

ADMINISTRATIVE APPEALS BOARD
ADMINISTRATIVE APPEAL NO. 1/2018

BETWEEN

SO CHUNG LEUNG

Appellant

and

PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

- Mr Alan NG Man-sang (Deputy Chairman)
- Mr Lawrence NG San-wa, M.H. (Member)
- Mr SO Yiu-wing (Member)

Date of Hearing: 8 August 2018

Date of Handing down Written Decision with Reasons: 15 February 2019

DECISION

1. By a Notice of Appeal dated 16th January 2018 lodged by the Appellant with the Administrative Appeals Board¹ (“**the Board**”) (“**the**

¹ See Hearing Bundle 164-166.

Notice of Appeal”), the Appellant appealed against a decision of the Respondent dated 29th December 2017² (“**the Decision**”) whereby the Respondent decided to exercise his power under *section 39(2)(d) of the Personal Data (Privacy) Ordinance (Cap. 486)* (“**PD(P)O**”) not to continue further investigation into the complaint lodged by the Appellant with the Respondent by email on 29th June 2016³ (“**the Complaint**”).

2. Director of Fire Services is the person bound by the Decision, and has been invited to make and has all along made representations relevant to the instant appeal.⁴

3. The background pertinent to the instant appeal is as follows.

The Background

4. The Appellant is a Senior Station Officer of the Fire Services Department (“**the FSD**”).

5. Under *section 20 of the Fire Services Ordinance (Cap.95)* (“**FSO**”), the Director of Fire Services may make orders called “Fire Services Department General Orders” to provide for, *inter alia*, the following:-

- (a) discipline;
- (b) services to be performed by members;
- (c) the manner and form of reports, correspondence and other

² See Hearing Bundle 167-174.

³ See Hearing Bundle 221-222.

⁴ See Hearing Bundle 179-180.

records;

- (d) the performance of any act which may be necessary for the proper carrying out of the provisions of the *FSO* or any regulations made thereunder or of any other enactment or for the discharge of any duty imposed by law on the FSD; and
- (e) such other matters as may be necessary or expedient for preventing abuse or neglect of duty, for rendering the FSD efficient in the discharge of its duties and for carrying out the objects of the *FSO*.

6. Pursuant to Chapter 12-13 of the Fire Services Department General Orders⁵ (“**the General Orders**”), a service member⁶ of the FSD (including the Appellant) is required to report details of his injuries whilst off-duty. Chapter 12-13 of the General Orders is quoted as follows:-

“Injuries Whilst off Duty

12-13 (i) In the event of any member injured whilst off duty, the incident will be reported to his Unit or Watch Commander as soon as possible, but in any case within 24 hours, unless there are extenuating circumstances, such as different time zone, when the injury occurred outside HKSAR.

⁵ See Hearing Bundle 310. The Fire Services Department General Orders are announced *via* internal communication channels. Updated version is readily available at all units for members of the FSD to access. It is the duty and responsibility of all members to be acquainted with the Fire Services Department General Orders and once a member has been notified that an Order has been issued, the responsibility for compliance therewith rests with him/her. That said, the Order issued would be explained by the Unit Commander and questions and answers periods on the Order issued would be regularly included in the training programmes of all units, see the email by the FSD to the Respondent dated 17th March 2017 at Hearing Bundle 297.

⁶ A service member means a person holding any rank in the FSD as set out in *Schedule 6 to FSO*, and includes senior officers, subordinate officers and members of other ranks as set out in *Part I, Part II and Part III of Schedule 6 to FSO*.

(ii) The Unit or Watch Commander will make enquiries into the cause of the injury and obtain a statement from the member as soon as practicable with the following details:-

- (a) the nature of injury;
- (b) the description of the accident;
- (c) the time/date and place of occurrence;
- (d) statements from witnesses of the accident, if any;
- (e) whether or not the accident, if elements of crime are involved, has been reported to the Police. If so, the Police Report Book number is to be given; and
- (f) relevant Medical Certificate and other medical information, if any.

(iii) A report to this effect will then be forwarded to FSHQ [Fire Services Headquarter], copied to his Senior Commander and Divisional Commander/Senior Assistant Chief Ambulance Officer/Assistant Chief Ambulance Officer.”

7. To implement the above reporting requirement, the FSD required its service members to complete a standard form (FSG 158)⁷ (“**the Reporting Form**”) providing the following information to the Director of Fire Services:-

- (a) Nature of Injury
- (b) Description of the Accident
- (c) Time/Date of occurrence
- (d) Place of occurrence
- (e) Witness Statements attached: Yes/No
- (f) Whether or not the accident, if elements of crime are

⁷ See Hearing Bundle 296.

involved, has been reported to the Police? If so, give the Police Report Book Number

(g) Medical certificate attached: Yes/No

(h) Any other medical information: Yes/No

8. Refusal to comply with the above reporting requirement if so ordered by the FSD would amount to a disciplinary offence as specified in the *First Schedule to FSO*⁸. This would mean that the service member concerned shall be liable to be dismissed or otherwise dealt with as provided in *section 12 of FSO*⁹.

9. The Appellant, having suspected that the above reporting requirement was in contravention of the *Data Protection Principle (“DPP”) 1 contained in Schedule 1 to PD(P)O*, lodged the Complaint¹⁰ with the Respondent.

10. By an email dated 30th June 2016, the Respondent acknowledged receipt of the Complaint and attached thereto, among other things, the Respondent’s Complaint Handling Policy (the 5th Revision) issued in April 2013 (“**the Policy**”) for the Appellant’s attention.¹¹

11. On 10th August 2016, the Respondent accepted the Complaint as a

⁸ *Items (2) and (3) of Schedule 1 to FSO* provides that any member commits an offence against discipline who “(2) without good and sufficient cause fails to carry out any lawful order, whether written or verbal; (3) is insubordinate towards any member whose orders it is his duty to obey”.

⁹ *Section 12 of FSO* provides that “[a]ny member who commits any of the offences against discipline specified in the *First Schedule* shall be liable to be dismissed or otherwise dealt with as provided in [*FSO*] and in regulations made thereunder”.

¹⁰ See Hearing Bundle 221-222.

¹¹ See Hearing Bundle 223-231.

“complaint” within *section 37 of PD(P)O*¹² and on 7th October 2016, informed the FSD of his intention to carry out a formal investigation against the FSD under *section 38(a) of PD(P)O*¹³.

12. In the course of the investigation, the FSD replied¹⁴ as follows:-

- (a) The integrity and efficiency of the FSD could only be maintained if the FSD had the fullest powers to obtain relevant information of possible offences against discipline, to investigate and, where justified after investigation, to take disciplinary actions accordingly. Hence, there was a legitimate need for the FSD to ascertain whether an injury sustained by a service member whilst off duty had resulted from a disorderly manner, or in any manner prejudicial to discipline, or likely to bring discredit upon the FSD or the public services. Furthermore, for preventing abuse or neglect of duty, supervisors of the injured member would examine the details of the injury and the seriousness of the injury. If the supervisor suspected there was an abuse of sick leave and unwarranted absence from duty, he might take actions accordingly.

- (b) The core duties of the FSD include fire suppression, rescue services, advising public on fire protection and emergency ambulance services.¹⁵ All service members had to be physically fit to carry out any of the above duties, having

¹² See the email by the Respondent to the Appellant dated 14th August 2016, Hearing Bundle 248.

¹³ See Hearing Bundle 263-264.

¹⁴ See Hearing Bundle 265-271.

¹⁵ See *section 7 of FSO*.

regard to the responsibilities of their offices. Some injuries sustained by the service members whilst off duty were so serious that they were incapable of carrying out the inherent requirements of their normal operational duties. In order to determine which types of duty should be assigned or what workplace adjustments made for the injured service members (if so made), the FSD needed to obtain the details of the injuries as stipulated in Chapter 12-13 of the General Orders for consideration.

- (c) In some cases where (i) the injured service members could not even perform adjusted duties after the injuries, or (ii) the injured members could not resume to carry out the inherent requirements of the original job after having performed adjusted duties for a long period of time, the details of the injuries as stipulated in Chapter 12-13 of the General Orders had to be obtained by the FSD for the purpose of deciding whether a Medical Board should be convened under Civil Service Regulation 940.
- (d) The collected information might be used for the welfare purpose.

13. Upon the request of the Respondent¹⁶, the FSD provided the number of reported cases arising from different scenarios between 2012 and 2016.¹⁷ They are tabulated as follows:-

¹⁶ See Hearing Bundle 328-330.

¹⁷ See Hearing Bundle 331-340.

| Number of reported cases in connection with: | Year | | | | |
|---|--------------|--------------|--------------|--------------|--------------|
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| (i) Home accidents | 142 (39%) | 125 (34%) | 148 (41%) | 128 (36%) | 125 (34%) |
| (ii) Sport activities | 144 (39%) | 169 (47%) | 153 (42%) | 154 (44%) | 170 (46%) |
| (iii) Drunkenness or the influence of alcohol | 1 (0.3%) | 0 | 0 | 0 | 1 (0.3%) |
| (iv) Disorderly conduct (other than (iii)) | 0 | 0 | 0 | 1 (0.3%) | 1 (0.3%) |
| (v) Outside work | 0 | 0 | 0 | 0 | 0 |
| (vi) Other | 78 (21%) | 69 (19%) | 63 (17%) | 68 (19%) | 71 (19%) |
| Percentage of reported cases involving: (iii) drunkenness or the influence of alcohol; or (iv) disorderly conduct | 0.3% | 0 | 0 | 0.3% | 0.6% |

14. The FSD explained that the members in incidents (iii) of paragraph 13 hereinabove were injured during the course of arrest whilst being drunk¹⁸ and in a traffic accident¹⁹ respectively, and that the members in incidents (iv) of paragraph 13 hereinabove were injured in a family dispute²⁰ and in a traffic accident²¹ respectively. At the end of the day, the FSD has laid no disciplinary charges against the members concerned in the aforesaid four incidents.

¹⁸ No charge was imposed on the member concerned by the police and he was bound over for a period of 12 months, see Hearing Bundle 332.

¹⁹ The member concerned was charged with and convicted of (a) driving a motor vehicle with alcohol concentration in blood exceeding the prescribed limit, (b) driving a motor vehicle without a third party risks insurance, and (c) careless driving. The member concerned was sentenced by (a) a 160 hours' community services order, (b) a suspension from driving for a period of 12 months, (c) an Order to attend and complete the driving and improvement course within the last 3 months of the disqualified period at his own cost, and (d) a fine of HK\$3,000, see Hearing Bundle 332-333.

²⁰ The police instituted no charge against the member concerned, see Hearing Bundle 333.

²¹ The member concerned was convicted of careless driving and fined HK\$1,000, see Hearing Bundle 333.

15. In the course of the investigation, the Respondent also made enquiry with the Police Force, the Immigration Department, the Customs and Excise Department, and the Correctional Services Department as to whether their staff members were required to report details of their injury/injuries whilst off duty. They all confirmed that they did not have any similar reporting requirement regarding the injury/injuries of their staff members whilst off duty.²²

16. During the investigation, the Respondent had communicated with the FSD. By an email dated 24th November 2017, the Respondent informed the FSD of his observation on the reporting requirement mentioned in paragraph 7 hereinabove²³; the Respondent observed that the collection of items (a), (g) and (h) mentioned in paragraph 7 hereinabove (i.e. in relation to the injury) was not excessive whereas the collection of items (b) to (f) (i.e. in relation to the accident) appeared to be excessive. By the same email, the Respondent advised the FSD to consider the following:-

- (a) Not collecting items (b) to (f) mentioned in paragraph 7 hereinabove at the first place but the supervisor concerned might ask for such data under special circumstances on a need-to-know basis.

- (b) Replacing the reporting requirement mentioned in paragraph 7 hereinabove by other less privacy-intrusive alternative for the purpose of discipline.

²² See Hearing Bundle 321, 322, 326 & 327.

²³ See Hearing Bundle 354-355.

17. As a result, the FSD revised the Reporting Form in that a service member injured whilst off duty will be required to complete only Part I of the revised Reporting Form (“**the Revised Reporting Form**”) as follows:-

| | |
|----------------------|---|
| Part I 第一部 | |
| (a) | 傷勢 Nature of Injury: _____ |
| (b) | 事發時間/日期 Time/Date of occurrence: _____ |
| (c) | 有否夾附醫生證明書：有／無* Medical certificate attached: Yes/No* |
| | 有否其他醫療資料：有／無* Any other medical information: Yes/No* *刪去不適用字句。 *Delete as appropriate. |

(The above items correspond to items (a), (c), (g) and (h) of paragraph 7 above)

| |
|---|
| Part II (If applicable) 第二部 (如適用) |
| 附加資料 Additional information _____ |

18. It is mandatory for a service member of the FSD to complete Part I of the Revised Reporting Form giving information as to the nature of injury (item (a) in paragraph 7 hereinabove), the time/date of occurrence of the injury (item (c) in paragraph 7 hereinabove), whether medical

certificate is attached (item (g) in paragraph 7 hereinabove), and whether there is any other medical information provided (item (h) in paragraph 7 hereinabove).

19. Under the revised reporting arrangement, upon receipt of the Revised Reporting Form with Part I completed, the Unit/Watch Commander may require the service member to provide “additional information” in Part II of the Revised Reporting Form, only if he/she considers the information provided in Part I insufficient to assess the suitability of the service member to perform his/her duties, such as fire suppression and rescue services. This revised reporting arrangement was detailed in an email from the FSD to its all members dated 27th December 2017²⁴ (“**the 27/12/17 Email**”).

20. The Revised Reporting Form has taken effect since 27th December 2017. The consequential amendments to the General Orders would also be made by the FSD in due course.

21. Having carefully considered all the information available and the circumstances of the case, including but not limited to the remedial action taken by the FSD in paragraphs 17 to 19 above, the Respondent decided to exercise his power under *section 39(2)(d) of PD(P)O* and paragraph 8(h) of the Policy not to continue further investigation into the Complaint.²⁵

22. Hence, the instant appeal.

²⁴ See Hearing Bundle 367-368.

²⁵ See Hearing Bundle 167-174.

The Reasons for the Decision

23. In the Reasons for the Decision, the Respondent took the following views:-

“Observation and Assessment

14. It appears to me that the operational duties of [the] FSD, such as fire suppression and rescue services are very demanding on its members’ physical fitness, which is essential to avoid any danger caused to themselves and/or to the members of public. In my view, [the] FSD has a direct interest in knowing whether a member is physically fit despite his injury whilst off duty. It is noted that the reporting requirement regarding injuries whilst off duty covers the situation where an injured member chooses not to apply for sick leave, in which case [the] FSD has no means of knowing his injury sustained whilst off duty. Hence, I consider that the collection of a member’s personal data in items (a), (c), (g) and (h) in paragraph [7] above by [the] FSD is necessary and directly related to [the] FSD’s function and activity, and hence, there is no contravention of DPP1(1) on the part of [the] FSD. Personal data in the remaining items in paragraph [7] above i.e. items (b), (d), (e) and (f) are not so necessary, nor are they directly related to [the] FSD’s function and activity.
15. Although a member may have sustained injury whilst off duty as a result of his disorderly conduct, such as fighting in a public place, the question is what percentage of reported injury cases reveals conduct which is likely to bring discredit upon [the] FSD. The information shown in paragraphs [13 and 14] above indeed failed to justify the need of collecting the personal data of all injured members “to obtain the relevant information of possible offences committed by individual member against discipline” as claimed by [the] FSD.
16. Therefore, I find it excessive for [the] FSD to collect

indiscriminately from all injured members the personal data in items (b), (d), (e) and (f) in paragraph [7] above, for the purpose of maintaining discipline of [the] FSD.

FSD's Remedial Actions

17. In response to our investigation and to avoid excessive collection of personal data, [the] FSD revised the Reporting Form with effect from 27 December 2017 ...

...

19. Hence, [the] FSD will require the “additional information” of the actual circumstances of an injured member’s specific case only on a need-to-know basis. The consequential amendments to the General Orders would also be made by [the] FSD in due course. Under these circumstances, I consider that this investigation has served the purpose of preventing excessive collection of personal data on the part of [the] FSD, and as such, further investigation of the case cannot reasonably be expected to bring about a more satisfactory result.”

The Grounds of Appeal

24. In a nutshell, the grounds of appeal as annexed to the Notice of Appeal²⁶ can be boiled down to the following 2 points:-

- (a) Part II of the Revised Reporting Form retains the absolute power of the FSD to collect additional information which is too encompassing, and had already been held by the Respondent “not so necessary, nor are they directly related to [the] FSD’s function and activity”.

²⁶ See Hearing Bundle 165-166.

- (b) There is no direct bearing between the additional information and the assessment of the member's suitability in discharging his duties.

The Law

25. *DPP1 in Schedule 1 to PD(P)O provides that: -*

- “(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.”

26. *Section 39 of PD(P)O provides, inter alia, that:-*

- “(2) The [Respondent] 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-

...

- (d) any investigation or further investigation is for any other reason unnecessary.”

27. Paragraph 8 under Part (B) of the Policy provides, *inter alia*, that “... an investigation or further investigation may be considered unnecessary if ... (h) given the conciliation by the [Respondent], 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 ...”

28. Section 21(1) of the Administrative Appeals Board Ordinance (Cap.442) provides that for the purposes of an appeal, the Board may: (j) subject to subsection (2), confirm, vary or reverse the decision that is appealed against or substitute therefor such other decision or make such other order as it may think fit. Subsection (2) provides that the Board, in the exercise of its powers under subsection (1)(j), shall have regard to any statement of policy lodged by the Respondent with the Secretary to the Board under section 11(2)(a)(ii), if it is satisfied that, at the time of the making of the decision being the subject of the appeal, the appellant was or could reasonably have been expected to be aware of the policy.

Our Analysis

29. The 2 points raised in the grounds of appeal can be considered together.

30. The Appellant has submitted on 22nd April 2018 a written response²⁷ to the Respondent’s Statement filed and served on 28th March 2018, and made oral submission at the substantive hearing of the instant appeal.

31. The principal criticisms of the revised reporting arrangement are as follows:-

(a) Under the revised reporting arrangement, the Unit/Watch

²⁷ See Hearing Bundle 413-415.

Commander may require the member to provide “additional information” in Part II of the Revised Reporting Form. “Additional information” in Part II of the Revised Reporting Form has not been defined, and the Unit/Watch Commander has an absolute power to require the member to provide any additional information under the guise of a “need-to-know” basis. This absolute power can easily be abused, and become a backdoor for re-introducing those items which have been left out of the Revised Reporting Form back to the revised reporting arrangement.

- (b) The Unit/Watch Commander may not be competent, and neither is it appropriate for the Unit/Watch Commander to assess the suitability of the member concerned to perform his fire services duties.
- (c) Although a seminar covering the revised reporting arrangement was organized in mid-January 2018, the Unit/Watch Commanders were not required to attend the seminar. This being the case, the chance of the Unit/Watch Commanders abusing their power given would be high.
- (d) The FSD is half-hearted towards making good the revised reporting arrangement since there has been no consequential amendment to Chapter 12-13 of the General Orders.

32. Both the FSD and the Respondent were represented, and have filed their respective Skeleton Submission. Their legal representatives have also made oral submissions at the substantive hearing of the instant appeal.

33. In gist, the Respondent has submitted the following:-

- (a) The revised reporting requirement is a 2-stage reporting system whereby request for “additional information” is not made automatic but triggered off by need.
- (b) The 27/12/17 Email²⁸ has made it explicitly clear that a member may be required to complete Part II of the Revised Reporting Form if the Unit/Watch Commander considers that the information provided in Part I of the Revised Reporting Form is insufficient to assist his/her assessment of the suitability of the service member concerned to perform the latter’s principal duties. The 27/12/17 Email further explained that the additional information provided in Part II will enable the Unit/Watch Commander to take appropriate management actions or provide reasonable accommodation for the service member concerned.
- (c) It is unrealistic to demand the FSD to set out exhaustively the circumstances which may give rise to the collection of “additional information”, or the types of “additional information” to be collected. There are bound to be

²⁸ See Hearing Bundle 367-368.

varying circumstances which may call upon the Unit/Watch Commander to request additional information from the service member concerned. In considering whether or not the information provided by the service member concerned in Part I of the Revised Reporting Form is insufficient, the Unit/Watch Commander must have reasonable grounds to substantiate his/her belief that the information provided in Part I is insufficient to assist in his/her assessment of the member's suitability to perform the latter's principal duties, and the "additional information" to be collected must not be excessive for that purpose.

- (d) Given that the lives of the service member and/or other members of the public may be at stake when the service member discharges his/her principal duties such as fire suppression and rescue services, the FSD's emphasis on physical fitness of its service members is justifiable and, indeed, is fundamental to the functions of the FSD. It is therefore legitimate for the FSD to collect "additional information" for assessing an injured service member's suitability to perform such duties when the Unit/Watch Commander reasonably believes that the information supplied by the service member concerned is insufficient to discharge his/her assessment duty.

34. In a nutshell, the FSD has made the following submissions:-

- (a) The revised reporting arrangement only applies to service members, and does not apply to the civilian members of

the FSD.

- (b) The injury referred to in the Revised Reporting Form is understood to mean physical injury and does not cover psychiatric injury.
- (c) The Director of Fire Services organized 2 seminars on 16th and 17th January 2018, inviting members holding the ranks of Assistant Divisional Officer and Senior Ambulance Officer or above (being Unit Commanders in the FSD) to explain the revised reporting arrangement to their members. It is a common practice within the FSD for information to be disseminated to all members through their Unit Commanders.
- (d) Up to the date of the substantive hearing of the instant appeal, the revised reporting arrangement had been in operation for about 8 months. 100 Revised Reporting Forms had been completed and submitted to the FSD. After receiving those 100 Revised Reporting Forms, none of the Unit/Watch Commanders had asked the service members concerned for further information. The service members concerned need not await the request from their Unit/Watch Commanders. They themselves may volunteer information about their injuries (in Part II of the Revised Reporting Form) relevant to the discharge of the assessment duty of their Unit/Watch Commanders.
- (e) Under the revised reporting arrangement, the discretion

conferred on the Unit/Watch Commanders to request for further information as regards the injury of the service members concerned is more for the purpose of clarification.

- (f) The Revised Reporting Form is an interim measure taken by the FSD after having considered the views of the Respondent during his investigation into the Complaint. The FSD will fully implement the revised reporting arrangement and amend the General Orders after the decision of the instant appeal is handed down.

35. It must be remembered that the nature of the instant appeal before the Board is a rehearing.²⁹ As such, we are duty bound to look at the merits of the instant appeal afresh.

36. To look at all the matters in the round afresh, we cannot stress enough the very demanding nature of the duties of the service members of the FSD. Their duties require them to handle delicate life threatening rescue situation where they are very often required to race against time to save lives and the lives of the civilians are very often on the line. Any failings in the physical fitness of the service members may pose great risk not only to the lives they are going to rescue but also their lives and the lives of their colleagues. The nature of their duties no doubt puts a great demand on their physical fitness. It is therefore of importance that

²⁹ See *Chan Wing Sang v Commissioner of Police* (AAB No. 220/2013, 17 April 2014) §23; *Happy Pacific Limited v Commissioner of Police* (Unreported, HCAL 115/1999) §36 (Stock J); *Li Wai Hung Cesario v Public Officer Appointed by The Secretary for Home Affairs* (AAB No. 27/2014, 24 December 2014) §11; *Li Wai Hung Cesario v Administrative Appeals Board* (Unreported, HCAL 18/2015) §§95, 98-101.

anything which may affect their physical fitness must be reported to their superiors, i.e. Unit/Watch Commanders so that their superiors can decide objectively and cool-headedly the suitability of the service members concerned to perform such demanding duties. Seen in this light, the revised reporting arrangement which mandates service members of the FSD to disclose information relevant to their injuries whilst off duty³⁰ is necessary for and directly related to the functions of the FSD. In our view, the information sought in the Revised Reporting Form is measured and not excessive. Although the Unit/Watch Commanders are not medical expert, they are nevertheless better placed than the service members concerned to conduct the assessment. If medical opinion is to be called for, the Unit/Watch Commanders may enlist the assistance of doctor.

37. Ultimately, the information filled in by the service members in the Revised Reporting Form is to assist the Unit/Watch Commanders to discharge their duties to assess the suitability of the service members to continue after injury with their fire services duties. There may be cases where the information disclosed by the service members in the Revised Reporting Form is not sufficient to enable the Unit/Watch Commanders to discharge their duties. In proper discharge of their duties, the Unit/Watch Commanders should be vested with a discretion to seek further relevant information from the service members concerned on a “need-to-know” basis. The conferment of such a discretion should not be perceived as an inroad into the privacy of the service members or, as the Appellant argues, a backdoor for re-introducing those items which have been left out of the Revised Reporting Form back to the revised reporting arrangement.

³⁰ See paragraph 18 hereinabove.

38. We agree with the Respondent's submission that in considering whether or not the information provided by the service member concerned in Part I of the Revised Reporting Form is insufficient, the Unit/Watch Commander must have reasonable grounds to substantiate his/her belief that the information provided in Part I is insufficient to assist in his/her assessment of the member's suitability to perform the latter's principal duties, and the "additional information" to be collected must not be excessive for that purpose. In case of challenge, this would be an adequate yardstick to measure the decision making of the Unit/Watch Commander on this aspect.

39. Although the previous reporting arrangement (i.e. the Reporting Form) is susceptible to challenge, the FSD nevertheless has taken remedial action to bring the reporting arrangement in harmony with the requirements of *PD(P)O* and they are awaiting the decision of the instant appeal for the full implementation of the revised reporting arrangement. In our view, any further investigation of the case cannot reasonably be expected to bring about a more satisfactory result.

40. Having so opined, the Respondent is amply justified for not pursuing the Complaint further.

Conclusion

41. In light of the aforesaid reasoning, the Appeal should be dismissed and we so order.

42. At the end of the hearing of the present appeal, no party applied

for any particular costs order despite enquiry made by the Board. Accordingly and in all the circumstances of this case, we shall order that there be no order as to costs.

(signed)

(Mr Alan NG Man-sang)

Deputy Chairman

Administrative Appeals Board