

ADMINISTRATIVE APPEALS BOARD  
ADMINISTRATIVE APPEAL NO. 17/2023

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BETWEEN

HO KA KEUNG  
MANDY FUNG PUI MAN                      Appellants

and

PRIVACY COMMISSIONER                  Respondent  
FOR PERSONAL DATA

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Coram: Administrative Appeals Board

- Ms Abigail Wong Kei-yee (Deputy Chairman)
- Ms Cally Chan Shan-shan (Member)
- Miss Pat Kwong Suet-wing (Member)

Date of Handing down Written Decision with Reasons: 6 February 2024

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DECISION  
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**Background**

1. By a Notice of Appeal dated 27 September 2023 lodged by Messrs. Maurice WM Lee Solicitors on behalf of the Appellants with the Administrative Appeals Board (“**the Board**”), the Appellants appeal against a decision (“**the Decision**”) dated 4 September 2023 made by the Respondent

(“**the Appeal**”). By the Decision, the Respondent decided that, in exercise of her discretion under section 39(2)(d) of the Personal Data (Privacy) Ordinance, she would not pursue the complaint made by the Appellants (“**the Complaint**”).

2. By a letter dated 17 October 2023, the Respondent informed the Board that she had decided to withdraw the Decision, and that accordingly she would continue to handle the Complaint. The Respondent further stated that she had invited the Appellants to consider withdrawing the Appeal.

3. By letter dated 20 October 2023, the solicitor of the Appellants replied *inter alia*, to the Respondent that the Appellants were not in a position to consider abandoning their Appeal unless the Respondent confirmed that:

a) the Respondent had decided to carry out an investigation into the complaint in accordance with section 38 of the Personal Data (Privacy) Ordinance; and

b) the Respondent will dutifully undertake to complete the investigation expeditiously and, in any event, within the already long 180 days (counting from 21 July 2023, the date the complaint was formally accepted by the Respondent’s office under s.37 of the Personal Data (Privacy) Ordinance) in accordance with the Respondent’s performance pledge.

4. By letter dated 6 November 2023, the Respondent responded *inter alia*, that the case will be handled in accordance with the “Complaint Handling Policy” and the Appellants will be informed of the progress and outcome of the case in due course.

5. Dissatisfied with the Respondent's reply, the Appellant's solicitor, by letter dated 24 November 2023, requested the Board to, under section [21(1)(h)] and section [21(1)(j)] of the Administrative Appeals Board Ordinance (Cap. 442) ("**the AAB Ordinance**"), determine the Appeal summarily in the Appellants' favour and order the Respondent to immediately carry out an investigation into the Complaint.

6. By letter dated 27 November 2023, the Respondent informed the Board that the Respondent will not proceed the Appeal and would respectfully leave the matter to the Board for an appropriate order as the Board sees fit.

7. In the present case, the Appellants have not abandoned the Appeal in accordance with section 19 of the AAB Ordinance. Accordingly, the Appeal continues to be an appeal before the Board.

8. However, the fact is that the Respondent has withdrawn the Decision and does not intend to file any argument or evidence for the Appeal. Accordingly a situation has arisen whereby the subject-matter of the Appeal has in effect disappeared.

### **Summary Determination**

9. In a situation such as the present, where the decision under appeal has been reversed by a respondent, the Board has power to make a determination of the appeal summarily in favour of the appellant without a hearing. Section 21(1)(h) of the AAB Ordinance provides as follows:

“For the purposes of an appeal, the Board may-

...

(h) if it appears to the Board that the respondent has reversed the decision appealed against, determine the appeal summarily in favour of the appellant without a hearing and without calling on anyone to attend or to appear before it.”

### **Order**

10. The Board would accordingly exercise the power under section 21(1)(h) of the AAB Ordinance to make a determination of the Appeal summarily in favour of the Appellants without a hearing. As the exercise of this power is made consequential upon the Respondent having reversed or withdrawn the Decision, it is exercised without consideration of the merits of the Appeal, and without hearing the parties.

11. This Appeal is allowed and the Decision is formally set aside. The practical effect of allowing the Appeal is that the Respondent is required to carry out an investigation into the Complaint.

12. As the present decision is made without consideration of the merits, it is inappropriate for this Board to make any comments on the merits of the Complaint, nor to speculate on the result of the Respondent’s investigation – and we will not do so.

(signed)

(Ms Abigail Wong Kei-yee)

Deputy Chairman

Administrative Appeals Board

Appellants : Represented by Mr Allan Chiang, Counsel instructed by

Messrs. Maurice WM Lee Solicitors .

Respondent : Represented by Ms Dorothy Fung, Legal Counsel

(Acting)