

ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEAL NOS. 1, 2, 5, 6, 8-11, 16 & 17/2024

BETWEEN

LAU TAK LUN

Appellant

and

PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

- Mr Jenkin Suen, SC (Deputy Chairman)
- Mr Cheung Human, MH (Member)
- Mr Sy Ming-yiu (Member)

Date of Hearing: 30 May 2025

Date of Handing down Written Decision with Reasons: 15 September 2025

DECISION

A. INTRODUCTION

1. These are appeals ("the Appeals" or "the First String of Appeals") by Mr Lau Tak Lun ("Mr Lau" or "the Appellant") against ten decisions of the Privacy Commissioner for Personal Data ("the Commissioner" or "the Respondent")

dated 22 November 2023, 15 December 2023, 8, 12, 17, 22, 24 & 26 January 2024, and 5 & 14 February 2024 (“the Decisions” or “the First String of Decisions”). Among the Decisions:

- (1) 8 of them (being the impugned decisions of AAB Nos. 1, 2, 6, 8-11 & 16/2024) were made on the basis of section 37 of the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”), namely that the alleged “personal data” involved either company information or such information that, without more, cannot directly or indirectly ascertain the Appellant’s identity as the data subject, and accordingly the Commissioner decided that she was unable to process the cases in questions as “complaints” under section 37 of the PDPO. It is also for this reason that the Commissioner took the stance that the Administrative Appeals Board (“Board” or “AAB”) has no jurisdiction to hear these appeals under section 37 of the PDPO;
- (2) The remaining 2 of them (being the impugned decisions in AAB Nos. 5 & 17/2024) were made under section 39(2)(ca) and 39(2)(d) of the PDPO, namely that the Commissioner found that there was either no disclosure of the Appellant’s “personal data” as defined under the the PDPO, or no prima facie contravention of section 64(3A) or 64(3C) of PDPO, and it is the Commissioner’s position that she has duly exercised her discretion not to carry out an investigation of the Appellant’s complaints.

2. Subsequently, the Commissioner decided that the Decisions should be withdrawn and the matters reconsidered holistically, taking into account the detailed elaborations made by the Appellant in his various Notices of Appeals. The Commissioner’s decision to withdraw and reconsider the matter was

conveyed to the Appellant by letter dated 26 July 2024, and to the Board by letter dated 29 July 2024 (collectively “the Jul 24 Letters”). By the Jul 24 Letters, the Commissioner has decided to withdraw the Decisions and reconsider the complained matters, including a substantive consideration of whether any “specified investigation” as defined in section 66C of the PDPO ought to be commenced in respect of any possible doxxing offences.

3. By way of background, this was not the first time the Commissioner has withdrawn her decisions in relation to similar or related complaints by Mr Lau. In *Administrative Appeal No. 20 of 2023* (“AAB No. 20/2023”), after Mr Lau lodged the Notice of Appeal, the Commissioner informed the Board that she had “decided to withdraw” the impugned decision, and that she would “continue to handle the Appellant’s complaint”. The Commissioner invited the Appellant to consider withdrawing his appeal, but the Appellant declined to do so. Ultimately, the Board exercised the power under section 21(1)(h) of the Administrative Appeals Board Ordinance (“AAB Ordinance”) to make a determination of the appeal in AAB No. 20/2023 summarily in favour of Mr Lau, consequential upon the Commissioner having reversed or withdrawn the decision in question without consideration of the merits of appeal in AAB No. 20/2023. Nevertheless, the Board declined to award costs against the Commissioner.

4. Be that as it may, the withdrawal of the Decisions pursuant to the Jul 24 Letters culminates in the decision of the Commissioner dated 15 August 2024 not to carry out criminal investigation into alleged doxxing offences (“Reconsidered Decision”). According to the Commissioner, the Reconsidered Decision was made upon reconsideration of the subject matters of the present Decisions (i.e. the First String of Decisions) being appealed against in the present Appeals (i.e. the First String of Appeals”).

5. On 14 November 2024, Mr Lau filed a Notice of Application for Leave to Apply for Judicial Review (“Form 86”) to seek relief in HCAL 2130/2024 (“JR Proceedings”) in respect of the Reconsidered Decision. A central dispute in the JR Proceedings is concerned with the extent to which the Court may interfere with the decision of the Commissioner as to whether to undertake specified investigation for prospective criminal proceedings. Thus far, the Commissioner has filed her Initial Response in the JR Proceedings on 18 February 2025 (“R’s Initial Response”) whilst Mr Lau has filed his initial response to R’s Initial Response on 20 May 2025 (“Lau’s Initial Response”). The matter is now pending determination by the Honourable Mr Justice Coleman.

6. In view of the withdrawal of the Decisions following the Jul 24 Letters, the Board has directed the parties to file submissions as to the further conduct and costs of the present Appeals. Pursuant to such directions, the following have been filed and have been considered by the Board, namely:

- (1) Written submissions dated 2 October 2024 from the Appellant;
- (2) Letter dated 19 November 2024 from the Respondent to the Board, enclosing the Respondent’s submission and the list of documents with copy;
- (3) Letter dated 17 January 2025 from the Appellant to the Board, enclosing the Appellant’s response to the Respondent’s submission with enclosures;
- (4) Letter dated 15 March 2025 from the Appellant to the Board (being the Appellant’s supplemental submission); and

- (5) Letter dated 14 May 2025 from the Respondent to the Board, enclosing the Respondent's submissions in reply to the Appellant's supplemental submissions (by Mr Martin Ho, Counsel) and the list of documents with copy.

7. Separately, the Appellant has lodged appeals against six decisions of the Commissioner ("Second String of Decisions") in AAB Nos. 44-49/2024 ("Second String of Appeals"). A central issue in the Second String of Appeals is whether the Board has jurisdiction to hear those appeals, given that the Second String of Decisions pertain to criminal investigations by the Commissioner.

8. Since the First String of Appeals and the Second String of Appeals are interrelated to some extent, the Board has directed them to be heard at the same time on 30 May 2025.

9. At the hearing on 30 May 2025, the Board has heard oral submissions from (i) Mr Lau and (ii) Mr Martin Ho, Counsel for the Commissioner. In short:

- (1) As regards the First String of Appeals, the Commissioner invites the Board to dismiss them as they have become academic. On the other hand, Mr Lau invites the Board to deal with them substantively, or alternatively allow the Appeals summarily with costs to Mr Lau.
- (2) As to the Second String of Appeals, it is the Commissioner's primary stance that they should be dismissed for want of jurisdiction. Notwithstanding such primary stance, the Commissioner accepted at the oral hearing that it is a sensible approach to stay the Second String of Appeals pending the determination of the Honourable Mr Justice Coleman in the JR Proceedings, so that the Board could have

the guidance of the Court before resolving the Second String of Appeals.

10. Further, during such hearing, Mr Lau produced for the first time the following (which are relevant to the Second String of Appeals):

- (1) The Commissioner's Complaint Form for Suspected "doxing" offence under section 64 of the PDPO; and
- (2) Lau's Initial Response.

11. Towards the end of the hearing on 30 May 2025, the Board has directed the Appellant to lodge the following within 7 days of the hearing, namely:

- (1) The annexures to Lau's Initial Response;
- (2) Mr Lau's Statement of Costs setting out the costs sought to be recovered against the Commissioner in the First String of Appeals;
- (3) Decisions on costs in AAB 34 of 2017 (dated 28 November 2019) and AAB 22 of 2020 (dated 13 April 2023) referred to by Mr Lau during oral submissions.

12. In this Decision, the Board will deal with the First String of Appeals. As regards the Second String of Appeals, they will be dealt with by a separate decision of the Board.

B. DISCUSSION

13. As mentioned above, the Commissioner contends that the present Appeals have become academic. In particular:

- (1) The Commissioner invited the Board to dismiss the present Appeals on the ground that recent developments have rendered it academic and/or unnecessary for the Board to address the complaints underlying the First String of Appeals.
- (2) In the latest submissions filed on behalf of the Commissioner on 14 May 2025, Mr Martin Ho submitted that, in view of the Reconsidered Decision and the JR Proceedings, the First String of Appeals have been overtaken by events and it is entirely academic to examine the substantive merits of the Decisions.
- (3) Mr Ho thus invited the Board (i) to simply make no order in respect of the Decisions or (ii) alternatively, to summarily determine these Appeals under section 21(1)(h) of the AAB Ordinance.

14. On the other hand, Mr Lau submitted that, since he has not abandoned the Appeals, it is necessary for the Board to formally set aside the Decisions in order to dispose of the Appeals, instead of making no order or otherwise dismissing the Appeals. In particular:

- (1) Mr Lau prays for the Board's consideration of the merits of the Appeals on de novo basis without a hearing based on the papers already before the Board and seeks order in terms of the prayers for relief sought, pursuant to section 21(1)(g) of the AAB Ordinance (which provides that "with the consent of the parties to the appeal, determine the appeal without an oral hearing on the basis of written submissions only").
- (2) Alternatively, Mr Lau stresses that the Board has the power to make a determination of the appeal summarily in favour of the appellant

without a hearing pursuant to section 21(1)(h) of AAB Ordinance, and that such summary determination procedure has been adopted by the Board in AAB No. 17/2023, AAB No. 20/2023 and AAB No. 4/2024.

- (3) Specifically, if the Board is minded to adopt the summary determination procedure under section 21(1)(h) of the AAB Ordinance, Mr Lau asks the Board to spell out the practical effect akin to §11 in AAB No. 17/2023 and §7 in AAB No. 4/2024 to avoid any ambiguity or misunderstandings.

15. Having considered the relevant circumstances and the submissions from the parties, the Board has ultimately reached the decision to summarily determine the Appeals in favour of Mr Lau and formally set aside the Decisions without consideration of the merits of the Appeals.

16. *First*, we do not consider it desirable or appropriate to venture into the merits of the Appeals, as suggested by Mr Lau. Without being exhaustive:

- (1) As a result of the withdrawal of the Decisions, the Commissioner has not taken further steps since July 2024 to file further statements or make further discovery, nor to file witness statements. It would not be desirable to determine the merits of the Appeals in the absence of all relevant materials and full assistance from the parties.
- (2) As the subject matters of the Decisions were reconsidered and culminated in the Reconsidered Decision which is now the subject of challenge in the JR Proceedings, the Board does not consider it desirable to go into the merits of the Decisions which are overtaken by events.

- (3) Given the potential overlap of the substantive issues in the Appeals and the JR Proceedings, it is also not desirable to go into the merits of the Appeals to minimise any risk of inconsistent findings.
- (4) For the avoidance of doubt, the above do not preclude the Board from determining the Appeals summarily without consideration of merits.

17. Second, in §§6-9 of the decision of AAB No. 20/2023, the Board held as follows:

“6. However, the fact is that the Respondent has withdrawn the Decision and as such in effect reversed the same, wherefor the subject matter of the Appeal is no longer in existence and the Board has power to make a determination of the Appeal summarily in favour of the Appellant without a hearing pursuant to section 21(1)(h) of the AAB Ordinance which provides as follows:

“(1) For the purposes of an appeal, the Board may- ... (h) if it appears to the Board that the respondent has reversed the decision appealed against, determine the appeal summarily in favour of the appellant without a hearing and without calling on anyone to attend or to appear before it.”

7. In the circumstances, the Board would accordingly exercise the power under section 21(1)(h) of the AAB Ordinance to make a determination of the Appeal summarily in favour of the Appellant without a hearing. As the exercise of this power is made consequential upon the Respondent having reversed or withdrawn the Decision, it is exercised without consideration of the merits of the Appeal, and without hearing the parties.

8. Accordingly, the Appeal is allowed and the Decision is formally set aside.

9. As the present decision is made without consideration of the merits, apart from formally setting aside the Decision, it is inappropriate for this Board to grant any other relief as sought by the Appellant in the Notice of Appeal. For the same reasons, it is also inappropriate for this Board to make any comments on the merits of the Complaint, or to speculate on the possible outcome of the Respondent's re-consideration of the Appellant's Complaint (or complaints) – and we will not do so.”

18. The Board agrees with the above approach and reasoning which should apply equally to the present Appeals.

19. *Third*, we do not accede to the Commissioner's request to dismiss the Appeals or otherwise make no order on the Appeals. Without being exhaustive:

- (1) We prefer the approach adopted in AAB No. 20/2023, particularly as it is a decision in respect of an appeal involving the same parties and similar or related complaints.
- (2) The Commissioner argues that a responsible public authority is obliged to consider whether the decision it had made ought to be reconsidered, in light of new developments that have emerged. However, this was not the first time the Commissioner has withdrawn her decisions only after the lodging of appeals by Mr Lau.
- (3) Moreover, as compared with AAB 20/2023 (where the Commissioner withdrew her decision about 2 weeks after Mr Lau lodged his notice of appeal), the Commissioner saw fit to withdraw the Decisions here after a comparatively longer period of time. As such, there is all the more reason to exercise our powers to determine the Appeals summarily in favour of Mr Lau.

- (4) The Commissioner further argues that there is no need for any order of the Board to be made for the withdrawal to be effected. However, this does not sit well with section 21(1)(h) of the AAB Ordinance which expressly empowers the Board to determine the appeal summarily in favour of an appellant in circumstances where the respondent has reversed the decision appealed against. In other words, the statute contemplates that, even if there is no need for any order to be made, the Board can nevertheless exercise the power to determine an appeal summarily where a decision has been reversed (or effectively reversed by being withdrawn). There is no bar to the Board doing so to formally set aside the Decisions to dispose of the Appeals anyway.
- (5) The Commissioner has, among others, argued that there should be no summary determination given the Commissioner's stance on the merits, including for instance the lack of jurisdiction by the Board to deal with (i) decisions concerning criminal investigations and/or (ii) decisions under section 37 of the PDPO. In his oral submissions, Mr Martin Ho reiterated that summary determination is not appropriate given complicated issues such as whether the Court has jurisdiction to deal with section 37 appeal and whether the Commissioner's understanding (that no personal data is involved) is subject to appeal. Nevertheless, given that we have decided not to venture into the merits of the Appeals, we do not consider it desirable to selectively entertain (and adjudicate on) such arguments by the Commissioner.
- (6) In any case, there should be no real concern that such summary determination of the Appeals *without consideration of merits* would somehow prejudice the position of the Commissioner in future.

20. In the circumstances, the Board would accordingly exercise the power under section 21(1)(h) of the AAB Ordinance to make a determination of the Appeals summarily in favour of the Appellant. For the avoidance of doubt, given that section 21(1)(h) of the AAB Ordinance empowers the Board to do so without a hearing, it must go without saying that *a fortiori* the Board retains such power to do so where a hearing is directed to have taken place. As the exercise of this power is made consequential upon the Commissioner having reversed or withdrawn the Decisions by way of the Jul 24 Letters, it is exercised without consideration of the merits of the Appeal.

C. COSTS

21. Mr Lau has asked for costs to be awarded against the Commissioner. Having considered the arguments from both parties (including the decisions on costs in AAB 34 of 2017 (dated 28 November 2019) and AAB 22 of 2020 (dated 13 April 2023) relied upon by Mr Lau) and with the benefit of the reasoning and analysis in §§13-21 of the decision in AAB No. 20/2023, the Board is not satisfied that in all the circumstances of the case it would be unjust and inequitable not to make an award of costs against the Commissioner. This is particularly so bearing in mind that the Board has not ventured into the merits of the Appeals, and that overlapping issues between Mr Lau and the Commissioner are yet to be determined either in the JR Proceedings and/or the Second String of Appeals (insofar as any stay of such Appeals is lifted in future following the determination of the JR Proceedings). It may be noted that, in contrast, in AAB 34 of 2017 and AAB 22 of 2020, the Board awarded costs in favour of the appellants only after allowing the appeals with substantive determination, i.e. the Board went into the merits and determined the same. Therefore, these decisions are distinguishable from the present case. As the Board is not minded to award costs, it is not necessary to consider and deal further with the Appellant's Statement of Costs.

D. CONCLUSION

22. For the reasons stated above, the Board allows the Appeals summarily in favour of the Appellant pursuant to section 21(1)(h) of the AAB Ordinance and the Decisions are formally set aside. Further the Board makes no order as to costs.

23. Lastly, we thank the Appellant and Mr Martin Ho for the Commissioner for their assistance to the Board.

(signed)

(Mr Jenkin Suen, SC)

Deputy Chairman

Administrative Appeals Board

Appellant : Acted in person

Respondent : Represented by Mr Martin Ho, Counsel instructed by the
Respondent