

ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEAL NO.40/2012

BETWEEN

LI CHI SUM

Appellant

and

PRIVACY COMMISSIONER

Respondent

FOR PERSONAL DATA

Coram: Administrative Appeals Board

Date of Hearing: 30 April 2013

Date of Handing down Written Decision with Reasons: 2 July 2013

DECISION

The Background

1. The Appellant is a Fire Services Department officer. He was previously stationed at Kong Wan Fire Services Station. He submitted 18 letters to the Commissioner of Fire Services ("the Commissioner") complaining against various aspects and conduct of senior officers' management, and treatment, of the rank and file officers of the Fire Services Department. In particular, he complained against the

(according to his allegation) slanderous adverse assessments his senior officers made of him and their malicious destruction of his career. Amongst those letters, his letter dated 2 September 2009 sought a meeting with the Commissioner.

2. The Fire Services Department General Orders Chapter 9 s.9-46(i) provides that an officer may request in writing for a meeting with a superior officer, but s.9-46(v) also provides that if an officer abuses such right or makes malicious or unreasonable complaints, he may be subject to disciplinary action.

3. The Fire Services Department (“the Department”) did, based on the said letters from the Appellant, institute disciplinary proceedings against the Appellant in relation to the aforesaid action of the Appellant.

4. The Appellant complained to the Privacy Commissioner, alleging that the Department has contravened Principle 3 of the Data Protection Principles set out in Schedule 1 of the Personal Data (Privacy) Ordinance, in that the use of the letters and the data contained in it was not the purpose or directly related to the purpose for which the data was collected.

5. The Privacy Commissioner, on the above undisputed facts, concluded that the aforesaid use by the Department was not in contravention of Principle 3, and therefore decided not to proceed with the investigation of the complaint, pursuant to s.39(2)(ca) and (d) of the Personal Data (Privacy) Ordinance.

6. The Appellant appealed to this Appeals Board against the decision of the Privacy Commissioner.

The Decision on this Appeal and Reasons for the Decision

7. The Appellant appeared in person at the hearing. At the hearing he again alleged malicious oppression by the Department and its senior officers as set out in his 18 letters and in instituting the disciplinary proceedings against him. However, it must be made very clear that this Appeals Board should not, and is not in a position to, make any finding as to the truth of his allegations. The Appellant has come to a wrong forum if he is seeking an adjudication of those allegations.

8. This Appeals Board, like the Privacy Commissioner, only has jurisdiction on the issue whether Principle 3 has been or may have been contravened, and whether an investigation ought to be continued as to whether there has been a contravention.

9. The said letters to the Commissioner were clearly about the management of the Department and its officers, within the scope of regulation by the Standing Orders. The disciplinary proceedings were, likewise, for the same management purpose also within the scope of the Standing Orders. If the contents of the letters are data regarded as being collected by Department at all (which is an issue that this Appeals Board in this Appeal needs not decide to dispose of the same), it is clear that they have been used for the same purpose, or at least for a directly related purpose, and there could not have been any contravention of Principle 3. Whether there is any substance in the Appellant's complaints in the 18 letters concerning the management of the Department, and whether the Department was right in its conduct of disciplinary proceedings against the Appellant, is irrelevant to the issue whether there has been or may have been contravention of Principle 3, the sole issue which the Privacy Commissioner and this Appeals Board have jurisdiction to determine.

10. Thus, the Privacy Commissioner was correct in discontinuing investigation of the Appellant's complaint, and the appeal is dismissed unanimously.

Other matter

11. The Appellant adduced, in further evidence for the purpose of this Appeal, 2 medical reports on the Appellant, but sought a direction that those not be disclosed to the Department, even though it is a party affected by this Appeal and was present at the hearing of the Appeal. The medical reports have not been included in the Appeal Bundle served on the Department, and the Appeals Board only read and considered them *de bene esse*, reserving its decision (to be handed down as the same time as the decision on this Appeal) as to whether to admit them as evidence of this Appeal and whether to disclose them to the Department.

12. As reflected in the reasons of the decision of this Appeal as set out above, the medical reports are clearly irrelevant to the issue in this Appeal, and therefore the 2 medical reports are not admitted as evidence in this Appeal. Thus, the Department will not be prejudiced in the conduct of this Appeal by not having access to the 2 medical reports, and the Appellant's request of not disclosing them to the Department is hereby granted.

(signed)

(Mr Chan Chi Hung, SC)
Deputy Chairman
Administrative Appeals Board