties’ submissions and arguments that their main contention lies in the proper interpretation of “personal data” as set out under section 2(1) of the Ordinance.

34. In this regard, an abstract concept appears to have emerged from the parties’ submissions and arguments, that is whether or not one should pay due regard to the context in which the Address appeared in determining whether or not the Address constituted Mr Leung’s personal data. In other words, whether the critical question is (1) whether the Address per se constituted Mr Leung’s personal data or (2) whether the Address as it was contained in Ms Chan’s credit report within TU’s database constituted Mr Leung’s personal data.

35. Mr Leung contends that the Address *itself* constituted his personal data as he is the sole registered owner of the property located at the Address and a simple search of the land register would enable his identity as the sole registered owner to be ascertained.

36. In response, the Commissioner submits that in deciding whether certain data held by a party satisfies the condition laid down in paragraph (b), reference to the individual must be capable of being construed from the context of all relevant information controlled by the data user, of which the personal

data of that individual forms part. Thus, the totality of all relevant data controlled by the data user in question must be taken into account. If it is practicable for that data user to ascertain from the totality of such data the identity of the individual, the condition as laid down under paragraph (b) would be satisfied.

37. The Board accepts the Commissioner's above submissions.

38. For example, insofar as a data user (e.g. anyone who might be conducting a search of the Address from the land register) is concerned, the Address together with Mr Leung's name constitutes his personal data as the Address appearing in the land register constitutes a data from which it is practicable for Mr Leung's identity as the property's sole registered owner to be ascertained in that particular context. Nevertheless, the Commissioner submits that in the context of the present case, the data user, i.e. the bank, was collecting information about Ms Chan who was identified in the bank's database or other records as the person to whom the information collected relates. Hence, Ms Chan was the data subject when the information was supplied to the bank.

39. The above analysis is consistent with and supported by what Ribeiro JA (as he then was) said in *Eastweek Publisher Ltd & Another* [2000] 2 HKLRD 83, 91C-E:-

“One may contrast what happens in a paradigm example of protected personal data collection. What comes to mind is the

case of a person applying for a bank loan or the issue of a credit card or for cover from an insurance company. He is asked to fill in an application form, this being the relevant act of personal data collection. He is required to fill it in with items of personal information such as his age, present and previous occupation, income, any criminal convictions, any health problems, and so on. Plainly, in such cases, the data user is collecting such information about the specific individual in question and identifies him in its database or other records as the person to whom the information collected relates, i.e., as the data subject." (emphasis added).

40. The suggestion that whether or not a given data or piece of information constituted one's personal data, and in particular, whether it constituted something from which it is practicable for the identity of the individual to be directly or indirectly ascertained, may be determined in the abstract and in isolation from the context in which the relevant data appears is artificial to say the least.

41. According to the extract of Ms Chan's credit report which has been included in the list of documents lodged by the Commissioner in compliance with section 11(2)(b) of the AAB Ordinance, in addition to the Address, the blanks to be filled therein (the answers to which have all been redacted for the purpose of this appeal, except Ms Chan's full name) included (1) the full name of Ms Chan, (2) her Hong Kong Identification Card number, (3) her date of birth, (4) her contact telephone number(s) and (5) her credit status, including the amount of her due and outstanding indebtedness.

42. The Address was thus but one of the data recorded within Ms Chan's credit report held within TU's database.

43. It is notable that the Address appeared in Ms Chan's credit report (as opposed to any document remotely relating to Mr Leung or any document that seeks in any way to identify Mr Leung), which was compiled on the basis of information supplied by Ms Chan (who was obviously the data subject at the material time). The Address was just one piece of information recorded within Ms Chan's credit report held within TU's database. Mr Leung was neither named as a co-borrower or guarantor of Ms Chan's debts, nor was he in any way associated with Ms Chan even on Mr Leung's own case. In the circumstances, the data user of the information supplied by Ms Chan and/or contained her credit report would hardly correlate such information with Mr Leung.

44. The Board can understand Mr Leung's grievances in the present case, in view of the fact that the Address had apparently been misused, causing him annoyance and nuisance. While the Board sympathises with what has happened to Mr Leung, we are not satisfied that the Address in the context of the present case constituted Mr Leung's personal data as defined in section 2(1) of the Ordinance. Ground 3 is, therefore, rejected.

45. Given that both Grounds 1 and 2 concern Mr Leung's allegations that TU acted in contravention of various requirements under the Ordinance and/or the Code and/or the DPP in, for instance, sharing the Address with debt

collection agencies and failing to entertain his “data correction request” within 40 days etc., and were thus necessarily premised upon the precondition that the Address was his personal data, Grounds 1 and 2 naturally fall away following the rejection of Ground 3.

46. In other words, on the basis of the rejection of Ground 3 alone, the appeal should be dismissed. However, purely for the sake of completeness, we shall proceed to consider the other grounds of appeal briefly.

D3. Ground 1

47. Insofar as Ground 1 is concerned, the Commissioner’s position may be summarized as follows:-

- (1) Whilst Clause 2.9 of the Code did not contain the explicit wording to the effect that a credit provider may, through a credit report provided by a credit reference agency, access consumer credit data for the purpose of debt collection, the overall scheme of the Code clearly envisaged and permitted the use of consumer credit data by a credit provider for the purpose of debt collection through providing such consumer credit data to debt collection agencies; and
- (2) DPP 4 is simply inapplicable for the purpose of this appeal.

Alleged Contravention of Clause 2.9 of the Code

48. According to the “Introduction” to the Code, the Code was issued by the Commissioner “for the purpose of providing practical guidance in respect of any requirements under this Ordinance [i.e. the Ordinance] imposed on data users” pursuant to section 12 of the Ordinance.

49. Clauses 2.8 and 2.9 of the Code provide as follows:-

“Access by credit provider to consumer credit data held by CRA
[defined under the Code to mean “credit reference agency”]

Access for updating

2.8 *A credit provider may at any time, for the purpose of providing or updating consumer credit data on an individual, access from a CRA such consumer credit data on the individual as was previously provided by it to the CRA.*

Access through credit report

2.9 *Without prejudice to the generality of clause 2.8 but subject to clauses 2.9A and 2.10A, a credit provider may, through a credit report provided by a CRA, access consumer credit data (except mortgage count) held by the CRA on an individual:*

2.9.1 *in the course of:*

2.9.1.1 *the consideration of any application for grant of consumer credit;*

2.9.1.2 *the review of existing consumer credit facilities granted; or*

2.9.1.3 *the renewal of existing consumer credit facilities granted,*

to the individual as borrower or to another person for whom the individual proposes to act or acts as mortgagor or guarantor; or

2.9.2 for the purpose of the reasonable monitoring of the indebtedness of the individual while there is currently a default by the individual as borrower, mortgagor or guarantor,”

50. The term “consumer credit data” has been defined under Clause 1.8 of the Code to mean “*any personal data concerning an individual collected by a credit provider in the course of or in connection with the provision of consumer credit, or any personal data collected by or generated in the database of a CRA in the course of or in connection with the providing of consumer credit reference service*”.

51. Further, Clauses 2.16 to 2.18 of the Code provide as follows:-

“Providing of consumer credit data by credit provider to DCA
[defined under Clause 1.15 of the Code as meaning “debt collection agency”]

Matters to be satisfied with before providing data

2.16 On or before providing any consumer credit data to a DCA for debt collection against an individual, a credit provider shall ensure that:

2.16.1 a formal contract has been executed to require, or written instructions have been issued under such a contract to require, the DCA to (i) follow such conduct as stipulated by the Banking Code or similar industry codes (if any) in relation to debt collection activities; (ii) prevent any consumer credit data transferred to it

from being kept longer than necessary for debt collection; and (iii) prevent authorized or accidental access, processing, erasure, loss or use of the data transferred to it for debt collection; and

2.16.2 the credit provider is satisfied with the reputation of such DCA, on the basis of previous dealings with the DCA or other reasonable grounds, that the agency will fully comply with the requirement as aforesaid.

Data to be provided

2.17 Subject to clause 2.16, if a credit provider engages a DCA for collection against an individual in default, it may provide to the agency only information relating directly to the individual consisting of the following:

2.17.1 particulars to enable identification and location of the individual, including address and contact information;

2.17.2 the nature of the credit;

2.17.3 amount to be recovered and details of any goods subject to repossession.

Accuracy of data provided

2.18 A credit provider shall only provide consumer credit data to a DCA after checking the data for accuracy. if the credit provider discovers any inaccuracy in the data which has been provided to and which the credit provider reasonably believes is being retained by the DCA, the credit provider shall notify the DCA as soon as reasonably practicable of such fact.”

52. Having regard to the overall scheme of the Code, the Board agrees with the Commissioner’s interpretation of the relevant clauses:-

- (1) Clause 2.9.2 expressly permits a credit provider to have access to consumer credit data held by a credit reference agency as contained within a credit report on an individual for the purpose of the reasonable monitoring of the indebtedness of the individual while there is currently a default by the individual as borrower, mortgagor or guarantor;

- (2) Clauses 2.16 to 2.18 provide for the circumstances in which it is permissible for a credit provider to pass on such consumer credit data obtained to a debt collection agency, the categories of consumer credit data which may be provided and the preconditions which must be satisfied prior to the passing on of such consumer credit data to a debt collection agency.

53. As has been set out above, in support of his allegation that the sharing of consumer credit data by credit providers with credit reference agencies for the purpose of debt collection is in breach of Clause 2.9 of the Code, Mr Leung sought reliance on, amongst other things, the HKAB Letter which was titled “*LegCo Panel on Financial Affairs; Meeting on 9th April 2002; Proposal on Sharing of Positive Consumer Credit Data*”, and paragraph 5 of the Briefing Paper annexed thereto stated as follows, “*Financial institutions will have access to credit reports issued by the credit reference agency for credit evaluation purpose only. This is in line with the access requirements laid down in the Code*

of Practice on Consumer Credit Data issued by the Privacy Commissioner. The use of such data for marketing purposes is disallowed.”

54. The Board is of the view that Mr Leung’s purported reliance on the HKAB Letter is misconceived for the following reasons:-

- (1) It is clear from the HKAB Letter that what was discussed therein was a “proposed scheme on sharing of positive consumer credit data”. The letter was sent by the HKAB to the Legco Panel on Financial Affairs to provide further details of its proposal for the Panel’s consideration prior to a meeting scheduled on 9 April 2002. The Briefing Paper which was annexed to the HKAB Letter was simply a paper provided by the HKAB to the Panel as a high-level description of its proposed scheme. Mr Leung has however failed to proffer any evidence or information as to whether or not this proposed scheme was eventually implemented or how the phrase “credit evaluation purpose” is to be interpreted and/or construed; and
- (2) In any event, even if the proposed scheme was indeed implemented, it would not have the effect of overriding the clear wording and effect of the Code. The purposes for which credit providers may have access to consumer credit data held by credit reference agencies have been clearly set out in Clause 2.9 of the Code. Clauses 2.16 and 2.18 further provide that consumer credit data so

obtained may subject to the fulfilment of certain conditions be provided by credit providers to debt collection agencies for the purpose of debt recovery.

55. There is therefore no contravention or breach of Clause 2.9 of the Code by virtue of the use of the Address for the purpose of collecting Ms Chan's debts.

Alleged Contravention of DPP4

56. DPP 4 provides, *inter alia*, as follows:-

“Principle 4 – security of personal data

(1) 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, loss or 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 is stored;*
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data is 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.”*

57. The Board has previously expressed its view on the proper interpretation of DPP4 in an earlier decision, *Apple Daily Limited v Privacy Commissioner for Personal Data* (AAB No. 5/1999), on which the Commissioner relies in its submissions. In that case, the appellant (the publisher of a newspaper) had in a newspaper article disclosed the name of the street (as opposed to the full address) on which victims of an assault case had recently moved to. The victims complained to the Privacy Commissioner for Personal Data about the report. The Commissioner found that the appellant had breached DPP4 on the basis that the disclosure of the victims' new address would cause serious harm to the victims because the assailant might have access to the newspaper report and learnt of the new address of the victims and attack them again. On the basis of that finding, the Commissioner issued an enforcement notice against the appellant. The appellant then appealed against the decision.

58. On appeal, the Board (as it was then constituted for the purpose of that appeal) quashed the Commissioner's decision on the basis that the Commissioner had misconstrued DPP4. In so doing, the Board expressed its view on the proper construction of DPP4 as follows (at page 4 of the Board's decision):-

*“In our view, Principle 4 does not cover the present situation. As a matter of construction, Principle 4 is clearly intended to ensure that the personal data is stored in a secured manner so that there would not be any **unauthorized or accidental access, processing, erasure or other use of the data.** It refers to the data being held by the data user and steps to be taken to ensure there will be no unauthorised or accidental use of the data. The factors that the data user must consider include the storage (i.e. location); security*

measures in accessing (both in terms of the equipment and personnel) and transmission of the data. The activities such as “access, process or erasure” which Principle 4 seeks to avoid must be “unauthorised or accidental” in nature. This clearly refers to the security aspect of the protection. The general words “other use” must be construed by reference to the previous activities such as access, processing and erasure.”

59. We agree with the interpretation and construction of DPP4 as set out in the above passage. A credit provider uses the consumer credit data when it provides the same to a debt collection agency for the purpose of debt recovery. Once it is provided, a debt collection agency will inevitably gain access to it. There is therefore no question of any “unauthorised or accidental” activities arising out of such provision which as discussed above, is authorized by the overall scheme of the Code. Once the relevant consumer credit data are provided in accordance with the Code, any access to those data by the debt collection agency will not be “unauthorised or accidental”.

60. We therefore take the view that there is no contravention of DPP4 in the present case.

D4. Ground 2

61. In essence, the crux of Mr Leung’s complaint under Ground 2 is that the Commissioner erred in reaching the Decision that he did in considering that the deletion/removal of the Address from Ms Chan’s account within TU’s database constituted satisfactory remedial actions insofar as the Complaint is concerned.

62. In Mr Leung's view, the Commissioner, in reaching the Decision, failed to take into proper consideration the underlying problem of TU's breach of the Ordinance (not least sections 22 and 23 of the Ordinance) by failing to properly comply with his "data correction request" through TU's failure to (1) entertain Mr Leung's data correction request within 40 days until after the Commissioner's intervention pursuant to section 23(1) of the Ordinance; (2) provide a "dispute flag" in its system to label any disputed information such that data users (i.e. other financial institutions) would know that the accuracy of such information is in dispute; and (3) inform all credit providers, who had accessed Ms Chan's credit report within 12 months immediately preceding the day on which the correction was made, of the correction pursuant to section 23(1) of the Ordinance.

63. It is unnecessary for us to deal with this ground of appeal. As this hearing is a hearing *de novo*, irrespective of what considerations the Commissioner had taken into account or failed to take into account in reaching the Decision, we shall consider, and we have indeed considered, the matter afresh.

64. In any event, it is clear from section 22 of the Ordinance that only the individual who is the data subject of the relevant personal data in question may make a data correction request under the statutory regime as laid down by the Ordinance. It therefore follows from our analysis in respect of Ground 3 above that Mr Leung was not entitled to make a data correction request in relation to the Address as contained in the credit report of Ms Chan who should be regarded

as the data subject in that context. Thus, there was no obligation on the part of TU to comply with any “data correction request” made by Mr Leung in respect of the Address.

65. Hence, Ground 2 must also be rejected.

E. MR LEUNG’S APPLICATION FOR AN ANONYMITY ORDER

66. By letter dated 12 March 2017, Mr Leung wrote to the Board to apply for an anonymity order in this appeal in order to “*mitigate risks of any revenge actions (against [himself]) by collection agencies and banks*”. Whilst he has no objection for the hearing to be held in public, he has requested that his personal information, including his name and address, not be disclosed and/or published by the Board and/or any attendees at the oral hearing of this appeal and that he should not be named in the Board’s decision.

67. By letter dated 25 July 2017, TU informed the Board that it would have no objection to Mr Leung’s application for an anonymity order.

68. By written submissions dated 26 July 2017, the Commissioner indicated that it would adopt a neutral position in respect of Mr Leung’s application for an anonymity order and would leave this matter entirely to the Board.

69. The general principles governing the granting of anonymity order were enunciated by the Court of Appeal in *In the Matter of BU* (unreported, CACV 103/2012, 20 July 2012) at §§10-17. These general guiding principles were

then succinctly summarized and applied in the case of *Lai Yi v Tsui Kin Chung* (unreported, LDPD 1406/2015, 5 October 2015) at §38 as follows:-

“The Court of Appeal in In the Matter BU discussed the general principles in granting anonymity order. That case concerns a torture claimant intending to lodge a judicial review. He applied for an anonymity order in his intended legal proceedings. The principles enunciated by the learned Cheung CJHC and Stock VP can be summarized as follows:

- i) The starting point and general rule is that judicial proceedings are held in public and the parties are named in judgments. It is a right provided in the Hong Kong Bill of Rights. There may be circumstances which justify the exclusion of the press and public from all or part of a trial. These circumstances include (a) reasons of morals; (b) public order; (c) national security in a democratic society; (d) when interest of private lives of parties (children, patient, etc) so required; and (e) special circumstances which the court considers publicity would prejudice the interests of justice (e.g. preserving secret technical processes; publicity would defeat the object of hearing; identity of victim in blackmail case; harm to witness or party from third parties; deterring a party from pursuing a case freely or at all; highly personal evidence which should be kept confidential are revealed, etc).*
- ii) The guiding principle is therefore whether the interests of justice are shown so to require, and in determining what the interests of justice require, the court should bear in mind the relevant competing components of what interest in such cases. It is a balancing exercise between different competing interests.*
- iii) The court’s jurisdiction making the anonymity order is not in doubt. It is available even to a piece of litigation where the*

trial or other hearings will be held in open court or in chambers (open to public) with no restriction on reporting.

- iv) When the anonymity order is made, the principle of open justice is thereby compromised, because third parties' right to freedom of expression, which includes freedom to seek, receive and impart information, is necessarily curtailed. This third parties' right is also guaranteed under the Bill of Rights.*
- v) The right of expression is not absolute. It may be restricted for the respect of the rights or reputation of others or for the protection of national security or of public order, or of public health or morals.*
- vi) Different rights are in play. As a very general statement, the right to life and freedom from torture, etc should take precedence over the right to freedom of expression and freedom of the press.*
- vii) Much will depend on the circumstances of each case. A remote risk of danger to life or safety will be insufficient. Each application must therefore be examined on its own facts and issues.*
- viii) The position adopted by the asylum seeker or torture claimant will always be an important factor because he is likely to be in a good position to assess the risks and to say whether or not he needs anonymity for his protection. However, his view is not binding on the court or final.*
- ix) It is the applicant for such order who has to put in sufficient materials to satisfy the court that such order should be made. The burden is on him to justify the making of the anonymity order. His justification for anonymity order such as fear of risk of life or safety, whether of himself or of others, should be clearly articulated. "How" and "why" his/his family member's safety is at risk must be explained.*

x) An anonymity order does not, by itself, exclude members of the public or the press from attending a hearing, which is a separate matter to be considered and decided if necessary.”

70. Applying the aforesaid guiding principles to the present appeal, the burden is on Mr Leung to adduce sufficient materials to justify the making of an anonymity order and that a remote risk of danger to the life or safety of himself / his family would be inadequate.

71. In the present appeal, Mr Leung’s evidence appears to be that (1) collection agents from Citibank continuously sent nuisance letters (addressed to Ms Chan) to the Address (“**Incident 1**”); and (2) a collection agent engaged by Citibank (a tall, strong, non-Chinese Asian male) physically trespassed into private areas within the residential estate (where the Address was situated) without permission, which caused his family members apprehension (“**Incident 2**”).

72. Nevertheless, as confirmed by Mr Leung upon the Board’s enquiry at the beginning of the hearing of this appeal:-

- (1) Insofar as Incident 1 is concerned, whilst Mr Leung had received letters addressed to Ms Chan repeatedly, such nuisance and/or harassment had long ceased, with the last of such letters having been received by Mr Leung over a year prior to the date of the hearing this appeal. In the circumstances, Mr Leung had not received any such letter(s) since about August 2016;

- (2) Insofar as Incident 2 is concerned, this was a single, isolated incident, which took place on 12 June 2014, where the non-Chinese Asian collection agent trespassed into the residential estate and dropped a letter (addressed to Ms Chan concerning the collection of debts purportedly owed by Ms Chan) near the entrance to the Address. There was no verbal exchange between Mr Leung and/or his family members and the non-Chinese Asian collection agent. Further, since 12 June 2014, no similar incident has ever taken place.

73. In the circumstances, the Board is not satisfied that there is any concrete evidence to demonstrate that there is any real risk of revenge action being taken by collection agencies and/or banks. Nor is there anything which shows that the life or safety of Mr Leung or his family members is or would be at risk.

74. In the circumstances, the Board is of the unanimous view that Mr Leung's application for an anonymity order should be dismissed.

F. CONCLUSION

75. In the circumstances, the Board unanimously dismiss this appeal.

76. The Board now invites the parties and TU to file and exchange written submissions on costs within 28 days from today (with each party's submissions

limited to 5 A4 pages). Upon receiving such submissions, the Board will make a decision on costs on paper without any further hearing.

(signed)

(Mr Richard KHAW Wei-kiang, SC)

Deputy Chairman

Administrative Appeals Board