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ADMINISTRATIVE APPEALS BOARD  
ADMINISTRATIVE APPEAL NO. 13/2021

BETWEEN

WAN WAH CHING

Appellant

and

PRIVACY COMMISSIONER  
FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

Mr Cheung Kam-leung (Deputy Chairman)

Mr Sy Ming-yiu (Member)

Ms Christine Yung Wai-chi (Member)

Date of Hearing: 9 September 2021

Date of Handing down Written Decision with Reasons: 11 May 2022

DECISION

## Background

1. The Appellant was a member of the Discovery Bay Recreation Club (“**the Club**”), a residents’ club operated by the Discovery Bay Recreation Club Limited (“**the Company**”). The use of the Club was subject to the rules and by-laws of the Club. On 29 June 2020, the Company issued a warning letter to the Appellant and alleged that he had been in repeated breaches of the by-laws of the Club. Instances of breaches included using offensive language, refusing to follow reasonable instructions of the Club’s staff, and using the changing room after its opening hours.
2. The Appellant’s membership was suspended and he was banned from using the Club.
3. The Appellant denied all the allegations. On 21 August 2020, the Appellant sent a data access request form (“**the 1<sup>st</sup> Request**”) to the Company and requested it to produce the CCTV footages taken at the Club on 26 June 2020.
4. The aims of the request were twofold – on one hand the Appellant wished to challenge the allegations against him; on the other hand, he was looking for evidence to support his intended legal action against the Company.
5. The Company replied that there was no CCTV video recording of him taken at the Club on 26 June 2020.
6. The date specified in the 1<sup>st</sup> Request Form was incorrect. The correct date should be 26 May 2020. On or around 21 December 2020, the Appellant made a new request for the CCTV footage taken on 26 May 2020 (“**the 2<sup>nd</sup> Request**”). On

2 February 2021, the Appellant received from the Company a short video footage which showed that he left the Club at around 10:38 p.m. According to the Company, they were unable to find any other footages in which the Appellant can be seen.

7. The Appellant then filed a complaint with the Privacy Commissioner for Personal Data (“**the Commissioner**” or “**the Respondent**”) for alleged failure on the Company’s part to comply with the 2<sup>nd</sup> Request. It was alleged that the Company had either deliberately deleted or unlawfully withheld other video footages.

8. After reviewing the evidence, the Respondent decided against making any further investigation, pursuant to sections 39(2)(ca) and 39(2)(d) of the Personal Data (Privacy) Ordinance, Cap. 486 (“**the Ordinance**”).

9. Dissatisfied with the Respondent’s decision, the Appellant appealed to this Board.

### **The Grounds of Appeal**

10. The grounds of appeal as set out in the Notice of Appeal dated 1 June 2021 are as follows:

*“The purpose of [the 2<sup>nd</sup> Request] is for personal justification for myself not against the company. Due to the Company’s deliberate attempt to keep only the footage that is useful to them... I cannot clarify my behaviour to myself ...*

*... core issue is not Club House does not now possess other footages.”*

## Discussions

11. When it comes to discovery of documents (including video recordings), usually a statement from the party against whom a request is made that he does not have the documents is, subject to evidence to the contrary, conclusive. In this case, the Commissioner accepted the Company's explanation that it regularly deleted the security camera recordings, and was not in possession of any other footages except the footage already disclosed.

12. The Appellant argued that "*the core issue of the case was irrelevant to the circumstances that the Club House no longer possessed the Required Footage*". His argument, as understood by this Board, was that even if the Company no longer had the footages, the Respondent was under a duty to find out the circumstances under which the footages were deleted.

13. It is further alleged that the Company had withheld or deliberately deleted other relevant footages. However, the allegation was not supported by any evidence. As stated in *AAB No. 32/2004*, there is a burden on the Appellant to adduce at least some evidence to support his complaint, and the Commissioner is not obliged to investigate bare allegations. In the circumstances of this appeal, there simply does not exist any evidence that the Company had deliberately deleted or withheld some other relevant footages. The Commissioner's decision to terminate investigation cannot be said to be unreasonable and amount to wrongful exercise of his discretion under s.39(2) of the Ordinance.

14. During the hearing, the Appeal Tribunal invited the Appellant to clarify what he intended to mean by “*the purpose of [the 2<sup>nd</sup> Request] is for personal justification for myself*” and “*I cannot clarify my behaviour to myself*”. The Appellant said that he wanted to be able to explain to himself (要對自己有交代). He also added that he was contemplating civil action against the company, and he believed that the required footages might assist him in proving his case.

15. In *Wu Kit Ping v Administrative Appeals Board* [2007] 4 HKLRD 849, it was clearly held that:

“34. It is not the purpose of the Ordinance to enable an individual to obtain a copy of every document upon which there is a reference to the individual. It is not the purpose of the Ordinance to supplement rights of discovery in legal proceedings, nor to add any wider action for discovery for the purpose of discovering the identity of a wrongdoer under the principles established in Norwich ...

45. ... In this respect it must be remembered that the purpose of the Ordinance is to enable a data subject to examine his or her own data, it is not to enable a data subject to locate information for other purposes, such as litigation.”

16. Likewise, in *Chan Shu Chun & Anor v Dr. Kung Yan Sum & Ors* [2020] HKCFI 360, it is said that:

“17. ... it is not the object of the Ordinance to extend the rights and duties of discovery in legal proceedings, to require a party to apply to another party or authority in order to produce a document for the purpose of discovery...”

19. The mischief which the Ordinance was intended to address was the misuse and retention of personal data collected, and the objective it was intended to achieve was to provide for the right of an individual to access the personal data collected by a data user, to prevent it from being misused and to correct any inaccuracy of the data collected. It had nothing to do with the operation of discovery in legal proceedings and Legislature could not have intended to produce any collateral effect on the settled law and already broad scope of discovery.”

17. Understandably, the Appellant wishes to have all the potentially available evidence so that he can better ascertain the merit of his claim before he takes active steps to commence legal action against the Company. However, it is not the purpose of the Ordinance to extend the scope of discovery to enable him to rebut the Company’s allegations of breach on his part.

18. The Board agrees with the Commissioner’s conclusion that the Company has complied with the data request and that the complaint does not warrant further investigation.

19. In the circumstances, the Board dismisses the present appeal with no order as to costs.

(signed)

(Mr Cheung Kam-leung)

Deputy Chairman

Administrative Appeals Board