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ADMINISTRATIVE APPEALS BOARD

Administrative Appeal No. 29 of 2006

BETWEEN

潘國燦

Appellant

and

THE PRIVACY COMMISSIONER FOR PERSONAL DATA

Respondent

Coram : Administrative Appeals Board

Date of Hearing: 13 November 2006

Date of handing down Decision with Reasons : 3 March 2007

DECISION

Introduction

1. It is a matter of public record that in about March 2006, information concerning complaints against the police (including personal data of the complainants) was leaked onto the internet by a contractor of the Independent Police Complaints Council ("IPCC") or its Secretariat ("the Incident").

2. By a complaint dated 24 May 2006, the Appellant lodged a complaint to the Privacy Commissioner for Personal Data (“PCPD”). It is difficult to discern from the Complaint Form what exactly was the Appellant’s grievance, but the only thing mentioned in the Form which fell within the jurisdiction of the PCPD was a reference to the Incident. Apparently the PCPD treated the Appellant’s complaint as one concerning leakage of his personal data in the Incident.

3. By letter dated 22 June 2006, the PCPD replied to the Appellant refusing to carry out or continue an investigation into the Appellant’s complaint.

4. By Notice of Appeal dated 28 June 2006, the Appellant appeals against that decision to this Board.

5. This Board will similarly treat the appeal as one against the decision of the PCPD not to carry out or continue an investigation into a complaint that the Appellant’s personal data had been leaked in the Incident.

Evidence before the Board

6. Before this Board, the Appellant has adduced no evidence that:

6.1. the IPCC had possession of his personal data; and

6.2. such personal data was leaked to the public in the Incident.

7. In contrast, upon inquiry made by the PCPD following the Appellant’s complaint, the IPCC confirmed that:

7.1. it did not have any record concerning the Appellant, and

7.2. to the best of its knowledge the information leaked in the Incident did not contain any personal data concerning the Appellant.

8. It should be mentioned that in the materials supplied to this Board and in his oral submissions to the Board, the Appellant gave an account of his complaints against certain officers from the Mongkok police station over many years. This Board considered that these matters were irrelevant to the instant appeal.

9. Nevertheless, the Board should specifically deal with a matter stressed by the Appellant. He repeatedly asserted that he had received a letter from the office of the then Secretary for Security, with a reference "391" or "39(1)", which he claims would support his complaints. Unfortunately the Appellant has misplaced that letter and has not kept any copy.

10. However, the IPCC has ascertained that it had received a letter dated 20 January 2000 from the Appellant. That letter, a copy of which is at pages 160-161 of the hearing bundle, was then referred by the IPCC to the Commissioner of Police for further handling. The IPCC was informed by the Commissioner of Police on 20 March 2000 that CAPO had recorded the content of the Appellant's letter under the reference "CAPO K (MRB) RN 00000391": see memo at page 164 of the hearing bundle.

11. In any case, the IPCC further confirmed that "MRB" (Miscellaneous Report Book) cases were not within the ambit of IPCC's functions, hence it would not have received information concerning such cases from CAPO.

12. This Board sees no reason not to accept the evidence from the IPCC as stated in paragraphs 7, 10 and 11 above.

Decision

13. In the circumstances, the PCPD was clearly right in declining to carry out or continue any investigation into the Appellant's complaint.

14. Accordingly, this appeal must be dismissed.



(JAT Sew-tong, SC)

Deputy Chairman

Administrative Appeals Board

(中文譯本)

(以英文版本為準)

行政上訴委員會

行政上訴第 29/2006 號

有關

潘國燦

上訴人

與

個人資料私隱專員

答辯人

之間

在行政上訴委員會席前的上訴個案

聆訊日期：二零零六年十一月十三日

裁決理由頒布日期：二零零七年三月三日

裁決理由書

引言

1. 大約在二零零六年三月，投訴警方獨立監察委員會(“警監會”)或其秘書處的承辦商曾在互聯網上洩漏有關投訴警方的個案資料(包括該等投訴人的個人資料)(“事件”)，此事乃公共記錄。
2. 上訴人於二零零六年五月二十四日向個人資料私隱專員(“私隱專員”)作出投訴。從投訴表格中難以辨識上訴人實際受到甚麼屈辱，而表格中所提及事項亦只有一項屬於私隱專員的管轄範圍，即上述事件。因此，私隱專員把上訴人的投訴視作針對其個人資料在事件中遭洩漏處理。
3. 私隱專員在二零零六年六月二十二日的信件中回覆上訴人，拒絕調查或繼續調查上訴人的投訴個案。
4. 上訴人在二零零六年六月二十八日提交上訴通知書，就上述決定向本委員會提出上訴。

5. 同樣，本委員會亦將此上訴視作對上訴人針對私隱專員的決定(即不調查或不繼續調查其個人資料在上述事件中洩漏一事的投訴)的上訴。

提交委員會的證據

6. 上訴人並沒有向本委員會提交證據證實：

6.1 警監會擁有他的個人資料；以及

6.2 這些個人資料在上述事件中被公開。

7. 相比下，在私隱專員就上訴人的投訴向警監會進行查詢時，警監會確認：

7.1 警監會不曾擁有與上訴人有關的任何記錄，以及

7.2 就警監會所知，在上述事件中洩漏的資料並不包括關於上訴人的任何個人資料。

8. 在此，本委員會要提出，上訴人在向本委員會提供的資料和口頭陳述中，訴說他多年來投訴旺角警署某些警務人員。本委員會認為這些事情與本上訴無關。

9. 雖然如此，本委員會仍須特別處理上訴人認為重要的一件事。他一再聲稱曾收到當時保安局局長辦公室一封信，檔號為“391”或“39(1)”，他表示此信可支持他的投訴。不幸的是上訴人找不到這封信，亦沒有保存任何副本。

10. 不過，警監會確認曾於二零零零年一月二十日接獲上訴人來信，並將該信(副本載於聆訊文件冊第 160 - 161 頁)轉介至警務處處長處理。警監會於二零零零年三月二十日收到警務處處長通知，表示投訴警察課已把上訴人來信的內容記錄在案，檔號是“CAPO K (MRB) RN 00000391”，詳見聆訊文件冊第 164 頁的便箋。

11. 無論如何，警監會進一步確認，“MRB”(雜項報案簿)個案不屬於警監會的職權範圍，因此警監會不會曾經從投訴警察課收到關於這些個案的資料。

12. 本委員會認為沒有理由不接納警監會在上文第 7、10 及 11 段所述的證據。

裁決

13. 根據上述情況，私隱專員拒絕就上訴人的投訴進行或繼續進行任何調查工作，這項決定明顯是正確的。

14. 因此，駁回上訴。

行政上訴委員會副主席翟紹唐資深大律師