ADMINISTRATIVE APPEALS BOARD

Administrative Appeal No. 5 of 2005

BETWEEN

HUNG KWOK CHING — Appellant

and

PRIVACY COMMISSIONER FOR PERSONAL DATA — Respondent

Coram : Administrative Appeals Board

Date of Hearing : 19 December 2006

Date of handing down Decision with Reasons : 16 February 2007

D E C I S I O N

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1. In 1999, the appellant Hung Kok-ching was registered as a student of the Second Degree in PRC Law Program ("program") offered by Tsinghua University in collaboration with the University of Hong Kong School of Professional and Continuing Education ("HKU SPACE"). He completed the programme in 2003.

2. On 18.7.2004, the appellant sent a data access request ("DAR") and a data correction request ("DCR") to the University of Hong Kong

("HKU").

3. On 6.9.2004, the appellant complained to the Office of the Privacy Commissioner ("Commissioner") against HKU for non-compliance with his DCR. The relevant part of his letter is as follows:

> " On18 July 2004, I have sent a mail attached to the Acting Data Protection Officer of the University of Hong Kong Mr C K Lai concerning a data correction request and a complaint of the breach of the data protection principles in respect of the above study. After 40 days, the HKU did no comply my request. Then I sent a mail to Mr. Lai of HKU on 1 September 2004 requesting the HKU to comply the data correction request. Mr. Lai replied later on the same day that,
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> > " It is indeed HKU SPACE which holds the relevant data, and your various requests/complaints have therefore all been referred to HKU SPACE for follow-up. I suggest that, if you have any further questions concerning your various requests, you should address them directly to the School Secretary and Registrar of HKU SPACE, Mr J A Cribbon, for advice."

My data in respect of the aforesaid study had been collected by the University of Hong Kong through one of its academic units the School of Professional and Continuing Education in 1999. It

shall be reasonable for me to send a data correction request to the Acting Data Protection Officer of the University of Hong Kong. How the University of Hong Kong complies with the request is the internal administration of the HKU. When I sent a request or complaint according to the privacy policy statement of the HKU, It means that I sent a request to the HKU. I have no further obligation to sent another request to its academic unit which actually holds my data."

4. After a preliminary enquiry, the Commissioner on 12.1.2005 informed the appellant that the Commissioner did not propose to carry out an investigation of the appellant's complaint. The Commissioner referred to section 22(1) of the Personal Data (Privacy) Ordinance (Ordinance) which provides that the personal data that are subject to a data correction request must be personal data supplied by a data user in compliance with a data access request. The Commissioner also referred to section 23 of the Ordinance which requires a data user to make necessary corrections to the personal data to which a data correction request relates and supply the requestor with a copy of those data so corrected within 40 days after receiving the data correction request. The Commissioner noted that after the appellant made the data access request on 18.7.2004, no copy of the requested data had been supplied to the appellant by a data user. The appellant's data correction request was therefore not made in respect of personal data supplied to him by a data user pursuant to a data access request. Section 22(1) therefore does not apply.

5. The Commissioner was of the opinion that HKU did not hold the data to which the appellant's DAR and DCR related. HKU was not the relevant data user. The complaint against HKU for non-compliance with the data correction request was not substantiated.

6. The Commissioner further considered the complaint of the appellant had failed to reveal what personal data of which the appellant was the data subject had been collected by HKU or HKU SPACE. That being the case, there was no personal data collection and the data protection principles would not apply.

7. The appellant appealed to this Board. The relevant grounds of appeal may be shortly put as follows:

(1) HKU is the data user and should give reasons for failing to comply with his DCR.

(2) The Commissioner should give the appellant an opportunity to clarify any part of his complaint that the Commissioner considered unclear.

(3) If a DAR is a condition precedent for a DCR, the appellant should be allowed to submit a complaint on the accuracy of his personal data.

(4) The purpose of his complaint was to ask HKU to maintain the accuracy of his personal data regarding his intention to attend

the graduation ceremony of Tsinghua University on 14 January 2003. The purpose was within one of the data protection principles.

(5) The Commissioner should not look into the consequences of the breach by HKU of data protection principles.

8. The present case concerns one of three complaints made by the appellant against HKU for alleged breached of the requirements of the Ordinance. All three complaints arose out of the same background which has been set out in the appeal in respect of the appellant's DAR and need not be repeated here. The principle issue in the present case is whether HKU was a data user in relation to the personal data under the DCR and if so, whether section 22 (1) of Ordinance is satisfied so that HKU was obliged to comply with the DCR.

9. In the appeal concerning the appellant's DAR, the appellant made lengthy submissions to persuade us to conclude that HKU was a data user in respect of his personal data collected and physically held by HKU SPACE in connection with his study programme for the degree of PRC Law. We concluded that HKU was not a data user as contended by the appellant and we gave detailed reasons for our conclusion which we do not propose to repeat here. The DCR of the appellant was in respect of the same personal data held by HKU SPACE. Such data was not held by HKU and for the same reasons, HKU was not a data user in relation to the personal data under the DCR.

10. Since HKU was not a data user, section 22(1) does not apply. Further, no data had been supplied by HKU to the appellant pursuant to a DAR and there was no personal data for correction. For this reason, section 22(1) is not applicable. In these circumstances, there was no contravention of section 23 for the Commissioner to carry out any investigation. The decision of the Commissioner is correct. We see no reason why his decision should be disturbed. The appeal must fail.

(Mr Arthur LEONG Shiu-chung)
Chairman
Administrative Appeals Board