

ADMINISTRATIVE APPEALS BOARD

Administrative Appeal No. 38 of 2003

BETWEEN

HERON, QUENTIN JAMES LEE

Appellant

and

PRIVACY COMMISSIONER FOR PERSONAL DATA

Respondent

Coram : Administrative Appeals Board

Date of Hearing : 26 February 2004

Date of Decision with Reasons : 16 March 2004

D E C I S I O N

The Appellant was an employee of Cathay Pacific Airways Ltd ("CPA"). By an Agreement between Cathay Pacific Airways Ltd and Citibank International ("Citibank"), a CPA employee may be issued with a Citibank Cathay Pacific Staff Visa Card (Silver or Gold) on application by the employee by completing and signing an Employee Card Application Form. The particulars in this form include the employee's name, employee reference number and monthly salary at the time of application. This form has to be countersigned by an authorized officer of CPA confirming the accuracy of the particulars. Under this Agreement, CPA undertakes to give prior written notice to Citibank if any employee ceases to be an employee of CPA; Citibank may at any time suspend or withdraw the card from any employee without prior notice to CPA.

2. The Appellant applied for a Cathay Pacific Staff Visa card. He signed an Employee Card Application Form which contains the following clause relating to the use of his personal data by Citibank -

“I/We understand that the data requested above is necessary for you to process my/our application and if I/we fail to provide the same to you, you will not be able to issue any card to me/us. I/ we may always contact your Customer Service to get access to and request correction or amendment to the above data. In the event I/We cease to be an employee of Cathay Pacific or if my account or the account of the supplementary card issued under my account becomes delinquent, you may disclose any information or transaction records in relation to the use of my/our card to Cathay Pacific. I also authorize Cathay Pacific to disclose any of my employment information to you from time to time....”

3. The effect of this clause is the employee agrees to the disclosure by Citibank of his personal data for such purposes as may relate to the use of the Cathay Pacific Staff Card.

4. On 31.7 2001, Ms Karen Kam, Benefits Services Adviser of CPA wrote to Citibank (“letter”) (p.210) enclosing a list of “Cathay Pacific staff who have resigned from April to July 2001” with the heading “Citibank – Resignees” (“the List”) (p.211). Among those names on the list is the name of the Appellant - “Heron, Quentin James Lee (Mr.)” together with the “date of termination” of “09-07-2001”.

5. Subsequently, Citibank wrote to the Appellant informing him that following notification received from CPA that the Appellant was no longer employed by CPA, his Cathay Pacific Staff Visa card would be cancelled within 14 days of the letter. (p.237)

6. On 20.11.2001 the Appellant wrote back to Citibank disputing that his employment with CPA had been terminated. He told Citibank that he was still employed by CPA and that legal proceedings on the issue of termination of his employment were pending in the High Court. He wanted Citibank to maintain his Visa card account on the same terms of a CPA employee. He also asked Citibank to provide him with a copy of

CPA's "erroneous" notification of the termination of his employment. (p.132)

7. On 3.12.2001, Citibank replied to the Appellant that his Cathay Pacific Staff Visa card was cancelled when he ceased to be employed by CPA and that by his cardholder agreement with Citibank, he had authorized CPA to disclose his employment information to Citibank. Citibank also refused to let the Appellant have the "card cancellation notification from Cathay Pacific..." on the ground that CPA possessed and controlled the use of such information and prohibited Citibank from complying with the Appellant's request. (p.131)

8. On 6.12.2001, the Appellant wrote to Citibank repeating that he was still employed by CPA and Citibank had no reason to believe that it was otherwise. Citibank should reinstate his credit card. He also repeated his request for the two documents specified in his earlier letter of 20.11.2001. (p.128)

9. On 7.2.2002, the Appellant wrote to Citibank and again requested for the issue of the Cathay Pacific Staff Visa card to him. The Appellant, pursuant to s.18 of the Personal Data (Privacy) Ordinance ("PDPO"), enclosed with the letter a Data Access Request ("Request") in the prescribed form requesting Citibank to send to him a copy of the following documents:

(a) Citibank's initial letter to the Appellant advising him that his card was cancelled ("document 1") and

(b) CPA's letter to Citibank advising Citibank that the Appellant had ceased employment with CPA ("document 2"). (p.170-171)

10. On 20.2.2002, Citibank responded by sending to the Appellant a copy of document 1. As regards document 2, Citibank maintained that it did not belong to Citibank and asserted that CPA possessed and controlled the use of the documents. Therefore, Citibank was unable to provide a copy of it to the Appellant without CPA's consent. (p. 173)

11. On 2.3.2002, the Appellant reminded Citibank that it had to comply with his Request for document 2 within 40 days, i.e. on or before 19.3.2002; otherwise penalties would apply for non compliance. (p.175)

12. On 25.3.2002, Citibank replied that they were unable to comply with the Request and repeated that CPA possessed the data and controlled its use. In the same letter, Citibank informed the Appellant that they had reflected the Appellant's Request to CPA which would follow up the matter with the Appellant. (p. 177)

13. On 27.3.2002 and 4.4.2002, the Appellant wrote to Citibank arguing that document 2 was the property of Citibank and Citibank was the data user within the PDPO. The Appellant told Citibank that refusal to supply document 2 to him amounted to non compliance with the PDPO and in that event, a complaint would be made to the Privacy Commissioner. In the letter of 4.4.2002, the Appellant also complained that Citibank was not permitted to refer his Request to CPA without his consent and that Citibank had acted improperly against his wish. (p.178-180)

14. Apparently, Citibank did not comply with the Appellant's Request. On 17.4.2002, the Appellant wrote to Privacy Commissioner ("Commissioner") setting out the background of his case as disclosed in the exchange of letters between him and Citibank. (p.159). The Appellant also made two formal complaints against Citibank for

- (a) Refusing to comply with his Data Access Request dated 7.2.2002 for a copy of CPA's letter ("the Letter") to Citibank notifying Citibank of his termination of employment.
- (b) Referring his Data Access Request to CPA without his consent, thereby committing a breach of confidentiality. (p.162 -163)

15. On 23.4.2002, the Commissioner acknowledged receipt of the Appellant's complaints. In the same letter, he informed the Appellant that due to the high volume of cases being handled at the time by the Commissioner's Office, it might take sometime for the Appellant's complaints to be fully considered. (p.164)

16. On 29.5.2002, the Commissioner wrote to Citibank setting out the complaints of the Appellant. The Commissioner informed Citibank that pursuant to s.38 (a) of the PDPO, the Commissioner would carry out an investigation of the complaints. The Commissioner asked Citibank to provide the information specified in the Commissioner's letter including the explanation why Citibank was unable to comply with the Appellant's Request regarding document 2. (p.184)

17. On 18.6.2002, Citibank provided the information requested by the Commissioner but in relation to document 2, Citibank stated the following:

“We have kept copy of the List enclosed in CX's correspondence but not the covering correspondence dated 31.7.2001. However, we enclose another similar covering correspondence from CX to the Bank under the same nature for your reference.”

18. It should be noted that the enclosure is a copy of a sample letter from CPA with wording similar to the letter sent to Citibank on 31.7.2001. (p.190-191)

19. Pausing here, we note from this letter that as early as June 2002, Citibank had informed the Commissioner that the covering letter which is the Letter requested by the Appellant was not in the possession of Citibank and Citibank could only provide the List but not the Letter.

20. In the course of his investigation, the Commissioner also wrote to CPA on 29.11.2002 and 17.12.2002 regarding the Appellant's complaints. (p.204 and 206)

21. On 23.12.2002 CPA replied:

“In response to your questions, I can confirm that the data referred to was contained in a letter from Cathay Pacific Airways to Citibank. The letter also contained details of other employees who had left the employment of Cathay Pacific Airways. It was because of this that we advised Citibank not to release the information. In this sense, yes Cathay Pacific did control the data

even though it was in the actual possession of Citibank.” (p.207)

22. We pause again to note that from these letters, CPA and Citibank gave different versions as to who was in possession of the Letter at the time.

23. On 9.1.2003, CPA pursuant to further enquiries from the Commissioner, confirmed that CPA had not prohibited Citibank from releasing the information nor had the power to do so. (p. 209)

24. On 21.1.2003, the Commissioner asked Citibank to provide evidence that CPA had prohibited the release of the document requested by the Appellant (p.221 -222). Citibank replied on 5.2.2003 that it had not been given an affirmative answer in this respect by CPA as to whether the document could be released and suggested that in the interest of the Appellant, the Appellant should approach CPA for access to the relevant data. (p.223)

25. On 20.2.2003, the Commissioner informed Citibank of the results of the investigation in the following terms (p.227 – 233):

“Based on all the evidence made available to me and the circumstances of the case, I am of the opinion that you have contravened the requirements of s.19(1) of the Ordinance by failing to provide a copy of the Requested Data to the Complainant. As regards allegation (II), I am of the opinion that you have not contravened the requirements of Data Protection Principle 3(“DPP3”) in Schedule 1 of the Ordinance.”

26. The Commissioner also advised Citibank that it was “... a data user within the meaning of the Ordinance, in relation to the Complainant’s personal data recorded in the List...” and “... information available from CX indicated that, in providing the List to you, they had not prohibited you from complying with the Complaint’s access request. ...CX made it clear they did not have the power to do so. From the information provided to this office, it does not appear to me that CX controls the use of the data in such a way as to prohibit you from complying with the Request.”

27. The Commissioner also told Citibank that being the data user of the List, Citibank was “obliged under section 19(1) of the Ordinance to give a copy of it to the Complainant with references to other employees of CX being omitted in accordance with section 20(2) (b) of the Ordinance.” and Citibank’s failure to do so was a contravention of section 19(1) of the PDPO.

28. In relation to the second complaint, the Commissioner told Citibank that “any information you collected in respect of the Request was for the purpose of your handling the Request. Given that you took the view that CX had the right to decide whether or not to release the information to the Complainant, your disclosure of the Request to CX was,...directly related to the purpose of you handling the Requestyour act of disclosure was not in contravention of the requirements of DPP3.”

29. Regarding the contravention of s.19(1), Citibank was told that if the Commissioner was of the opinion that the contravention was likely to be repeated by Citibank, the Commissioner had the discretion to serve an enforcement notice on it. However, if Citibank would give to the Commissioner the following undertakings i.e. -

- A. to provide to the Appellant a copy of the List within 14 days of giving the Commissioner the undertaking;
- B. to notify the Appellant that at the time of the Request Citibank did not hold any document requested by the Appellant other than the List within 14 days of giving the Commissioner the undertaking; and
- C. to inform the office of the Commissioner, within 7 days after A and B had been carried out, with supporting documents that it had done so,

the Commissioner would take that into account as evidence that repetition of the contravention was not likely.

30. On 5.3.2003, Citibank gave to the Commissioner in writing the three undertakings set out the Commissioner's letter of 20.2.2003. Pursuant to undertaking C, Citibank on 10.3.2003, informed the Commissioner that undertaking A and B had been carried out and supporting documents were enclosed with the letter. (p.234-235)

31. On 27.3.2003, the Commissioner informed the Appellant of the result of his investigation of the Appellant's complaints against Citibank.(p.242-248). He told the Appellant that Citibank had contravened s.19(1) of the PDPO in failing to provide him with a copy of document 2. He said:

“Given my findings of Citibank's contravention of s. 19(1) of the Ordinance, I may serve an enforcement notice on Citibank pursuant to section 50 if I am of the pinion that their contravention is likely to be repeated in the future. In considering whether the contravention by Citibank is likely to be repeated in the future, I have taken into account various factors, including inter alia, whether Citibank is willing to give a written undertaking to me on their taking appropriate remedial actions in the matter. In this connection, I have on 20 February 2003 notified Citibank in writing the result of my investigation and demanded them to undertake to remedy the contravention. In response to my directions, Citibank has provided me with the following undertaking...”

32. After setting out the three undertakings A, B and C which Citibank was required to give, the Commissioner continued:

“Citibank has produced to me copies of their letters to you dated 10th and 12th of March 2003 in accordance with (C) above. In (the) light of the foregoing, I am satisfied with the remedial actions taken by Citibank in respect of the contravention. As a result, I am of the view that the contravention of section 19(1) of the Ordinance is not likely to be repeated by Citibank. Accordingly, I do not propose to serve an enforcement notice under s.50 of the Ordinance on Citibank in consequence of this investigation.”

33. On 5.7.2003, the Appellant appealed under s. 47(4) of the PDPO to this Board against the decisions of the Commissioner. Section 47(4) provides as follows:

“The complainant (...) may appeal to the Administrative Appeals Board against a decision of the Commissioner –

- (a) to the effect that he has not served, and does not propose to serve, an enforcement notice on the relevant data user in consequence of the investigation concerned; and
- (b) of which the complainant was informed in the notice concerned under subsection (3) served on him.

34. The appellant’s grounds may be briefly stated as follows:

- (a) Citibank’s refusal of his Request was improper and unlawful and the Commissioner should take action against Citibank under s.64 to 66 of the PDPO.
- (b) Citibank had contravened DPP3 by disclosing his Request to CPA and the Commissioner should take enforcement action.
- (c) Citibank destroyed his Request and lied during investigation by the Commissioner and both are contravention of the PDPO. In the alternative, Citibank failed to inform him within 40 days of his Request that the data requested was not in its possession and contravened s. 18(1)(a) of the PDPO.
- (d) The Commissioner should be required to take enforcement action against Citibank for the contraventions specified in (c).

35. The Appellant’s lengthy arguments in support of his appeal are set out in his two letters dated 5.7 2003 and 8.10.2003 and these may be summarized as follows:

- (a) On the question of whether the Commissioner had properly

exercised his discretion in refusing to issue an enforcement notice against Citibank, the Appellant submits that the Commissioner's letter of 23.4.2002 stating that delay in dealing with the Appellant's complaints was due to the high volume of cases the office had to handle at the time, indicates contraventions of the PDPO have become too prevalent and sanction should be imposed to deter such violations, especially violations by corporations. The Commissioner's refusal to issue an enforcement notice is a wrongful exercise of his discretion and this is inconsistent with the intention of the DPPO.

(b) On the question of whether Citibank committed a breach of DPP3, the Appellant says –

(i) whether his employment with CPA has been legally terminated is still a matter of dispute. If he is still employed by CPA, Citibank should not have cancelled his credit card. If he had left the employment of CPA, on expiry of his card, his agreement allowing CPA to exchange information about his personal data ceased to be effective. Even if the agreement is still effective, it does not cover his Data Access Request. The agreement does allow Citibank to disclose his Data Access Request to CPA.

(ii) The Commissioner has ruled that Citibank need not obtain CPA's permission to release the letter to him. The data was therefore in the control of Citibank. There was no need and no purpose for Citibank to disclose his Data Access Request to CPA. Citibank had ignored DPP3. The fact that Citibank had erroneously thought advice should be sought from CPA about releasing the letter is irrelevant.

(c) In a letter dated 12.3.2003, forty days after the Appellant made his Data Access Request, Citibank informed the Commissioner that the data requested by the Appellant was destroyed prior to his Data Access Request. However, in all

the previous correspondence, no such claim had been made. The claim that the letter had been destroyed could not be accepted as true. If it were true, it was an offence under the PDPO.

- (d) The Commissioner's ruling that Citibank did not contravene DPP3 was based on a ground not raised by Citibank and although Citibank had contravened s.19(1), the Commissioner did not issue an enforcement notice. All these show that there was collusion between the Commissioner and Citibank.
- (e) Citibank had violated s. 19(1) and DPP3 and the action taken by the Commissioner was inconsistent with his ruling and conclusion. The refusal by the Commissioner to issue an enforcement notice was without ground.
- (f) This Board should not have allowed the Commissioner privilege from producing the minutes of correspondence between the Deputy Commissioner and the Legal Director of the Privacy Commissioner's Office.

36. In his statement relating to his decision, the Commissioner set out the following reasons for not serving an enforcement notice on Citibank:

- (a) The power of the Commissioner to issue enforcement notice under s. 50(1) of the PDPO is discretionary. Even if there is a contravention of the Ordinance, he is not bound to issue the notice. In exercising his discretion, he takes into account many factors including the likelihood of repetition of the contravention.
- (a) The nature of his discretion is set out clearly in his Complaint Handling Policy which the Appellant had been given a copy.
- (c) This Policy states that the likelihood of a contravention (would) be repeated in the future depends on factors including whether the contravening party is prepared to give an undertaking to the

Commissioner regarding improvement in its future conduct.

(d)The Commissioner took into account that Citibank had undertaken to remedy the breach in two aspects i.e. to provide to the Appellant a copy of the List and confirm to the Appellant that at the time of the Request, other than the List, it did not hold any document requested. These remedial actions are considered by the Commissioner appropriate in the circumstances.

(e) In the light of the above, the Commissioner considered Citibank would not likely repeat the contravention.

37. As regards Citibank's disclosure of the Appellant's request to CPA without his consent, the Commissioner considers the disclosure was directly related to the original purpose of collecting the Appellant's Request, namely to handle the Request. As there was no change of use of the data in contravention of the requirement of DPP3, the disclosure needed not be justified by the Appellant's consent.

38. The decision against which this appeal has been taken out by the Appellant is the decision of the Commissioner contained in his letter to the Appellant dated 27.3.2003. This relates to two matters:

(a)The Commissioner's finding that Citibank had contravened section 19(1) of the PDPO in refusing to supply the Appellant with a copy of the Letter and the Commissioner's refusal to serve an enforcement notice on Citibank despite the contravention.

(b)The Commissioner's finding that the disclosure of the Appellant's Request by Citibank to CPA did not amount to a breach of DPP 3 by Citibank.

39. The appeal is therefore confined to these two matters but we would like to dispose of the allegations by the Appellant first. The Appellant alleges Citibank has committed offences under the PDPO by destroying personal data, lying to the Commissioner during investigation and failing to comply with s.18(1) of the PDPO. We wish to point out that

the Appellant had never complained to the Commissioner about these matters. Naturally, no decision has been made by the Commissioner on these matters and no mention has been made of them in the letter of 27.3.2003. In any case whether an offence of destruction of data or giving false information has been committed by Citibank is a matter of criminal proceedings with which the courts are concerned. These matters do not fall within s. 47(4) of the PDPO for a decision in this appeal.

40. Similarly, we are not here to investigate into the Appellant's allegation of collusion between the Commissioner and the Citibank. Nevertheless, because it is a serious allegation and is relevant to whether the Commissioner had exercised his discretion in good faith, we feel we should not let it go by without saying a few words on this issue.

41. The Appellant submits that Citibank's assertion that the Letter he requested had been destroyed is a lie. He relies on the letter Citibank sent to him on 12.3.2003. He submits that if the Letter had been destroyed at the time he made his Request, in accordance with s. 18(1) of the PDPO, Citibank should have informed him of it within 40 days of 7.2.2002. He maintains that either the Commissioner had accepted without basis Citibank's assertion as true or had through the required undertakings, instructed Citibank to lie about the existence of the Letter. In either case, it shows collusion between the Commissioner and Citibank. In addition, the Appellant says, the Commissioner's refusal to serve an enforcement notice despite Citibank's contravention of the PDPO clearly indicates collusion between the two.

42. The Commissioner says that Citibank's assertion was that the Letter was not in its possession and there was no evidence to the contrary. That being the case, Citibank would not be able to supply the Letter to the Appellant. The Commissioner therefore required Citibank to give an undertaking to write to the Appellant to that effect. The Commissioner says that there was no collusion between them.

43. In our judgment, Citibank wrote the letter of 12.3.2003 relied on by the Appellant in performance of his undertakings to the Commissioner. Citibank stated in the letter that at the time of the Request, it did not hold any document requested by the Appellant other than that which had been

supplied to him. As has been pointed out earlier in this judgment, as early as in June 2002, Citibank had informed the Commissioner that the Letter was not in its possession. It follows that what Citibank asserted on 12.3.2003 could not have been prompted by the Commissioner or an invention at the instigation of the Commissioner. Neither the letter of 18.6.2002 nor the letter of 12.3.2003 states the Letter had been destroyed. Destruction is not the same as non possession and it would be wrong to say that Citibank had asserted that the letter was destroyed. As we will explain later, the refusal to issue an enforcement notice is an exercise of the Commissioner's discretion. This decision without more cannot be evidence of collusion. In our view, there is little support for this allegation.

44. Coming back to the main issue before us, we have carefully considered all the arguments of the Appellants, despite their repetitions as well as the arguments of the Commissioner. We have also considered all the relevant circumstances of the case. We have come to the following conclusions.

45. On the question of enforcement notice, under s.50(1) of the PDPO Commissioner may serve an enforcement notice on a data user who, in the opinion of the Commissioner –

(a) is contravening a requirement under the Ordinance, or

(b) has contravened such a requirement in circumstances that make it likely that the contravention will continue or be repeated.

46. The Commissioner in the notice may direct the data user to take such steps as may be specified in the notice to remedy the contravention or as the case may be, the matters occasioning it within such period as may be specified in the notice.

S.50(2) provides that –

“In deciding whether to serve an enforcement notice the Commissioner shall consider whether the contravention or matter to which the notice relates has caused or is likely to

cause damage or distress any individual who is the data subject of any personal data to which the contravention or matter, as the case may be relates”

47. Thus, subject to s. 50(2) and provided that he takes into account all the relevant circumstances and excludes all those which are irrelevant and he acts reasonably, the Commissioner has a wide discretion in deciding whether to serve an enforcement notice.

48. The primary purpose of serving an enforcement notice on a data user who has committed a contravention of the PDPO is to require him to remedy the contravention, having regard to the damage or stress the contravention has caused or likely to cause to the data subject concerned. But where other means are available to enable the contravention to be remedied, so that any damage or stress caused or likely to be caused, to the data subject can be compensated or avoided, and a repetition of the contravention by the data user can be prevented, such means may be adopted by the Commissioner as an alternative to fulfill the primary purpose of an enforcement notice. In such a case, the Commissioner's refusal to serve an enforcement notice despite a contravention has been found would not be inconsistent with the aim of the Ordinance nor would it undermine its purpose.

49. The Appellant has not complained that he has suffered or he would likely suffer any damage, loss or stress as a result of the contravention by Citibank nor is there any evidence thereof. We are satisfied that by requiring Citibank to give the undertakings which Citibank did give to the Commissioner and which Citibank did perform, the Commissioner had taken reasonable steps to ensure that the contravention of which the Appellant had complained was remedied.

50. The Commissioner, having regard to the fact that this was the first contravention by Citibank and to the cooperation of Citibank in giving and performing the required undertakings, was satisfied that a repeated contravention by Citibank was not likely and an enforcement notice was therefore not necessary. In our opinion, this is a fair and reasonable conclusion by the Commissioner. We agree with his conclusion.

51. The Appellant says that even in that case, Citibank should be punished under one or more of the sections 64 to 66 of the PDPO. Suffice to say, s. 66 relates to damages which may be claimed by a data subject. The Commissioner has no power to award damages. Claiming of damages is a matter for civil proceedings in a civil court and is not a matter for us. S.64 and 65 relate to criminal prosecution which again is not a matter for us. But we wish to add that where the Commissioner considers it inappropriate to issue an enforcement notice against a data user who has committed a contravention of s. 19(1) of the PDPO, to prosecute the data user for the contravention would serve no useful purpose.

52. The Appellant submits that the Commissioner has admitted delay in processing his complaint because of workload in his office. That shows, the Appellant argues, that contravention of the PDPO is too prevalent and sanction should be imposed on Citibank as a deterrent to other corporations and would be offenders. We find no evidence that Citibank is a repeated offender or that contravention of the PDPO by corporation or other employers is prevalent. In our opinion, this case is no more than an isolated case. There is no basis for a deterrent sanction.

53. On the second question of non compliance with DPP 3, DPP3 provides as follows:

“Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than –

(a) the purpose for which the data were to be used at the time of the collection of the data; or

(b) a purpose directly related to the purpose referred to in paragraph (a)”.

54. The Appellant argues that since the Commissioner has ruled that Citibank had control of the Letter, Citibank’s erroneous belief to the contrary is irrelevant. Citibank did not in fact need to consult CPA. And disclosing the Request was in breach of DPP3.

55. The real question is whether the Request had been used for a purpose other than that for which it had been received by Citibank or other than for a purpose directly related thereto. If it had not been so used, no consent from the Appellant is necessary.

56. In our view, the purpose of the Request was to enable the Appellant to gain access to the data which Citibank thought, though erroneously, was in CPA's possession and control and without CPA's permission, could not be released to the Appellant. Common sense dictates that in such a situation, in order to comply with the Appellant's request, it would be natural for Citibank to seek CPA's permission to release the document. In so doing, disclosure of the Request to CPA was inevitable. We are satisfied that in these circumstances, the disclosure of the Request to CPA was for a purpose for which the Request had been received by Citibank or at least for a purpose directly related thereto. The erroneous belief of Citibank that it did not possess the document is relevant to whether Citibank in referring the Request to CPA, acted in good faith. Citibank was not aware of its error until it was advised by the Commissioner of the error. By that time Citibank had already referred the Request to CPA. We are satisfied that Citibank had no ulterior motive in referring the Request to CPA. The disclosure was merely Citibank's endeavour to satisfy the Appellant and it had acted in good faith.

57. The terms of the credit card holder agreement between Citibank and the Appellant are not relevant because they relate to the use of the Appellant's credit card. The employment dispute between CPA and the Appellant plays no part in the present issue though it may be relevant to a dispute in connection with the Appellant's credit card agreement with Citibank. We agree with the Commissioner's conclusion that there was no contravention of DPP3 by Citibank.

58. For the above reasons, we dismiss the appeal.

59. Before leaving, we wish to mention that a copy of the Letter the Appellant all along wanted to have access can be found in the bundle of documents prepared for this appeal. We have referred to this letter at the beginning of this judgment. It can be seen that this Letter is a routine

covering letter enclosing a list of employees who had left CPA during the period covered by the list. There is nothing derogative of the Appellant in this letter nor is there anything specifically referable to the Appellant. It would appear that through this appeal the Appellant has been able to gain access to the document to which he claimed he has been denied access. From a practical point of view, it would appear whether the Commissioner was right or wrong in his conclusions no longer matters. We wish to make it clear that this approach, though practical, is not appropriate and we have not adopted it in reaching our conclusion.

A handwritten signature in black ink, appearing to read 'A. Leong', with a stylized flourish at the end.

(Arthur Leong)
Chairman
Administrative Appeals Board