

ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEAL NO. 23 OF 2012

BETWEEN

SYE KOON HANG

Appellant

and

PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

Date of Hearing: 9 January 2013

Date of handing down Written Decision with Reasons: 8 March 2013

DECISION

Complaint to the Respondent

1. The Appellant was at one time employed by a certain company conveniently referred to hereafter as "ICG". During his short period of employment, ICG neither arranged for his Mandatory Provident Fund (MPF) enrolment nor made the contributions as legally required. The Appellant found out this failure when he was about to leave the employment of ICG. Maybe for this reason or others as well, the relationship between the parties was in such regrettable state that they could not even complete the paper work face to face together for the MPF scheme. Later at

some stage the Appellant complained to the authority for this failure of ICG resulting in its prosecution and conviction of the relevant offences.

2. Soon after leaving ICG, a female agent of Manulife rang him allegedly at inconvenient moments repeatedly when he could not find time to talk with her to find out the reasons for her calls. According to the Appellant these calls caused him great annoyance and distress. Initially he suspected that the agent called him to sell him financial services and products other than MPF. Only after he made some enquiries, he learned that his personal data, including his mobile phone number were disclosed to Manulife by ICG for the purpose of arranging his MPF enrolment and contributions. The Appellant then made a complaint to the Respondent against ICG alleging, inter alia, that it disclosed his personal data to the agent without his prior consent.

3. Another allegation in his complaint relates to a reference letter given by ICG. ICG agreed to send the Appellant a reference letter. After waiting for a long time for the reference letter which never came, he checked with ICG. ICG explained that the letter had been sent to a wrong address "17Q Tai Foo House" but according to information he provided when he was employed by ICG. This explanation he rejected and complained to the Respondent that ICG intentionally leaking his personal data contained in the reference letter to others.

4. The last allegation against ICG was the non-compliance of his Data Access Request made to ICG by e-mail. He did not accept its explanation that it was unable to provide the requested data because they were its confidential information.

Follow-up Actions by Respondent and his Decision

5. The Respondent approached ICG to obtain relevant information and the Appellant also supplied further information and materials. After examining and considering the documents and materials so obtained he made the following findings.

6. The Manulife agent was the designated intermediary of ICG to arrange the MPF enrolment and contribution. ICG admitted to the alleged disclosure of the personal data of the Appellant by way of filling in the necessary form for the enrolment of MPF, namely Manulife Global Select (MPF) Scheme Employee Enrolment Form. Those personal data were collected from the Appellant during his employment. These data were names, addresses, date of birth, mobile phone number, etc and the Respondent found that they were collected for employment related purposes. The keeping of and subsequent disclosure of these data, the Respondent was of the view, was to facilitate the enrolment and contribution for MPF and therefore was also for an employment related purpose. As a result he did not find any breach of the Data Protection Principle 3 which required a data user to use the data collected for the same purpose when they were collected or for a related purpose.

7. In regard to the reference letter, the address on its envelope was wrong in respect of the flat and floor numbers. A staff member of ICG was mistaken. The staff thought that 17Q should be the same as Q17 and the former looked more sensible to her. Therefore the staff entered the wrong one into the record concerning the Appellant. The reference letter was undelivered and returned intact. On these facts, the Respondent did not find any cogent evidence to support the allegation that ICG disclosed the reference letter to other, albeit intentionally. He found that there was no breach of Data Protection Principle 4.

8. As to the Data Access Request, the Appellant claimed to have made, the Respondent failed to obtain concrete evidence notwithstanding that he had repeatedly requested the Appellant to provide the same. All that the Appellant had shown him was some e-mail he sent to one Ring Wong of ICG purported to be a Data Access Request. The content noted and quoted by the Respondent was in the following terms: *“By the way, for propose(sic)of 收集的個人資料 on this issue, [you] would hereby request [ICG] to issue electronic or scan copy of exact content for that letter...”* and *“As mentioned [you are] waiting for [Mr. Ring Wong] to provide privacy detail--information for all [your] personal data information regarding in this letter...”*. The Respondent was of the view that the request in these terms were not effective in engaging the requirements for two reasons. Firstly the Appellant did not specify that the request was made under the **Personal Data (Privacy) Ordinance (“the Ordinance”)**. Secondly the request was too vague and broad for ICG to understand and comply with. The Respondent therefore did not think that the Appellant had made out his case against ICG for failing to comply with the request.

9. Having found that there was no prima facie evidence for all these three allegations, the Respondent exercised his discretion under section 39(2)(d) of **the Ordinance** not to pursue the complaint any further. This exercise of discretion was in accordance with the policy of the Respondent: [the Complaint Handling Policy].

Grounds of Appeal and Decision of the Board

10. The crux of the arguments of the Appellant was that the Respondent was wrong in finding that the purpose of providing his personal data to Manulife was of the same purpose of their collection or of a related purpose. In his submission he relied on a number of factors but none of which can substantiate his arguments.

11. The first factor was that he did not consent to the disclosure of his personal particulars to Manulife. In his submission in this regard, he repeatedly

stressed the point that he never consented to the filing by ICG of the relevant forms for MPF enrolment. The Respondent noted that ICG was legally required to enrol the Appellant within 60 days after employing him. That ICG failed to do and was convicted and sentenced for the related offences. The Appellant stressed many times this fault of ICG. It was alleged that the parties agreed to meet to discuss the filling in of the forms. This Board failed to understand why it would be so difficult for the parties to sort out the filing of the forms there and then instead of making an arrangement to meet again. Though the procedure for enrolment would not be complete without the signature of the Appellant unless he refused to sign, the Board disagrees with the submission by the Appellant that ICG could not file the forms for him. ICG could leave the forms, as it did, with the agent for her to contact the Appellant for his signature. That incidentally explained why the agent was anxious to get in touch with him. There is no legal requirement that the forms should be signed and completed at the same time by both parties at a face to face meeting. With or without the consent of the Appellant, the filing of the forms by ICG was to facilitate the enrolment and contributions for the MPF. The finding of the Respondent in this regard is therefore correct.

12. The second factor relied on by the Appellant was that the purpose is not related to his employment, especially when he had left the employment of ICG. He had made enquires with other government departments and public authorities. He cited their views in support. The views he obtained from these enquiries were irrelevant as they were not legal precedents binding upon the Respondent or this Board. Furthermore, he understood those views to mean the MPF was not employment matter or employment related matter. All in all the department or authorities he had consulted for their view, as we understood it, merely wanted to make a point that the complaint against ICG was not within their function and power to intervene. For instance, clearly the Labour Department had no role to play in the complaint and not surprisingly they expressed the view that it was not an

employment-related matter. It was never their view that the Respondent was wrong in arriving at the conclusion that the disclosure of the personal particulars was for purpose related to the original purpose of their collection.

13. The third and last factor was a statement in the recruitment of advertisement by ICG. It stated that collecting the personal particulars of job applicants was for the purpose of recruitment. The Appellant stressed that the disclosure to ICG of his particulars had nothing to do with recruitment and could not be for the purpose of recruitment. Therefore he argued that the disclosure by ICG of his personal data to Manulife is not for the purpose of their collection.

14. The Respondent had pointed out that not all data disclosed were collected at the time of recruitment, notably the period of employment. This Board does not think it is useful to point this out. Even assuming that all data had been collected at the time of recruitment, subsequent employment of the Appellant would entitle ICG to keep his personal data because it was for a purpose related to the recruitment. Especially, the personal data in question are no more than the usual data an employer would require his employees to give for the record. ICG was under a statutory duty to enrol the Appellant for the MPF, and when it disclosed his personal data in the enrolment form to facilitate the enrolment procedure it was for the purpose related to his employment. Taking all these circumstances into consideration, this Board agrees with the Respondent that the personal data were used for a purpose related to the purpose of recruitment and therefore were also used for a purpose related to that of their collection at the time of recruitment.

15. All the factors relied on by the Appellant did not support his argument. His grounds of appeal must fail. The circumstances as found by the Respondent after preliminary enquiry showed that there was no prima facie evidence of any contravention of the requirements of **the Ordinance** when ICG disclosed the personal data to the Manulife agent. As for the other two allegations, the Appellant

did not seek to challenge the Respondent's decision. Looking at the circumstances of the case, this Board agrees with the findings of the Respondent. There was no prima facie evidence that posting the wrongly addressed letter had led to the disclosure to a third party of the personal data of the Appellant. Furthermore ICG had verified the correct address with the Appellant and the reference letter was eventually sent to the correct address. As to the allegation of failing to comply with the data access request, having looked at the passage noted and cited by the Respondent as aforesaid in paragraph 8 and the correspondence by e-mail of the parties, this Board agrees with the findings of the Respondent. As a result, there had been no effective data access request within the meaning of **the Ordinance**.

16. For all the above reasons, the Respondent was entitled to come to the conclusion that there was no prima facie evidence of any contravention of **the Ordinance**, in respect of any of the allegations in the Appellant's complaint. When he exercised his decision not to pursue further the complaint, he was acting according to his declared policy: [the Complaint Handling Policy]. Furthermore, this Board is bound by section 21(2) of **the Administrative Appeals Board Ordinance** to have regard to this [Complaint Handling Policy]. In the premises, the appeal is dismissed.

(signed)

(Mr Yung Yiu-wing)

Deputy Chairman

Administrative Appeals Board