

ADMINISTRATIVE APPEALS BOARD

APPEAL NO. 7/2007

BETWEEN

Young Yim-yi, Bonnie

Appellant

and

Privacy Commissioner for Personal Data

Respondent

Coram: Administrative Appeals Board

Date of hearing: 24<sup>th</sup> July 2007

Date of handing down Decision with Reasons: 19<sup>th</sup> November 2007

DECISION

The appeal

1. The Appellant Young Yim Yi Bonnie was a student who undertook a degree programme in the Social Work and Social Administration Department of HKU. According to her, she had suffered from depression and anxiety. She had lodged complaints about disability discrimination against one teaching staff of the Social Work and Social Administration Department of HKU for marking her script with a more stringent standard in

a supplementary examination in January 2005 by reason of her having taken sick leave.

2. In February 2005, she also made a complaint against the Programme Director of the Social Work and Social Administration Department of HKU. She alleged that the Programme Director pressurized and intimidated her not to “cause troubles”. She then allegedly sustained relapse of depression and had to take sick leave for one semester.

3. In about August 2005, the Appellant complained to the Equal Opportunity Commission (“EOC”) about disability discrimination. In September 2005, the Appellant put the HKU on notice of her complaints against disability discrimination and the alleged further victimization committed by the said Programme Director.

4. According to the Appellant, one crucial piece of evidence to substantiate her complaints was the subject examination script (“the Script”) and the correspondence exchanged between the Social Work and Social Administration Department of HKU and the external examiner (“the External Examiner Correspondence”). In the course of the investigation, the EOC however did not obtain them from the HKU.

5. Consequently, the Appellant issued a letter to HKU in March 2006 to request for copies of the Script and External Examiner Correspondence. HKU failed to provide any reply.

6. The Appellant then complained to the Office of the Privacy Commissioner for Personal Data (“the Commissioner”). After some initial failure to adopt the correct procedure, eventually on 15<sup>th</sup> June 2006, the Appellant issued a Data Access Request Form (OPS003) to

HKU requesting for copies of the Script and the External Examiner Correspondence.

7. By a letter of 27<sup>th</sup> July 2006, HKU informed the Appellant that they were unable to comply with the Data Access Request in that:-

- (a) The Department of Social Work and Social Administration had advised HKU that they no longer have the Script (which examination was held in January 2005) since the department's normal practice was to destroy all examination scripts after one year; and
- (b) Whilst the Script was included in the samples of examination scripts forwarded to the External Examiner for comments, the Script had not been specifically mentioned in the correspondence between the Department and the External Examiner. There was thus no personal data concerning the Appellant.

The said letter then quoted parts of the External Examiner Correspondence which showed that the Script ( which was merely identified by Course Code and Course Title) was one of the scripts sent to the external examiner. The said letter continued to state that the only reference to the Script by the external examiner was:- *"I found the examinations - both their content and instruction - to be of exemplary quality, including the script of the supplementary examination which I reviewed very carefully."* The reference to *"the script of the supplementary examination"* was in fact a reference to the Script. The said letter also pointed out that the external examiner merely commented on the examination arrangements and did not give specific comment on individual scripts.

8. Dissatisfied with HKU's reply, the Appellant complained to the Commissioner. The Appellant alleged that HKU had breached section 19(1) of the Personal Data (Privacy) Ordinance ("PDO") by failing to comply with the Data Access Request within 40 days; that the contents quoted in HKU's reply were incomplete; and that HKU failed to explain why they had not provided copies of the External Examiner Correspondence. The Appellant urged the Commissioner to investigate into the complaint.

9. The Commissioner conducted inquiry with HKU on the matter complained of. By a letter dated 6<sup>th</sup> December 2006, the Data Protection Officer of HKU wrote to the Commissioner:-

- (i) enclosing a letter dated 4<sup>th</sup> December 2006 from the Head of Department of Social Work and Social Administration concerning the said department's policy on keeping past examination scripts; and
- (ii) enclosing an extract from HKU's Code of Practice on the guidelines for the handling of student assessment data.

10. The relevant parts of the said letter dated 4<sup>th</sup> December 2006 written by the Head of Department of Social Work and Social Administration to HKU's Data Protection Officer were:-

*"Please be informed that there is no written documentation with regard to the Department's practice to destroy all examination scripts after one year. We adopt this practice on the basis that all the examination results have been approved and publicized.*

*As far as we are aware, there is no ruling or guideline of the*

*University on the minimum period of keeping past examination scripts. We had used to keep past examination scripts for three years. Owing to the increase of student numbers and courses, and severe shortage of storage space in the Department, we cannot afford to keep past examination scripts for more than one year starting from 2002.*

*...We do not understand the purpose of the request from the student to see the examination script because it contains material written by the student herself only. Examiners are not allowed to write any remarks on the scripts.*"

11. The relevant portions of HKU's Code of Practice on the guidelines for the handling of student assessment data read:-

*"2.1 Decisions have to be reached by the Board of Examiners or comparable committees in Faculties on:-*

*...c) whether or not and when marked examination scripts and mark sheets will be destroyed.*

*2.2 During the assessment period (i.e. when examinations, marking and deliberation of results take place), student personal data are not accessible if there is the provision of an appeal mechanism.*

*2.3 For faculties which allow appeals to form part of the assessment process, appropriate arrangements should be made to safeguard the marked examination scripts and marks.*

*2.4 It is advisable that mark sheets and examination scripts that are no longer required after the assessment process be destroyed at an early opportunity. If they are to be retained, they will form part of the data of individual students and are then open to access on request.*

*2.6 It has been a practice in some Faculties to publish examination results and students' name (usually successful) by posting up the information on notice boards. Examination results and honours classifications no doubt constitute personal data of the students*

*concerned..."*

12. As seen from an internal minute of the Commissioner's office dated 8<sup>th</sup> December 2006, HKU also furnished the Commissioner with copies of the External Examiner Correspondence to show that they did not contain any personal data of the Appellant. According to another such internal minute dated 11<sup>th</sup> December 2006, a senior officer of the Commissioner's office stated that they were satisfied that the External Examiner Correspondence did not contain the Appellant's personal data. There is also another internal minute dated 12<sup>th</sup> December 2006 from another officer of the Commissioner's office stating that she had carefully examined the copies of the External Examiner Correspondence and noted that they only contained the general observations and comments of the overall standard and arrangement of the nine examination scripts provided by the Department of Social Work and Social Administration to the external examiner and that they did not contain any personal data of the Appellant.

#### The Decision of the Commissioner

13. By a letter dated 12<sup>th</sup> December 2006, the Commissioner informed the Appellant of its decision not to carry out a full investigation. In a written decision annexed to the said letter, the Commissioner set out his reasons for the Decision which read as follows:-

*"9. After receiving your complaint, we have inquired into the matter and obtained the following information. HKU asserted that it was the Department's practice in retaining examination scripts for not more than one year due to shortage of storage space. We have obtained from HKU copies of the Correspondence and examined the same.*

10. Generally speaking, an answer in an examination does not amount to personal data of the candidate unless the answer contains information about the candidate personally. In any case, there is no evidence before me establishing that HKU did possess the requested Script at the time of its receipt of your DAR. On the other hand, I have examined the copies of the Correspondence provided by HKU and am satisfied that they do not contain your personal data. Accordingly, there is no prima facie case of contravention of section 19(1) of the Ordinance on the part of HKU in respect of the DAR.

11. As regards your complaint against HKU for not retaining the Script, it should be noted that there is no provision in the Ordinance that requires a data user to retain personal data. The deliberate act of destruction of the Script by HKU according to its retention policy cannot be taken as an "unauthorized or accidental erasure" provided in DPP4. Your complaint is not substantiated.

12. Having carefully considered the information available to me and all the circumstances of this case, I am of the opinion that a full investigation is unnecessary in accordance with section 39(2)(d) of the Ordinance.

13. I enclose copies of DPP4 and sections 2, 18, 19 and 39 of the Ordinance together with our "Complaint Handling Policy" for your reference. On the issue of appeal, please refer to section 39(4) of the Ordinance and Part (E) of our "Complaint Handling Policy".

#### Grounds of appeal

14. The Appellant now appeals to this Administrative Appeals Board against the aforesaid Decision of the Commissioner. The Grounds of Appeal in relation to the Script were as follows:-

- (a) There is a prima facie case for investigation under Section 19(1) of PDO in

which HKU was unable to establish any statutory defence under Section 20 of DPO for non-compliance with the data access request of the Data Subject dated 15<sup>th</sup> June 2006.

- (b) The Social Work Department of HKU had destroyed the Script notwithstanding their being put on notice of the Data Subject's complaint about disability discrimination regarding the marking of the Script in September 2005 i.e. within one year from the examination in January 2005. HKU should be alert about preservation the personal data of the Data Subject before destroying the Script under "usual practice". Such circumstances warrant reasonable grounds for the OCP to conduct a formal investigation on whether such "usual practice" contravened the data protection requirement under PDO. However, the Commissioner had not taken into account these material facts when they made the Decision.
- (c) The Commissioner had not considered investigating into the reasons why the Social Work Department had not taken into account the special feature of the Data Subject's case including the disability discrimination complaints and deliberately destroyed the Script by following their "usual practice". Such acts give rise to suspicion of perverting the course of justice and the OCP had not taken into account when they made the Decision.
- (d) There is no evidence that the Commissioner could find and accept HKU's bare allegation on their "usual practice" of destroying examination scripts within one year. By a letter of 23<sup>rd</sup> October 2006, the Appellant had provided the



Commissioner with a copy of the Data Policy Statement of HKU, which provides no such “usual practice”. The Commissioner had disregarded such important evidence in making the Decision.

- (e) The Commissioner’s finding that the Script does not amount to personal data erred in that the Script provides the following personal data:-
- (i) Her student number;
  - (ii) Subject of assessment on her;
  - (iii) Date of assessment on her;
  - (iv) Questions attempted by her;
  - (v) Her answers to the examination questions which she was requested to express her opinion or thinking for assessment;
  - (vi) The name of her examiner;
  - (vii) The comments given by the examiners on her answers;
  - (viii) The date on which the Script was marked by the examiners;
  - (ix) The opinion of the examiner on her performance;
  - (x) The grade or mark assessed by the examiners on her answers;
  - (xi) The name of the external examiner who reviewed the script of the Complainant;
  - (xii) The external examiner’s comments on (v) to (ix); and
  - (xiii) Date of the review by the external examiner.

The Appellant had highlighted the Commissioner to the above in a letter of 23<sup>rd</sup> October 2006 but the Commissioner had not taken into account in arriving

at the Decision.

- (f) The Commissioner mis-interpreted PDO in claiming that there is no provision that requires a data user to retain personal data. On the contrary, the mechanism under Part V of the PDO (including Sections 19 and 20) is based on the assumption that the data user has the obligation to preserve personal data otherwise the right to access to and correction of personal data would not be able to be exercised and the whole data protection regime would fail.
- (g) The Commissioner erred in its reasoning that Data Protection Principle 4 is only applicable to guard against “unauthorized or accidental erasure” and therefore the PDO including the other Data Protection Principles have no application to cases where the data user deliberately destroyed the personal data of a data subject. On the contrary, the whole regime under Part V of and Data Protection Principles in Schedule 1 to PDO unequivocally emphasize the spirit of ensuring a data subject’s right to access to, accuracy, duration of retention and security of personal data. It would be absurd to interpret that protection is only provided to “unauthorized or accidental erasure” but not deliberate deletion.
- (h) In any case, if the Commissioner took the view that Data Protection Principle 4 is not applicable to this case, the Commissioner should have a statutory duty to provide assistance to the complainant in formulating the complaints under Section 37(4) of the DPO. The Commissioner had not offered such assistance to the Appellant in handling her complaints before they made the

Decision.

15. In relation to the External Examiner Correspondence, the Grounds of Appeal were as follows:-

- (a) The same Ground as in paragraph 14(a) hereinabove.
- (b) As admitted by HKU in its letter of 27<sup>th</sup> July 2006, the External Examiner Correspondence contains certain parts that relate to the assessment of the Data Subject in the supplementary examination. The definition of “personal data” under PDO includes an expression of opinion and therefore the Data Subject is entitled to a copy of such opinion on her examination performance as assessed by the External Examiner. The Commissioner had not duly taken this into account and erred in finding that there is no personal data in the External Examiner Correspondence.
- (c) The same Ground as in paragraph 14(h) hereinabove.

16. The Appellant asked for the Decision of the Commissioner to be set aside and that it should be ordered to conduct a formal investigation on the Appellant’s complaints.

Legal principles

17. In Administrative Appeals No. 11 of 2004, the Board ruled that:-

*"Section 8(2) of the Ordinance [the Personal Data (Privacy) Ordinance] empowered the Commissioner to do all such things as are necessary for, or incidental or conducive to, the better performance of his functions and section 39 gives the Commissioner wide discretion to refuse to carry out an investigation, in particular, he may do so if for any reason an investigation is unnecessary. Under these two sections, the Commissioner may decide in what manner he should perform his functions or exercise any of his powers in respect of a complaint received by him. Thus, to have a preliminary enquiry before exercising his power to decline an investigation is well within the powers conferred on him by the Ordinance provided that he takes into consideration of all the circumstances of the case and acted reasonably."*

18. In Administrative Appeals No. 47 of 2004, the Board ruled that:-

*"Under section 39(2)(d) of the Ordinance, the Commissioner can decide not to investigate for whatever reasons. The Board will not interfere with the Commissioner's decision provided that it was made reasonably, legitimately and in accordance with prescribed procedures."*

19. In Administrative Appeals No. 4 of 2007, the Board held that in considering the Commissioner's decision not to investigate further on a complaint under section 39(2), it was pertinent to note the limited manpower and resources in the Commissioner's Office in assessing the overall reasonableness of the Commissioner's decision.

20. It is further to be noted that under section 21(1)(j) of the Administrative Appeal Board Ordinance, Cap. 442, the Board has wide power to *"confirm, vary or reverse the decision that is appealed against or substitute therefor such other decision or make such other order as it may think fit"*.

### Hearing of the appeal

21. The Appellant was represented in her appeal by her husband who is a practicing solicitor. In fact, the Appellant's husband had been handling the entire complaint procedure for the Appellant up to and including the conduct of her appeal to this Board.

### Ground (a) in relation to the Script

22. The Appellant argues that there was a prima facie contravention of section 19(1) of PDO. Section 19 requires a data user to comply with a data access request not later than 40 days after receiving the request. Section 19(2) stipulates that a data user who is unable to comply with a data access request within the period specified shall (before the expiration of that period) inform the requestor in writing that the data user is so unable and of the reasons why the data user is so unable. Section 18(1) reads:-

*"(1) An individual, or a relevant person on behalf of an individual, may make a request-*

*(a) to be informed by a data user whether the data user holds personal data of which the individual is the data subject;*

*(b) if the data user holds such data, to be supplied by the data user with a copy of such data..."*

23. In HCAL 1050/2000, Yeung J. held that a requestor can only request for a copy of data when the data user does hold such data. In the present case, the Appellant issued a Data Access Request on 15<sup>th</sup> June 2006. HKU replied to such a request by its letter dated 27<sup>th</sup>

July 2006 stating that the Department of Social Work and Social Administration had advised that they no longer have the Script which related to a supplementary examination held in January 2005. After the lodging of the complaint, the Commissioner conducted preliminary enquiries with HKU and received direct confirmation from the Department of Social Work and Social Administration that starting from 2002, it was the Department's practice to destroy all examination scripts after one year. In our judgment, it was not unreasonable for the Commissioner to accept the aforesaid explanation from HKU, namely that it no longer holds the Script. At the hearing of this appeal, the Board enquired from the Appellant's representative as to whether there is any evidence to show that HKU is still in possession of the Script or whether there was any basis to doubt the veracity of HKU's assertion. The Appellant's representative confirmed that he has no such evidence or basis. We are satisfied that the Commissioner did not act unreasonably in accepting the explanation of HKU that it no longer holds the Script. The Commissioner was right in finding that there was no prima facie contravention of section 19(1) on the basis that there was no prima facie case of HKU still holding or possessing the Script (whether or not the Script constituted personal data within the meaning of the Ordinance).

#### Grounds (b) and (c)

24. These two grounds suggest that the Commissioner should have investigated into why the Department of Social Work and Social Administration had chosen to destroy the Script. These two grounds are logically premised on Grounds (f) and (g) in which the Appellant argues that the provisions of PDO impose a duty on a data user to retain personal data of a person. If the provisions of PDO do not impose such a duty and a data user is free to decide whether or not it wishes to retain a person's personal data, then it is not the function of the

Commissioner (under section 8 of PDO) to investigate into why a data user had chosen, in a particular case, not to retain a person's personal data. As explained below, we are of the view that Grounds (f) and (g) are without merits. Accordingly, Grounds (b) and (c) are also without merits.

Ground (d)

25. This Ground suggests that there is no evidence that the Commissioner could find and accept HKU's bare allegation of their "usual practice" of destroying examination scripts within one year. The basis for so suggesting is because the Data Policy Statement of HKU did not contain such a "usual practice". By a letter dated 23<sup>rd</sup> October 2006 to the Commissioner, the Appellant enclosed a copy of the Privacy Policy Statement of HKU downloaded from the internet which reads:-

***"Privacy Policy Statement***

*The University of Hong Kong is committed to meeting internationally-recognized standards of personal data privacy protection, in compliance with the requirements of the Personal Data (Privacy) Ordinance. In doing so, it will be ensured that the University's staff comply with the strictest standards of security and confidentiality.*

*Under the Ordinance, individuals have the right to request access to and correction of their personal data held by the University. Should you wish to access or correct your personal information held by us, please present your enquiry or request by e-mail to [afss@reg.hku.hk](mailto:afss@reg.hku.hk). Data access request can also be made by completing and returning the Data Access Request Form to the Data Protection Officer. A reasonable fee will be charged for the processing of any data access request.*

*If you have any enquiries about the University privacy policy and practices, please contact our Data Protection Officer by e-mail to [afss@reg.hku.hk](mailto:afss@reg.hku.hk). "*

26. It is thus axiomatic that the Privacy Policy Statement does not purport nor is it intended to set out all policies and practices maintained by HKU in respect of its handling of personal data. The Commissioner did make enquires with the Data Protection Officer of HKU and was provided with a copy of the HKU's Code of Practice as set out in paragraph 11 hereinabove. Paragraph 2.4 of the said Code of Practice advised that mark sheets and examination scripts that are no longer required after the assessment process be destroyed at an early opportunity. The said Code of Practice does not impose any specific time limit for the retention of mark sheets and examination scripts which is left to the discretion of each individual faculty or department. In the letter dated 4<sup>th</sup> December 2006 from the Head of Department of Social Work and Social Administration to the Data Protection Officer of HKU, there was clear confirmation that his department's practice was to dispose of mark sheets and examination scripts after one year. The Commissioner clearly had evidence of the "usual practice". There was nothing unreasonable on the part of the Commissioner to act on those evidence. Furthermore, the Appellant's representative had confirmed that he has no evidence to show that HKU is still in possession of the Script nor could he provide any basis to doubt the veracity of HKU's assertion. Ground (d) is without merits.

#### Ground (e)

27. In view of the Board's decision on Ground (a), it is strictly not necessary to decide on whether the Commission was right in paragraph 10 of its Reasons for Decision. Irrespective of whether the Script did contain personal data of the Appellant, if HKU no



longer retains the Script, there could be no contravention of section 19(1) of PDO. However, since the matter had been fully argued, the Board is prepared to make some observations. First of all, the draftsmen of Ground (e) seemed to have misinterpreted paragraph 10 of the Commissioner's Reasons for Decision. What the Commissioner said at paragraph 10 was:- "*Generally speaking, an answer in an examination does not amount to personal data of the candidate unless the answer contains information about the candidate personally.*" The Commissioner was thus not saying that an examination script cannot contain personal data of a candidate. In the "Reply to the Appellant's Representations" filed by the Commissioner, it was accepted that an examination script would contain the candidate's number, which would be his personal data. Counsel for the Commissioner also referred to *Hong Kong Data Privacy Law: Territorial Regulation in a Borderless World*, 2<sup>nd</sup> ed., by Mark Berthold and Raymond Wacks in which the learned authors said:-

*"...opinion data do not 'relate' to an individual because they record or reflect his opinions. A research paper or book does not constitute personal data about the author unless it has autobiographical content. Similarly, A's evaluation of B does not sufficiently relate to A to constitute personal data about him. It does, however, relate to B."*

Accordingly, if an examination script of the Appellant was marked with the examiner's comments or evaluation of the Appellant's answers, that examination script would be a document containing personal data of the Appellant.

28. In the present case however, the Commission was presented with evidence from the Department of Social Work and Social Administration (in its letter dated 4<sup>th</sup> December 2006) that the examination scripts contained only the materials written by the student because examiners were not allowed to write any remarks on the scripts. This statement is consistent

with paragraphs 2.1, 2.3 and 2.4 of HKU's Code of Practice which all refer to "*mark sheet*" in conjunction with examination scripts. Remarks of an examiner would thus be contained in a separate document rather than written on the examination script. In the context of the Code of Practice, the references to "*marked examination script*" simply meant "examination script that had gone through the process of assessment". The Appellant has provided no reason or basis to suggest that the Commissioner acted unreasonably in accepting the veracity of this statement from the Department of Social Work and Social Administration. Therefore whilst the Script might contain personal data of the Appellant in the sense that it might contain her student number, subject of assessment on her and the date of her examination, the Commissioner did not err in stating that her answers do not amount to personal data of the Appellant.

#### Grounds (f) and (g)

29. These two grounds are directed towards paragraph 11 of the Reasons for Decision of the Commissioner. The Commissioner concluded that the Ordinance did not require a data user to retain one's personal data and that Data Principle 4 ("DPP4") did not apply to a deliberate act of destruction of the Script.

30. As explained above, section 18 provides that *if a data user holds the personal data of an individual*, then upon proper request, he has to inform the requestor whether he holds his personal data, and if so, provide him with a copy. DPP2 provides that "*Personal data shall not be kept longer than is necessary for the fulfillment of the purpose...for which the data are or are to be used.*" Section 26 positively stipulates that "*A data user shall erase personal data held by the data user where the data are no longer required for the*

*purpose...for which the data were used...*". DPP2 and section 26 thus implicitly recognize the situation whereby a data user had, at one stage, collected and retained a person's personal data but later erased such data after fulfillment of its purpose. The decision is on the data user as to whether or not he wishes to continue retaining one's personal data having regard to the purpose for which the data were originally collected. The law only prevents the data user from retaining the data unnecessarily. It is ludicrous to suggest that the law imposes a duty on a data user to keep one's personal data indefinitely. Neither does the law impose any duty on a data user to justify his decision not to continue retaining one's personal data. On the contrary, it is only when a data user seeks to continue retaining one's personal data despite fulfillment of their purpose that he is required to justify his action. However, during the time when the data user is still retaining such personal data, DPP4 requires him to preserve the sanctity and accuracy of the data. The data user is thus required to protect such personal data from "*accidental access, processing, erasure or other use...*". In Administrative Appeals No. 5/1999, the Board set out the correct approach to DPP4 as follows:-

*"...As a matter of construction, DPP4 is clearly intended to ensure that the personal data is stored in a secured manner so that there would not be any **unauthorized or accidental access, processing, erasure or other use of the data**. It refers to the data being held by the data user and steps to be taken to ensure there will be no unauthorized or accidental use of the data. The factors that the data user must consider include the storage (i.e. location); security measures in accessing (both in terms of equipment and personnel) and transmission of the data. The activities such as "access, process or erasure" which DPP4 seeks to avoid must be "unauthorized or accidental" in nature. This clearly refers to the security aspect of the protection. The general words "other use" must be construed by reference to the previous activities such as access, processing and erasure."*

31. The Appellant argues that the effect of PDO is that a data user should retain the

personal data at least up to the time when the purpose for which they are collected is fulfilled. In our judgment, the provisions of PDO do not have the effect sought to be argued by the Appellant. They do not impose any positive duty on a data user to keep or retain one's personal data until the purpose (for which the data was originally collected) is exhausted. Nor do they require a data user to justify his deliberate decision of not continuing to retain one's personal data. Grounds (f) and (g) are thus equally without merits.

#### Ground (h)

32. This Ground relies on section 37(4) of PDO and suggests that the Commissioner had failed to offer assistance to the Appellant in handling her complaint before he made the Decision. Section 37(4) reads:-

*"37(4) It shall be the duty of the Commissioner and each prescribed officer who has been employed under section 9(1)(a) to provide appropriate assistance to an individual, or a relevant person on behalf of an individual, who wishes to make a complaint and requires assistance to formulate the complaint."*

33. This ground is utterly without merits. There is no evidence that the Appellant or her husband had ever required or appeared to have required the assistance of the Commissioner or his staff to formulate the complaint. On the contrary, the Appellant's husband is a solicitor who has demonstrated his ability to formulate highly detailed and structured complaints, grounds of appeal, and representations.

#### Grounds (a) and (b) in respect of the External Examiner Correspondence

34. Under Ground (a), the Appellant argues that there was a prima facie case of contravention of section 19(1) in relation to the External Examiner Correspondence. Under Ground (b), the Appellant argues that the External Examiner Correspondence would include an expression of opinion on the Appellant's examination performance. Unlike the Scripts, HKU does retain the External Examiner Correspondence and had provided them for the Commissioner's perusal.

35. In its reply to the Data Access Request, HKU had (in its letter dated 27<sup>th</sup> July 2006) set out the relevant parts of the External Examiner Correspondence which showed that there was no comment on the Appellant's examination performance at all. As pointed out in paragraph 12 hereinabove, staff members of the Commissioner's office had carefully examined the External Examiner Correspondence and concluded that they did not contain any personal data of the Appellant. In particular, a staff member of the Commissioner's office specifically confirmed that the External Examiner Correspondence merely contained general observations and comments of the overall standard and arrangement of the nine examination scripts provided to the External Examiner. The Appellant has put forward no basis to challenge the Commissioner's assessment that the External Examiner Correspondence did not contain any personal data of the Appellant and that there was no prima facie case of contravention of section 19(1). Grounds (a) and (b) in relation to the External Examiner Correspondence are without merits.

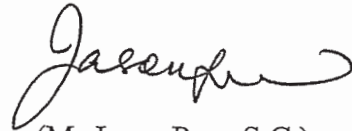
#### Ground (c) in respect of the External Examiner Correspondence

36. This Ground again suggests that the Commissioner had failed to offer assistance to the Appellant in handling her complaint before they made the Decision. For the same

reason as set out in paragraphs 32 and 33 hereinabove, this Ground of appeal is equally rejected.

### Conclusion

37. In conclusion, all grounds of appeal raised by the Appellant are without merits and are rejected. This appeal is accordingly dismissed.

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

(Mr Jason Pow, S.C.)

Deputy Chairman  
Administrative Appeals Board