

ADMINISTRATIVE APPEALS BOARD
Administrative Appeal No. 6/2012

BETWEEN

SUDDEN WEEKLY LIMITED

Appellant

and

THE PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board
Horace Wong Yuk-lun SC (Chairman)
Eugene Fung Ting-sek SC (Member)
Lam Wai-choi (Member)

Date of hearing: 28th and 29th October 2013

Date of handing down Written Decision with Reasons: 6 January 2014

DECISION

A. INTRODUCTION

1. Administrative Appeal Nos. 5 and 6 of 2012 arise out of the complaints made by three television artistes (two in Appeal No. 5 of 2012 (“**AAB5**”) and one in Appeal No. 6 of 2012) to the Privacy Commissioner for Personal Data (“**the Commissioner**”) in 2011. On 20th February 2012, the Commissioner issued a Result of Investigations (“**the Result of Investigations**”) and an enforcement notice (“**the Enforcement Notice**”) pursuant to section 50 of the

Personal Data (Privacy) Ordinance (Cap 486) (“**the Ordinance**”) to each of the Appellants. By separate Notices of Appeal dated 6th March 2012, the Appellants appealed against the Commissioner’s decisions to serve the Enforcement Notice on them.

2. On 3rd August 2012, the Chairman of the Administrative Appeals Board made a direction that both appeals be heard consecutively one after another.

3. The issues that require the Board’s determination are common to both appeals and both Appellants have been represented by the same team of solicitors and counsel. In these circumstances, the Board considers it appropriate to set out our discussions of the issues in the Decision of the Administrative Appeal No. 5 of 2012 (“**AAB5 Decision**”). This decision should therefore be read together with the AAB5 Decision.

B. THE RELEVANT FACTS

4. The Commissioner made certain factual findings in the Result of Investigations. In the Skeleton Submissions as well as the oral submissions of Mr Philip Dykes SC (appearing together with Mr Hectar Pun) for the Appellant, it was confirmed that such findings would not be challenged by the Appellant in this appeal. We accordingly find all of them as facts. For the purpose of this Decision, we set out some of them below. The Result of Investigations was prepared by the Commissioner in Chinese. The facts set out in this Section are based on the translation provided by the Appellant, on which no issue was raised by the Commissioner.

5. Mr Wong Chung Chak (“**Mr Wong**”) is an artiste of Television Broadcasts Ltd and the complainant. In June 2011, Mr Wong discovered that photographs (“**the said Photographs**”) of him at his home (“**the Residence**”), and a relevant article (“**the Article**”) were published on the cover page, page 2 and pages 44-46 of Sudden Weekly Issue No. 829. Most of the photographs showed that he was completely naked. The said Photographs could only have been taken from a place outside the Residence. See §§2 and 3 of Result of Investigations.

6. The said Photographs and the Article showed and described Mr Wong’s activities inside the Residence while he was naked before and after a shower. They also showed the presence of a female artiste, Ms Wu Hang Yee (“**Ms Wu**”), inside the Residence. Mr Wong was of the view that other people should not be able to see his activities inside the Residence located on the 21st Floor,

and other buildings are situated very far away from the windows of the Residence. Mr Wong considered that the Appellant had invaded his privacy by taking the said Photographs and hence lodged a complaint with the Commissioner. See §4 of Result of Investigations.

7. The Appellant stated that its publisher, Mr Chiu Wai Kin (“**Mr Chiu**”), was solely responsible for the publication of the photographs and editing of the Article. See §8 of Result of Investigations.

8. The Appellant admitted that the said Photographs were taken by a photographer hired by it in the course of his duty in the evenings of 25th May, 2nd June and 14th June 2011. It said that the shooting distance was approximately 1,000 metres and the photographer took the said Photographs using equipment including a 600mm telephoto lenses and a 1.4x magnifier. See §12 of Result of Investigations.

9. Mr Chiu asserted that the purpose of the Appellant’s taking and publication of the said Photographs was to prove that Mr Wong and Ms Wu were living together, which involved public interest. Mr Chiu stated that Mr Wong was an idol of young people, and that the public was concerned about Mr Wong’s words and acts. Mr Chiu further asserted that Mr Wong had always openly denied his cohabitation with Ms Wu and the said Photographs undoubtedly proved that Mr Wong was cohabiting with Ms Wu. See §§18 and 19 of Result of Investigations.

10. Mr Chiu confirmed that the Appellant did not make enquiries with Mr Wong in relation to the said Photographs and that Mr Wong was not informed about them prior to the publication of the Article. See §§21(4) and 21(5) of Result of Investigations.

11. The Appellant stated, and Mr Chiu confirmed, that it has not established any written codes or guidelines on the collection of information of artistes’ personal lives. Mr Chiu confirmed that he would verbally instruct all staff to abide by the laws of Hong Kong during the course of news coverage. See §67 of Result of Investigations.

12. Mr Wong confirmed that he had never talked to the media on his initiative denying his cohabitation with Ms Wu. As far as he could remember, Mr Wong never said whether he was cohabiting with Ms Wu when he answered the reporters’ questions. See §25 of Result of Investigations.

13. The Commissioner considered that:

- (1) the means of news gathering (including entertainment news) by media organisations are regulated by the Ordinance (see §34 of Result of Investigations);
- (2) because the said Photographs had already been published in the Sudden Weekly and complaints were received from Mr Wong, the exemption in section 61(1) of the Ordinance would not apply (see §37 of Result of Investigations);
- (3) the taking of the said Photographs by the Appellant in this case amounted to collection of personal data of Mr Wong (see §42 of Result of Investigations);
- (4) the privacy of an individual should be protected against unjustifiable interference irrespective of his social status and occupation and Mr Wong should not be deprived of their rights to privacy protection simply because he is a television artiste (see §46 of Result of Investigations);
- (5) in the circumstances of this case, Mr Wong had reasonable expectation of his privacy at the Residence and did not reasonably expect to have his activities at the Residence being photographed by persons outside (see §47 of Result of Investigations);
- (6) an ordinary person inside the Residence would not reasonably expect that he would be photographed from a location far away from his home using such devices (see §48 of Result of Investigations);
- (7) the Appellant's acts in this case seriously invaded the privacy of Mr Wong (see §50 of Result of Investigations);
- (8) the publication of the said Photographs in Sudden Weekly did not involve public interest (see §§56-66 of Result of Investigations);
- (9) it was improper to rely on the Appellant's employees to interpret the requirements under the Ordinance without a specific guideline on data collection (see §68 of Result of Investigations).

14. The Commissioner concluded that:

- (1) the Appellant used unfair means to collect personal data from Mr Wong by taking the said Photographs in the circumstances mentioned above and contravened the provisions under Data Protection Principle 1(2) (see §69 of Result of Investigations);
- (2) it was likely that the contravention by the Appellant would continue or be repeated (see §71 of Result of Investigations);
- (3) an enforcement notice under section 50 of the Ordinance should be issued to the Appellant (see §72 of Result of Investigations).

15. The matters which the Appellant was directed to carry out in the Enforcement Notice are the same as those set out in §16 of the AAB5 Decision with the appropriate changes.

16. By a letter dated 26th September 2013, the Appellant's solicitors amongst other things informed the Commissioner's Office that the said Photographs had already been permanently deleted from the Appellant's database and website and that paragraph (1) of the Enforcement Notice was no longer a matter that the Board would have to deal with at the substantive hearing.

C. THE GROUNDS OF APPEAL

17. In its Notice of Appeal, the Appellant advanced the same grounds of appeal as those in AAB5. We refer to Section C in the AAB5 Decision for such grounds.

D. GROUND 1

D1. Grounds 1(a) and 1(b)

18. We refer to §19 of the AAB5 Decision and do not see the need to deal with Grounds 1(a) and 1(b).

D2. Ground 1(c)

19. No submissions have been made by the Appellant to support its Ground 1(c) and we therefore do not see the need to deal with this ground either.

D3. Ground 1(d)

20. For these reasons set out in Section D3 of the AAB5 Decision, we reject Ground 1(d).

E. GROUND 2

21. For the reasons set out in Section E of the AAB5 Decision, we reject Ground 2.

F. GROUND 3

22. For the reasons set out in Section F of the AAB5 Decision, we reject Ground 3.

G. GROUND 4

23. For the reasons set out in Section G of the AAB5 Decision, we reject Ground 4.

H. GROUND 5

24. For the reasons set out in Section H of the AAB5 Decision, we reject Ground 5.

I. CONCLUSION

25. We accordingly dismiss this appeal with no order as to costs.

(signed)

(Horace Wong Yuk-lun SC)
Chairman
Administrative Appeals Board