

ADMINISTRATIVE APPEALS BOARD
ADMINISTRATIVE APPEAL NO. 12/2019

BETWEEN

DR BRIAN KING

Appellant

and

PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Before the Administrative Appeals Board

- Dr LO Pui-yin (Deputy Chairman)
- Ms FUNG Sau-yim (Member)
- Mr Ellis LAU Ying-tung (Member)

Date of Hearing: 24 October 2019

Date of Written Decision: 19 February 2020

DECISION

Introduction

1. This is the administrative appeal by the Appellant, Dr Brian King, against the decision of the Respondent, the Privacy Commissioner for Personal Data (“the Commissioner”), dated 22 February 2019 not to pursue Dr King’s complaint, made on 30 July 2018, against the Housing Department in respect of

the collection of his signature in September 2014 and in respect of refusals to comply with three data access requests (“DARs”) made by him.

2. The Appellant acts in person. The Respondent is represented before this Board by its legal counsel, Mr Dennis Ng. The Housing Department is represented before this Board by Mr Eugene Cheng of Fairbairn Catley Low & Kong, Solicitors.

3. This Board invited the Appellant to take the oath to give evidence at the hearing of his Appeal. After the Appellant enquired this Board of the matters that his testimony was needed, he declined to take the oath, explaining that those matters occurred quite some time ago and it would be unfair to him to testify on those matters on oath. This Board then proceeded to hear from the Appellant without requiring him to take the oath and he was not subject to any questioning by the representative of the Respondent and the representative of the Housing Department.

4. This Board makes findings of fact on the basis of what the Appellant stated to this Board at the hearing and the documents provided to this Board by the parties both before and during the hearing.

Background of the Appellant’s Complaint and the Respondent’s Decision

5. The Respondent wrote to the Appellant on or about 3 October 2018 summarizing the Appellant’s complaint into two allegations: (1) Not informing the Appellant of the collection purpose of his personal data and whether it was obligatory for him to supply the data when the Housing Department collected his personal data; and (2) Refusing to comply with his DARs on the grounds that he had failed to provide his identity proof to the Housing Department.

6. It is not disputed that the Appellant had lived in a public housing unit at Ming Yat House, Kin Ming Estate, Tseung Kwan O (“the Flat”) with his partner, Ms Nutit Lo, for a period of time, including in 2014. It is also not disputed that the registered tenant of the Flat was Ms Nutit Lo. It is also not seriously disputed that the Appellant was not registered with the Housing Department in any capacity in relation to the Flat. It is further not seriously disputed that the Housing Department knew that the Appellant had been living in the Flat.

7. The Housing Department served on the Appellant a document in September 2014, and at the time of service, asked the Appellant to acknowledge receipt of it. According to the Housing Department, this was a letter confirming termination of the tenancy of the registered tenant Ms Nutit Lo following her letter dated 13 August 2014 agreeing to surrender the Flat and requiring her to deliver vacant possession of the Flat on or before 30 September 2014. The Housing Department provided the Respondent with a copy of a letter, dated 10 September 2014, that appeared to be in such terms, with what appeared to be the signature of the Appellant on the second page above the Appellant’s name at the “copy to” line. The Appellant disagreed, stating to this Board that he believed that Ms Nutit Lo could not have written a letter surrendering the Flat because she was not literate in either English or Chinese; that he must have been given a different letter by the Housing Department, a letter that he described as an “eviction letter”; and that he signed on that different letter at a location nearer to the margin and in a slanted manner, so that the signature did not intrude into the main body of that different letter. Having considered the Appellant’s verbal statements, his written submission in this connection, and the documents provided by the parties, this Board is unable to accept the Appellant’s version of events, which is based on bare assertions. This Board notes, in this connection,

that the Appellant had not provided the Respondent and this Board at any time (be it before or during the hearing) with a copy of the “eviction letter” that he claimed to be the letter he had received. In the circumstances, this Board shall proceed to consider the Respondent’s handling of the part of the Appellant’s complaint over the collection of his signature by the Housing Department on the basis of the background circumstances being the Housing Department serving on or delivering to the Appellant a copy of the said letter dated 10 September 2014 and requesting him to sign on another copy of it to acknowledge receipt of the first mentioned copy.

8. The Appellant made a total of four DARs between April 2017 and March 2018. The facts relating to these DARs are largely uncontroversial (and the initial concerns this Board had on the DARs and how they had been handled by the Housing Department were resolved after hearing the Appellant and reading the unredacted copies of the original DARs that the Housing Department produced at the hearing) and this Board finds the facts to be as follows –

- (1) The Appellant made the first DAR on or about 22 April 2017. The Appellant provided on the data access request form his English and Chinese name, his Hong Kong Identity Card number, his correspondence address and e-mail address. In this DAR, the Appellant asked whether the Housing Department’s Kowloon West and Sai Kung District Tenancy Management Office held any of his personal data.
- (2) A Housing Officer of the Kowloon West and Sai Kung District of the Housing Department sent a letter under the file reference of E/KNM/MA/1131 to the Appellant on 15 May 2017, stating that: “The description you provided for the requested data was

insufficient and the proof of your capacity as a relevant person was missing. Thus your request could not be processed.” The Housing Officer also in the same letter asked the Appellant to visit her at the office at Kin Ming Estate at a specified time on 26 May 2017 with the letter. Later on, on 19 May 2017, the same Housing Officer wrote to rearrange the interview to another time on 31 May 2017 and also asked the Appellant to contact her to rearrange the interview if he was unavailable on that date and time.

- (3) The Appellant sent a handwritten letter dated 22 July 2017 addressed to the Housing Officer who wrote the letters referred to in (2) above. Having made reference to the Housing Officer’s letter of 15 May 2017, the Appellant stated that he was enclosing a fresh DAR and asked the Housing Officer to take note that he was asking her to confirm or deny that she held his personal data (with reference to footnote 7 of the data access request form).
- (4) The Appellant made the second DAR by a data access request form dated 23 July 2017. He directed the request to the Director of Housing with the file reference of E/KNM/MA/1131, requesting “[my] personal data held by you – kindly confirm whether you held it or not (see NOTE #7)”. He stated his correspondence address to be a flat in block 7 of Po Tin Housing Estate in Tuen Mun. Enclosed or provided with the second data access request form was a copy of the Appellant’s Hong Kong Identity Card, impressed with the stamp of “COPY For Hong Kong Housing Authority Only”.

- (5) An officer of the Housing Department (namely, Miss Liu Tze-shun Ada) wrote for the Housing Manager, Kowloon West and Sai Kung District wrote a reply dated 11 August 2017 stating with reference to the Appellant's letter of 23 July 2017 that his personal data were still kept in Kowloon West and Sai Kung Tenancy Management Office (10).

- (6) The Appellant made the third DAR by a data access request form dated 16 January 2018. The data access request form was addressed to the Hong Kong Housing Authority Kowloon West and Sai Kung (10) and the Data Protection Officer of the Hong Kong Housing Authority. He made reference to the file reference of E/KNM/MA/1131 and requested for a list of his personal data held by the Housing Department/the Hong Kong Housing Authority and referred to by Miss Liu Tze-shun Ada in her letter dated 23 July 2017 and a copy of the letter he signed regarding the vacation of Flat 1131, Ming Yat House, Kin Ming Estate, Tseung Kwan O (in August or September 2014). He asked that the copy of the requested data be sent by registered and/or ordinary mail to his correspondence address given on the data access request form, which was the same correspondence address stated on the data access request form of the second DAR.

- (7) An officer of the Housing Department of the Kowloon West and Sai Kung District Tenancy Management Office (10) wrote on or about 5 February 2018 to the correspondence address the Appellant gave on the data access request form of 16 January 2018. Referring to that data access request form, he indicated

that the Appellant's request could not be processed because he did not provide his identity proof (i.e. Hong Kong Identity Card copy). He also asked the Appellant to visit him with the letter and Hong Kong Identity Card at the Kowloon West and Sai Kung District Tenancy Management Office (10) at Kin Ming Estate on 20 February 2018 at a specified time.

- (8) Miss Liu Tze-shun Ada of the Housing Department wrote to the Appellant on the same correspondence address on or about 7 March 2018. She referred to the earlier letter of 5 February 2018 and stated that the Hong Kong Housing Authority/Housing Department could not process the Appellant's request because he had failed to furnish them the copy of his Hong Kong Identity Card, due to the requirement that they could only release the information to the data subject or a "relevant person" under the Personal Data (Privacy) Ordinance.
- (9) The Appellant made the fourth DAR by a data access request form dated 27 March 2018. The data access request form was addressed to the Director of Housing (in Chinese), made reference to three file references: E/KNM/MA/1131, U-0373595-4 and TKO-S-089925, and gave the Appellant's Hong Kong Identity Card number. The DAR sought data on or about 26 September 2014 with reference to No (17) in E/KNM/MA/1131 on the subject of "要求申請屯門寶田臨時收容中心及中轉屋". The Appellant stated the same correspondence address as in the data access request form of the second and the third DARs.

- (10) A Housing Officer of the Kowloon West and Sai Kung District Tenancy Management Office (10) wrote on or about 6 April 2018 to the correspondence address the Appellant gave on the data access request form stating that since the Appellant had failed to furnish the Housing Department with the copy of his Hong Kong Identity Card they could not confirm whether he was the data subject. The Housing Officer asked the Appellant to send his Hong Kong Identity Card copy with the letter to his office on or before 18 April 2018 and noted that otherwise the Appellant's request could not be processed.
- (11) Miss Liu Tze-shun Ada of the Housing Department wrote to the Appellant on the same correspondence address on or about 26 April 2018. She referred to the letter of the Kowloon West and Sai Kung District Tenancy Management Office (10) of 6 April 2018 and informed the Appellant that the Housing Department could only release the information to the data subject or a "relevant person" under the Personal Data (Privacy) Ordinance and since the Appellant had failed to furnish them with the copy of his Hong Kong Identity Card, they could not confirm whether he was the data subject, "[such] that, we cannot proceed your request with date of 27.3.2018 and 23.3.2018."

9. The Housing Department responded to the Commissioner's enquiry by a letter dated 12 February 2019. The letter set out certain background information that led to the Appellant being notified of the termination of tenancy of the public housing flat he occupied in September 2014 and his applications for transit and interim housing in 2014 and 2015. The letter also enclosed a copy of the letter

dated 10 September 2014 with what was said to be the Appellant's signature on the second page (with handwritten manuscript of "Acknowledge receipt on 12-9-2014" next to that signature). The letter further provided information on the Housing Department's action taken on the Appellant's DARs. Such information could be summarized as follows:

- (1) The first DAR was posted to the Kowloon West and Sai Kung District Tenancy Management Office (10). In order to clarify the data being requested and verify the identity of the requestor, the Kowloon West and Sai Kung District Tenancy Management Office (10) issued two invitation letters to the Appellant on 15 May 2017 and 19 May 2017 for interviews. That office also tried to contact the Appellant by telephone with the telephone numbers on record.
- (2) The second DAR was posted to the Kowloon West and Sai Kung District Tenancy Management Office (10), which received it without the copy of the Hong Kong Identity Card. After verifying the identity of the requestor, that office issued a reply letter to the Appellant on 11 August 2017.
- (3) The third DAR came to the Kowloon West and Sai Kung District Tenancy Management Office (10) via a memo of the Departmental Data Protection Officer ("DDPO") of 25 January 2018. The DDPO requested that that office to verify the identity of the requestor as their office had not received identity proof of the Appellant and served a direct reply to him. That office issued a letter to the Appellant on 5 February 2018 for an interview to verify his identity and tried to contact him through telephone

calls. As there was no reply or response, that office issued a letter to the Appellant on 7 March 2018 that the Housing Department could not proceed his DAR as identity of the requestor could not be verified.

- (4) The fourth DAR came to the Kowloon West and Sai Kung District Tenancy Management Office (10) via a memo of the DDPO of 28 March 2018 who requested that that office to verify the identity of the requestor as their office had not received identity proof of the Appellant and then served a direct reply to him. That office issued a letter to the Appellant on 6 April 2018 requesting him to provide his Hong Kong Identity Card copy to the office for identity verification and also tried to contact him through telephone calls. As there was no reply or response, that office issued a letter to the Appellant on 26 April 2018 that the Housing Department could not proceed his DAR as identity of the requestor could not be verified.

The Housing Department's letter to the Commissioner dated 12 February 2019 also provided information of the kinds of personal data being kept by the Kowloon West and Sai Kung District Tenancy Management Office (10). They included the documents relating to the applications made for transit housing and interim housing, which included a copy of the Appellant's Hong Kong Identity Card (for processing those applications).

10. The Housing Department's letter to the Commissioner dated 12 February 2019 also represented to the Commissioner, *inter alia*, that the Housing Department's handling of the Appellant's four DARs had involved the making by the Kowloon West and Sai Kung District Tenancy Management Office (10)

“every endeavor to verify his identity in order to protect his personal data and comply with Section 19(1) of the Personal Data (Privacy) Ordinance in response to the data access request within 40 calendar days from the date of receiving the same. Should Dr. KING wish to pursue his request, he has to submit a fresh DAR with a copy of his identity card being attached or approach HD’s office to produce his identity document(s) for verification.”

The Respondent’s Decision and Statement

11. The Respondent decided on 22 February 2019 that the Appellant’s complaint should not be pursued further in accordance with paragraph 8(e) of the Respondent’s Complaint Handling Policy, namely that “after preliminary enquiry by the [Commissioner], there is no *prima facie* evidence of any contravention of the requirements under the Ordinance”. The Respondent’s decision letter of that date explained the decision in that: **Firstly**, the Respondent did not consider that the Housing Department’s collection of the Appellant’s signature in the circumstances of the case known to them was in contravention of Data Protection Principle 1(3) of the Personal Data (Privacy) Ordinance, in that the content of the letter dated 10 September 2014 was self-explanatory; that the said letter was copied to the Appellant; that the Appellant signed on the said letter next to “c.c. *Mr. KING Brian (Flat 1131, Ming Yat House, King Ming Estate)*”, which the Respondent believed to be that the Appellant was aware that his signature was sought for the purposes of his acknowledgement of receipt of the said letter; and that explicit notification of whether it is obligatory or voluntary for a data subject to supply the data is not required where it is obvious from the circumstances, and where in the present case, it was of one’s free will to acknowledge receipt of a document by providing his/her signature, it was not necessary to give explicit notification of whether it was obligatory or voluntary for the Appellant to supply his signature. **Secondly**, by reference to section 20(1)(a) of the Personal Data

(Privacy) Ordinance, the Respondent considered that it was prudent and reasonable for the Housing Department to refuse to comply with the first, the third and the fourth DARs in order to protect the interest of the data subject, given that the Appellant had not provided his identity proof to the Housing Department for processing those three DARs and for that reason the Housing Department was unable to ascertain the identity of the requestor. The Respondent rejected the Appellant's claim that the Housing Department should be able to confirm the Appellant's identity by referring to his personal data contained in the referral letter issued by the Society for Community Organization.

12. The Respondent submitted in his statement to the Administrative Appeals Board the following matters:

- (1) The Respondent adopted and repeated the reasoning set out in the decision appealed against.
- (2) The Respondent considered that the Housing Department had not contravened any requirement of the Personal Data (Privacy) Ordinance by requesting the Appellant to sign a copy of the letter delivered to him for the sole purpose of acknowledging receipt of it. The Respondent was of the view that the issuing of the letter and requiring acknowledgement of its receipt were directly related to the lawful function and activity of the Housing Department under section 21 of the Housing Ordinance (Cap. 283).
- (3) The Respondent considered that there was no evidence of adoption of any coercive or oppressive means in the solicitation of the Appellant's signature and that the collection was for a

lawful purpose and in a manner that was not unfair. Therefore, the Respondent considered that there was no contravention of Data Protection Principle 1(2).

- (4) The Respondent considered that the purpose of the collection of the Appellant's signature was clear from the contemporaneous record provided by the Housing Department, namely to acknowledge receipt of the letter delivered. The Housing Department had not collected any other personal data of the Appellant for such purpose. There was no evidence suggesting that the Housing Department had used the Appellant's signature on the copy of the letter delivered, which had been retained, for any other purpose(s) apart from acting as a record of the delivery of the letter.
- (5) The Respondent referred to its regulatory practice and interpretation of Data Protection Principle 1(3) and submitted that this principle would only operate sensibly and fairly if the categories of personal data provided by the data subject would materially affect the ability of the data user in providing future goods or services, as the case may be, to the data subject. The Respondent expressed that the present case was different and distinguishable in that the collection of the Appellant's signature served no future purposes vis-à-vis the Housing Department.
- (6) The Respondent also referred to the commonplace practice in Hong Kong to acknowledge receipt by the recipient furnishing his or her signature. The Respondent considered that "[if] the mere fact of furnishing a signature by the recipient entails the

operation of DPP1(3) of the PDPO, it would create unnecessary burden on data users who, apart from collecting the data subject's signature, do not collect any other personal data of the data subject at the moment of acknowledging receipt and do not provide future service(s) to the particular data subject in reliance upon the signature.”

- (7) In the light of (4) to (6) above, the Respondent considered that there was no contravention of Data Protection Principle 1(3) involved in the circumstances of the present case.
- (8) Turning to the first, the third and the fourth DARs, the Respondent considered that the Housing Department had not contravened the requirements of the Personal Data (Privacy) Ordinance since the Housing Department had the need to ensure that the requestor was the data subject, the person entitled to exercise the right to lodge a DAR, and in this connection, it was incumbent upon the requestor to furnish sufficient identity verification information to the data user, upon the data user's reasonable request, to enable the data user in processing the DAR.
- (9) The Respondent added that it was misconceived for the Appellant to rely on the Respondent's Code of Practice on the Identity Card Number and Other Personal Identifiers; paragraph 3.1 of that Code of Practice should be read with the exceptions provided by paragraph 2.2 and paragraph 2.3.3. The Respondent submitted that a request for a copy of the Appellant's Hong Kong Identity Card would be justified for the correct identification and

attribution of the Appellant's identity, which would be important for advancement of the Appellant's interest in complying with the third DAR containing the Appellant's personal data.

- (10) The Respondent further added that the Housing Department had used the less intrusive means of inviting the Appellant for an interview for verification of his identity.
- (11) The Respondent furthermore added that the collection of a copy of the Appellant's identity card by the Housing Department would be justified in the present circumstances because the Appellant had voluntarily supplied his Hong Kong Identity Card number when he submitted the first DAR form to the Housing Department, had voluntarily supplied a copy of his Hong Kong Identity Card to the Housing Department when he made the second DAR, and had voluntarily submitted his Hong Kong Identity Card number when he submitted the fourth DAR form to the Housing Department.

The Housing Department's Submissions

13. The Housing Department engaged solicitors, who submitted on 18 June 2019 written representations making the following points:

- (1) The Appellant had made two further DARs in May 2019 and the Housing Department was going to comply with those two DARs. The Housing Department was of the opinion that compliance with those two DARs would substantively dispose of the subject matter involved in the first, the third and the fourth DARs. The

Housing Department therefore asked the Appellant to withdraw the part of his Administrative Appeal concerning the first, the third and the fourth DARs but the response from the Appellant did not appear to indicate an intention to do so.

- (2) The Housing Department observed that whilst the department was satisfied of the requestor's identity in respect of the second DAR in the circumstances of that DAR (where the requestor enclosed a copy of the Hong Kong Identity Card of the Appellant), the third DAR failed to provide any of the number or copy of the data subject's Hong Kong Identity Card and the fourth DAR failed to provide a copy of the data subject's Hong Kong Identity Card. As to references provided in the third DAR and the fourth DAR, only E/KNM/MA/1131 carried meaning to the department, but as it referred to an internal address code of a public housing unit instead of a particular individual (hence it was in fact not a personal identifier), the department did not consider it sufficient to satisfy itself of the requestor's identity. So, in relation to the third DAR, the department was of the opinion that it was even more justified for the data user to have required the requestor to furnish further information to enable the verification of the identity of the requestor.
- (3) The Housing Department observed that given the overlapping scope of the requested data of the first DAR and the second DAR and the requestor's letter dated 22 July 2017 which effectively bridged the gap of the first DAR and the second DAR, the issue of the first DAR had been substantively and practically resolved.

- (4) The Housing Department observed that given that the requestor had himself used his Hong Kong Identity Card number as a personal identifier in the first DAR and the fourth DAR and provided a copy of his Hong Kong Identity Card in the second DAR, the Housing Department could not be criticized for having reasonably requested for a copy of the requestor's Hong Kong Identity Card to verify the personal identifier the requestor so provided.
- (5) The Housing Department therefore observed that on the facts of this Administrative Appeal, the requests for a copy of the data subject's Hong Kong Identity Card were reasonably made, and as the requestor had failed to comply with those requests, the Housing Department's letters notifying the Appellant that his DARs could not be complied with on the ground that he had failed to furnish the data user with a copy of his Hong Kong Identity Card were valid refusals under the Personal Data (Privacy) Ordinance.
- (6) The Housing Department indicated that in the light of the background of the Appellant's occupation of a public housing unit, the Appellant's acknowledgement of receipt of the letter delivered in the form of his signature was for a lawful purpose directly related to the function or activity of the Housing Department. And the collection of only the Appellant's signature, without more, was adequate and not excessive in relation to that purpose.

- (7) The Housing Department indicated that the Appellant had not discharged his burden of proof in alleging that the department violated Data Protection Principle 1(3) since the Appellant had not put forward a positive case to substantiate the claimed violation, an acknowledgement of receipt by signature was such a common practice in society that it was reasonable to expect any recipient to have been implicitly aware or informed of the voluntary nature of such an acknowledgement, and an examination of the evidence available showed signs that the purpose of the Appellant signing on the copy of the letter delivered was to acknowledge his receipt of the same and his acknowledgement may be used by the relevant classes of people who were involved in the matter stated in the contents of that letter.

14. Mr Cheng appeared on behalf of the Housing Department at the Hearing of this Administrative Appeal. He adopted the written submissions (as summarized above) at the Hearing and stressed that in relation to the allegation regarding the collection of the signature, the evidence before this Hearing Board was the letter with the signature itself and so, the Appellant had not discharged his evidential burden in substantiating his allegation. In relation to the claim of violation of Data Protection Principle 1(3), Mr Cheng stressed that the collection of signature was an one-off collection as acknowledgement and there was no other purpose. Hence that principle did not apply. And if it did apply, the Appellant was implicitly aware of the voluntary nature of the request for his signature. In relation to the refusal to comply with the DARs, Mr Cheng maintained that the matter may have become academic; that the Housing Department, by dealing with the second DAR had already dealt with the first DAR. And in respect of the third DAR and the fourth DAR, it was fair and

reasonable of the Housing Department to invite the Appellant for an interview or to ask for a copy of his Hong Kong Identity Card. Mr Cheng stressed that under section 20(1) of the Personal Data (Privacy) Ordinance, the data user must refuse to comply with a data access request if one of the matters in the paragraphs thereunder existed.

The Appellant's Grounds of Appeal and Submissions

15. The Appellant submitted his Notice of Appeal dated 8 April 2019 and a document entitled "Statement relating to the grounds of appeal" on 22 July 2019. He explained and made submissions on the basis of these two documents at the hearing of this Administrative Appeal before this Hearing Board.

16. The Appellant's submissions can be summarized as follows: -

- (1) The Respondent had not investigated the Appellant's complaint with no fear or favour, contrary to the principle stated in paragraph 18(d) of the Complaint Handling Policy. This was because the Respondent had relied on information received from the Housing Department that the Respondent had not verified or checked. The Appellant submitted that the Respondent should require justification from the Housing Department of the factual allegations it made, after informing him of those allegations.
- (2) The Respondent had failed to take into account all circumstances of the case, an obligation that he had under paragraph 9 of the Complaint Handling Policy. Here, the Appellant referred to information the Respondent recorded in relation to the telephone conversations with Ms Au, an officer of the Housing

Department. The Appellant submitted that such information had not been taken into consideration by the Respondent when it made the decision to refuse to continue with the investigation.

- (3) The Appellant submitted that the Respondent was in breach of the Code of Practice on the Identity Card Number and Other Personal Identifiers, paragraph 3.1.
- (4) The Appellant submitted that in relation to the matter of the collection of his signature, the Respondent should have found that there was a violation of Data Protection Principle 1(2) as the reason for collection was unlawful and the means of collection unfair in the circumstances of the case; the officer of the Housing Department did not tell the Appellant what the collection of the signature was for. Also, the Appellant submitted that in relation to this matter, the Respondent should have found that there was a violation of Data Protection Principle 1(3) on the part of the Housing Department because the officer of the department did not tell him whether he had to sign, who would get to see and handle his signature, and to whom the signature would be transferred.
- (5) The Appellant submitted that in relation to the matter of the first, the third and the fourth DARs, the Respondent erred in failing to find there was prima facie evidence of a contravention of the Personal Data (Privacy) Ordinance, in that the reason the Housing Department gave for refusal, namely that the Appellant had failed to furnish a copy of his Hong Kong Identity Card, was not a lawful reason for non-compliance under section 20(1)(a) of

the Personal Data (Privacy) Ordinance. Section 19(2) allowed an option about the 40-day period to comply but not on any other reason of non-compliance. The Appellant submitted that section 20 did not apply to a data access request made under section 18(1)(a) and what was relevant or applied should be Data Protection Principle 6, which was that the requestor was entitled to be informed of whether the data user held his personal data; there was no option for the data user to refuse to state whether the data user held personal data of the requestor. The Appellant also submitted that there was no definition on what the data user would “reasonably require” but this could not mean simply what the data user would like to require. The Appellant further submitted that the right to refuse compliance under section 20 was only valid if lawful reasons were given for not complying with the data access request and the requestor was notified in accordance with section 21. The Respondent should have found that there was prima facie evidence of non-compliance with section 19(1) and (2).

- (6) The Appellant added that the form for making the data access request did not state what particulars he had to supply and he gave his Hong Kong Identity Card number to help the Housing Department. The Appellant considered that the Housing Department should have been able to find him since he had all along lived in the housing unit administered by the Housing Department.
- (7) In relation to the third DAR, the Appellant emphasized that it was a request under section 18(1)(b); he asked for the data he

found through the second DAR. Thus there should have been no problem with him satisfying the Housing Department of his identity, after, in relation to the second DAR, he had visited the office of the Housing Department to talk to the officer(s) face to face and had let the officer at the office take a copy of his Hong Kong Identity Card.

The Relevant Law and Policy

17. Section 18(1) of the Personal Data (Privacy) Ordinance provides that an individual, or a relevant person on behalf of an individual, may make a request: (a) to be informed by a data user whether the data user holds personal data of which the individual is the data subject; and (b) if the data user holds such data, to be supplied by the data user with a copy of such data.

18. Section 19(1) of the Personal Data (Privacy) Ordinance requires a data user to comply with a data access request within 40 days after receiving the request by (a) if the data user holds any personal data which is the subject of the request, informing the requestor in writing that the data user holds the data and supplying a copy of the data; or (b) if the data user does not hold any personal data which is the subject of the request, informing the requestor in writing that the data user does not hold the data, though a data user shall refuse to comply with a data access request if there exists one or more of the circumstances stated in section 20(1) of the Ordinance; and a data user may refuse to comply with a data access request if there exists one or more of the circumstances stated in section 20(3) of the Ordinance. Section 19(2) of the Ordinance provides separately that a data user who is unable to comply with a data access request within the 40-day period specified in section 19(1) shall, before the expiration of that period, give notice in writing to inform the requestor that the data user is so

unable and of the reasons why the data user is so unable and comply with the request to the extent, if any, that the data user is able to comply with the request and as soon as practicable after the expiration of that period, comply or fully comply, as the case may be, with the request. Section 28(5) of the Ordinance also provides that a data user may refuse to comply with a data access request unless and until any fee imposed by the data user for complying with the request has been paid.

19. The circumstances in which a data user shall refuse to comply with a data access request pursuant to section 20(1) of the Personal Data (Privacy) Ordinance are:

- (a) If the data user is not supplied with such information as the data user may reasonably require: (i) in order to satisfy the data user as to the identity of the requestor; (ii) where the requestor purports to be a relevant person, in order to satisfy the data user (A) as to the identity of the individual in relation to whom the requestor purports to be such a person; and (B) that the requestor is such a person in relation to that individual;
- (b) Subject to section 20(2), if the data user cannot comply with the request without disclosing personal data of which any other individual is the data subject unless the data user is satisfied that the other individual has consented to the disclosure of the data to the requestor; or
- (c) In any other case, if the compliance with the request is for the time being prohibited under the Ordinance or any other Ordinance.

20. The circumstances in which a data user may refuse to comply with a data access request pursuant to section 20(3) of the Personal Data (Privacy) Ordinance are:

- (a) The request is not in writing in the Chinese or English language;
- (b) The data user is not supplied with such information as the data user may reasonably require to locate the personal data to which the request relates;
- (c) The request follows two or more similar requests made by (i) the individual who is the data subject in respect of the personal data to which the request relates; (ii) one or more relevant persons on behalf of that individual; or (iii) any combination of that individual and those relevant persons, and it is unreasonable in all the circumstances for the data user to comply with the request;
- (d) Subject to section 20(4), any other data user controls the use of the data in such a way as to prohibit the first-mentioned data user from complying (whether in whole or in part) with the request;
- (e) The form in which the request shall be made has been specified under section 67 of the Ordinance and the request is not made in that form;
- (ea) The data user is entitled under the Ordinance or any other Ordinance not to comply with the request; or

- (f) In any other case, compliance with the request may for the time being be refused under the Ordinance, whether by virtue of an exemption under Part 8 or otherwise.

21. Schedule 1 to the Personal Data (Privacy) Ordinance makes provision for the data protection principles. Principle 1 relates to the purpose and manner of collection of personal data and is in the following terms:

- “(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.

- (2) Personal data shall be collected by means which are –
 - (a) lawful; and
 - (b) fair in the circumstances of the case.

- (3) Where the person from whom personal data is or is to be collected is the data subject, all practicable steps shall be taken to ensure that –
 - (a) he is explicitly or implicitly informed, on or before collecting the data, of –
 - (i) whether it is obligatory or voluntary for him to supply the data; and
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and

- (b) he is explicitly informed –
 - (i) on or before collecting data, of –
 - (A) the purpose (in general or specific terms) for which the data is to be used; and
 - (B) the classes of persons to whom the data may be transferred; and
 - (ii) on or before first use of the data for the purpose for which it was collected, of –
 - (A) his rights to request access to and to request the correction of the data; and
 - (B) the name or job title, and address, of the individual who is to handle any such request made to the data user,

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data was collected and that purpose is specified in Part 8 of this Ordinance as a purpose in relation to which personal data is exempt from the provisions of data protection principle 6.”

Principle 6 relates to access to personal data and is in the following terms:

“A data subject shall be entitled to –

- (a) ascertain whether a data user holds personal data of which he is the data subject;
- (b) request access to personal data –
 - (i) within a reasonable time;
 - (ii) at a fee, if any, that is not excessive;
 - (iii) in a reasonable manner; and

- (iv) in a form that is intelligible;
- (c) be given reasons if a request referred to in paragraph (b) is refused;
- (d) object to a refusal referred to in paragraph (c);
- (e) request the correction of personal data;
- (f) be given reasons if a request referred to in paragraph (e) is refused; and
- (g) object to a refusal referred to in paragraph (f).”

22. Section 39(2)(d) of the Personal Data (Privacy) Ordinance empowers the Respondent to decide to terminate an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case, any investigation or further investigation is for any other reason unnecessary.

23. The Respondent’s Complaint Handling Policy provides that: “8. ... 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; ...”.

Discussion

24. The Administrative Appeals Board hears and determines administrative appeals before it by way of rehearing on the merits and not simply by way of review: *Li Wai Hung Cesario v Administrative Appeals Board & Anor* (unreported, 15 June 2016, CACV 250/2015), CA. As Cheung JA indicated in para 7.6 of his judgment in this case, “[in] an appeal on the merits, the appellant has to say why the decision below is wrong and the tribunal will address these grounds of appeal. But it does not follow from that that the tribunal is required

to perform the task of a first instance decision maker afresh and set out its own findings and reasons for the decision.”

25. Section 21(2) of the Administrative Appeals Board Ordinance (Cap. 442) requires that the Administrative Appeals Board, in the exercise of its powers to determine administrative appeals under section 21(1)(j), to 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 that is the subject of the appeal, the appellant was or could reasonably have been expected to be aware of the policy. It is not disputed in this Administrative Appeal that the Appellant was or could reasonably have been expected to be aware of the Respondent’s Complaint Handling Policy. This Hearing Board accordingly shall have regard to this policy in the determination of this Administrative Appeal.

26. This Hearing Board has considered the written submissions of the Appellant, the Respondent and the Housing Department, and the oral submissions of the Appellant himself, Mr Ng for the Respondent and Mr Cheng for the Housing Department made at the Hearing of this Administrative Appeal, when this Hearing Board determines on the issues raised in this Administrative Appeal in the light of the facts it has found above.

The Collection of Signature

27. As stated earlier in this Decision, this Hearing Board, having read the documents and heard the submissions at the Hearing, is to consider the Respondent’s handling of the part of the Appellant’s complaint over the collection of his signature by the Housing Department on the basis of these background circumstances: At the material time, the Housing Department was

serving on or delivering to the Appellant, the occupant of a public housing flat, a copy of the Housing Department's letter dated 10 September 2014 and requesting him to sign on another copy to acknowledge receipt of that copy of the letter.

28. In the light of the above circumstances, this Hearing Board agrees with the Respondent and the Housing Department that the request related to the collection of the Appellant's signature was an one-off collection for a lawful purpose directly related to the function or activity of the Housing Department of managing the public housing flats in Hong Kong and that collection, being one for a signature to acknowledge the receipt of a letter delivered, was not excessive in relation to the said purpose.

29. This Hearing Board therefore does not consider that the collection of the Appellant's signature in the above circumstances was in any way unlawful or not fair in the circumstances. This Hearing Board does not consider that there is any *prima facie* evidence of a contravention of Data Protection Principle 1(2) involved in the above circumstances.

30. This Hearing Board next considers the allegation of contravention of Data Protection Principle 1(3), which, in the circumstances of this Administrative Appeal, concerns informing the data subject, on or before the collection of the data, of whether it is obligatory or voluntary for him to supply the data and, informing him, on or before the collection of the data, of the purpose (in general or specific terms) for which the data is to be used and the classes of persons to whom the data may be transferred.

31. This Hearing Board accepts the submission of the Respondent and the Housing Department that in the circumstances stated in paragraph 27 above, it was at least implicit in the conduct on which this Hearing Board considers this

Administrative Appeal that the Appellant would thereby be informed whether it was obligatory or voluntary for him to supply the signature and that it was not obligatory of him to supply the signature by signing on a copy of the letter delivered to him.

32. This Hearing Board also accepts the submission of the Respondent and the Housing Department that in the circumstances stated in paragraph 27 above, the Appellant would know from the contents of the letter delivered (which have been described in paragraph 7 above) and the request expressly made of him to sign on a copy of that letter of the purpose for which his signature was to be used, which was to be a record of his receipt of that letter, and thereby the sort of persons who would afterwards have access to that copy of the letter with his signature on it. In the circumstances stated in paragraph 27 above, this Hearing Board considers these matters to be sufficiently explicit to inform the Appellant of all these matters.

33. Accordingly, this Hearing Board does not consider that there is any *prima facie* evidence of a contravention of Data Protection Principle 1(3) involved in the above circumstances.

34. For these reasons, this Hearing Board rejects the Appellant's grounds of appeal and his submissions relating to the Housing Department's collection of his signature by requesting him to sign on another copy of the letter dated 10 September 2014 when a copy of the same was delivered to him in September 2014.

35. Mr Ng for the Respondent had raised in his oral submissions at the Hearing before this Hearing Board that what was collected on the occasion in question, namely, a signature, did not qualify as "personal data" within the

definition of that expression in section 2(1) of the Personal Data (Privacy) Ordinance because the criterion of “ascertainability” under limb (b) of that definition was not present in the circumstances of this Administrative Appeal. Mr Ng submitted that the consequence of this would be that Data Protection Principle 1 did not apply at all. In the light of the findings of this Hearing Board above regarding the occasion of the collection of the Appellant’s signature, it is not necessary for this Hearing Board to express any view on this substantial but belatedly raised point.

The Data Access Requests

36. This Hearing Board examines this part of the Administrative Appeal in the order of the relevant DARs.

37. Regarding the first DAR, given that the subject matter of the DAR was whether the Housing Department held any personal data of the Appellant, there is force in the Housing Department’s submission that the compliance of the second DAR had resolved the matter and there was no good reason for this Hearing Board to further consider the Appellant’s complaint about the Housing Department’s refusal of the first DAR. This Hearing Board would nonetheless proceed to determine this part of the Administrative Appeal.

38. This Hearing Board considers that it was reasonable of the Housing Department to require, in the circumstances of the first DAR, the requestor, who had supplied a Hong Kong Identity Card number in the DAR, to provide a copy of his Hong Kong Identity Card for verification and it was clearly not excessive of the Housing Department to ask the requestor to visit the office of the Kowloon West and Sai Kung District Tenancy Management Office (10) for an interview to proceed with the DAR. This Hearing Board also considers that the Housing

Department was entitled to and was indeed required under section 20(1)(a) to refuse to comply with the first DAR.

39. Next, this Hearing Board considers the third DAR and the fourth DAR.

40. This Hearing Board notes that by the time of the third DAR and the fourth DAR, the Housing Department had already handled and complied with the second DAR after verifying the requestor's identity to be the Appellant by obtaining a copy of his Hong Kong Identity Card.

41. This Hearing Board also notes that at the material times of the third DAR and the fourth DAR, the Housing Department's handling officers at the Kowloon West and Sai Kung District Tenancy Management Office (10) included Miss Liu Tze-shun Ada, who had handled the compliance of the second DAR.

42. The third DAR was made by the requestor of the same name and correspondence address, citing the same file reference, as that of the requestor of the second DAR. The subject matter of the third DAR was in fact stated as: "A list of my personal data held by you and referred to by Miss Liu Tze-shun Ada in her letter dated 23.7.2017; A copy of letter signed by me re Vacation of Flat 1131 Ming Yat House Kin Ming Est TKO (Aug or Sep, 2014)". In these circumstances, this Hearing Board questions what information the Housing Department would further require of the requestor of the third DAR in order to be satisfied of the identity of the requestor. Accordingly, this Hearing Board does not agree with the Respondent's conclusion underlying his decision not to continue with his investigation that there was no *prima facie* evidence of contravention of the Personal Data (Privacy) Ordinance in the Housing Department's refusal to comply with the third DAR on the materials before him.

43. The fourth DAR was made by the requestor of the same name and correspondence address, citing the same file reference, and providing the same Hong Kong Identity Card number, as that of the requestor of the second DAR. The description of the subject matter of the fourth DAR referred to the same file reference. In these circumstances, this Hearing Board also questions what information the Housing Department would further require of the requestor of the fourth DAR in order to be satisfied of the identity of the requestor. Accordingly, this Hearing Board does not agree with the Respondent's conclusion underlying his decision not to continue with his investigation that there was no *prima facie* evidence of contravention of the Personal Data (Privacy) Ordinance in the Housing Department's refusal to comply with the fourth DAR on the materials before him.

Conclusion and Order

44. This Hearing Board accordingly allows the Appellant's Administrative Appeal in part for the reasons above and, pursuant to section 21(1)(j) of the Administrative Appeals Board Ordinance, orders that the Respondent shall continue with the investigation of the Appellant's complaint regarding the Housing Department's refusal to comply with the third DAR and the fourth DAR of the Appellant.

45. The Secretary to the Administrative Appeals Board received by fax a letter of the Appellant dated 21 November 2019 and by post on 10 February 2020 a reminder letter requesting the approval of the Chairman of this Hearing Board to serve notice on the other parties to this Administrative Appeal to require them to produce "relevant documents for inspection" pursuant to section 13 of the Administrative Appeals Board Ordinance. The letter did not specify what documents the Appellant would require the other parties to produce. In the light

of the determination by this Hearing Board of this Administrative Appeal, this Hearing Board considers that this request needs not be entertained. In any event, as the Respondent had lodged with this Hearing Board in compliance with section 11(2)(b) of the Administrative Appeals Board Ordinance the documents relating to the matters in question in this Administrative Appeal which are or have been in the possession or under the control of the Respondent, it is often necessary for the Appellant to specify the document(s) or class of document(s) that he wishes the other parties to produce for inspection before this Hearing Board will entertain an application under section 13.

(signed)

(Dr LO Pui-yin)

Deputy Chairman

Administrative Appeals Board