ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEAL NO. 30/2024

BETWEEN

林進傑 Appellant

and

PRIVACY COMMISSIONER FOR PERSONAL DATA Respondent

Coram: Administrative Appeals Board

- Ms Rachel Lam Yan-kay, SC (Deputy Chairman)
- Ms Mandy Ng Man-yan (Member)
- Mr David Pong Chun-yee, JP (Member)

Date of Hearing: 21 February 2025

Date of Handing Down Written Decision with Reasons: 8 December 2025

DECISION

INTRODUCTION

1. By an application dated 6 August 2024, the Appellant seeks to appeal against the decision dated 23 July 2024 of the Privacy Commissioner for Personal

Data, the Respondent herein, rejecting his complaint alleging the use of his data by the Duty Lawyer Service ("DLS") had been improper.

2. The essence of the complaint was that the DLS had used his personal data collected during an earlier meeting (in August 2023) for the purposes of a later meeting (in September 2023), and that such use contradicted his legitimate expectation that it would not be so used.

3. In the course of this appeal, the Board has received and heard submissions from the Appellant and the Respondent. The relevant "Person Bound" in these proceedings is the DLS.

BACKGROUND

4. The background can be briefly stated.

5. In 2022, the Appellant sought leave to apply for judicial review of the decision of the Ombudsman to contact the Traffic Complaints Unit ("TCU") in respect of his complaint, which was not a complaint about the TCU itself (see HCAL 1271/2022, decision dated 29 December 2022). The application was rejected. He then appealed. This appeal was rejected as well (see CACV 10/2023, decision dated 23 August 2023).

6. On the same day that his appeal was rejected, the Appellant then applied to the Duty Lawyer Service, submitting an application form for free legal advice, wherein he stated that he wished to seek advice in respect of two aspects of CACV 10/2023. First, he wished to seek advice on how to oppose the bill of legal costs

against him. Second, he wished to seek advice on whether and how new evidence could be submitted for the Court of Appeal to consider.

7. He attended the meeting with DLS on 30 August 2023 ("the August Meeting").

8. On 12 September 2023, the Appellant filed another application form for free legal advice, saying that he had received the bill of legal costs in a case (without naming the case number), and that he wished to seek advice on how to proceed with taxation and/or how to further oppose in the matter. On 21 September 2023, he met with a Lawyer surnamed Lee during the DLS meeting ("the September Meeting"), and in the course of that meeting, Lawyer Lee mentioned the August Meeting and the Appellant noticed that he had looked at the relevant materials for that prior meeting.

9. The Appellant was upset that the information for the August Meeting had been referred to and utilised by DLS for the purposes of the September Meeting. On such basis, he complained to the Respondent stating *inter alia* that Data Protection Principle 3 ("Principle 3") (that personal data should not be used for a new purpose unrelated to the original purpose of collection, unless the data subject's express and voluntary consent had been obtained) had been contravened.

10. After investigation, the Respondent determined that in providing the information from the August Meeting to Lawyer Lee, this did not constitute a new purpose, and therefore, that Principle 3 had not been violated.

11. Being dissatisfied with this conclusion, the Appellant then lodged the present appeal.

THE PARTIES' RESPECTIVE POSITIONS

12. In the Notice of Appeal dated 6 August 2024, the Appellant said that his legitimate expectations in respect of how DLS operated had been contravened, including the understanding that the consultation would be a "one-off" event and that there would be confidentiality for the information shared.

13. By his Notice of Appeal, he referenced the case of *Ng Shek Wai v The Medical Council of Hong Kong* [2015] 2 HKLRD 121. In that case, the Medical Council ("the Council") held a disciplinary inquiry in relation to M, a medical practitioner. The inquiry was conducted in public and the names of the members of the Council were disclosed on name plates placed in front of them. After M was sentenced, the Council was alerted by the media that M did not have a clear record and reviewed its original decision. The written decision of the Council only stated the name of the Chairman. The matter was reported in the news. A member of the public unconnected with the case ("X") enquired with the Council of the identity of members sitting at the inquiry, the Legal Adviser of the Council and the defence counsel. However, X refused to answer repeated enquiries by the Council as to his purpose of the inquiry and intended use of the information. X then applied for judicial review to quash the Council's decision in refusing to disclose the requested information. The Council contended that Data Protection Principle ("DPP") 3 in Sch.1 of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO")applied to restrict disclosure to X and that none of the statutory exemptions from DPP applied. The Court held that this was erroneous, and that

the restriction did not apply, but that the principle of open justice applied such that the decision would be quashed and remitted to the Council for decision.

14. The Appellant relies on §52, an obiter statement, which suggests that disclosing the names to X would not constitute a "new purpose" as defined in s.3(4) of Sch.1 of the PDPO. There was no evidence of any statement of the purpose for collecting personal data. In ascertaining the original purpose or any directly related purpose, it was legitimate to have regard to "the reasonable expectations of the data subject". The names of the Council's members were disclosed on name plates placed in front of them at the inquiry. Members of the Council, the Legal Adviser and defence counsel would reasonably expect that the Council could disclose, either in its written decision or otherwise, their names and the capacity in which they attended. (See paras. 52-53.)

15. As we understand the Appellant's argument, it is his position that the reference to the information from the August Meeting as deployed in the September Meeting was a "new purpose" and thus exceeded his reasonable expectations.

16. He seeks to support this argument by referring *inter alia* to the DLS website, relying on the words "一次過" (one-off) and "絕對保密" (completely confidential).

17. In response to the above, the Respondent had set out in some detail their reasons for considering that the matter was part of the same matter and thus the information collected in August could properly be used for the September Meeting.

18. Non-exhaustively, the following points were noted first in the Respondent's decision, and then in the response to the present appeal:

(1) After considering the relevant materials (in particular the application forms for both the August and September Meetings), they had determined that this concerned the same case at different stages of progress.

(2) The subject matter to be explored had a high degree of overlap – in August the advice sought concerned *inter alia* opposing the costs order; in September, less than two weeks later, the advice sought concerned *inter alia* taxation. On both occasions, the questions posed were in relation to the same case at the same level of court.

(3) The question of what constituted 'reasonable expectations' was to be approached holistically, taking into account the context and circumstances of the case. The terms "一次過" (one-off) and "絕對保密" (completely confidential) should not be interpreted in isolation, but should be understood within the wider context.

(4) This wider context included a number of factors. First, the role and activities of the DLS, which is a government funded operation, needed to be managed in a way which ensured that there would not be abuse of the service and a fair and efficient deployment of resources so as to best assist the public. Thus, information relating to the same applicant and same case ought properly be used for handling subsequent related consultations. This would also benefit the applicant, in that the subsequent meetings would be informed by

the history of their case as recorded in prior consultations. Such use thus fell within legitimate expectations.

(5) Second, within the stated parameters of the service as it appears on the website, it was made clear to all applicants *inter alia* that repeated applications for access to the service in relation to the same matter and/or where the issue had already been previously advised upon or the development was not that significant would not be entertained. In so doing, the DLS would not simply look at what the applicant states in their respective application forms, but would also seek to be informed by other sources where it made sense to gather such information. In the circumstances, it was again legitimate for DLS to refer to the prior August Meeting information in order to assess whether the service was being abused and/or misused by the Appellant.

(6) The conclusion drawn was that there was direct relation between the two instances in which the DLS mechanisms were engaged (within less than a month), and there was no 'new purpose' as suggested by the Appellant. Whatever legitimate expectations there might have been, they were adequately dealt with and there was no contravention of Principle 3.

DISCUSSION

19. The hearing before the Board is one *de novo* and the matters have been considered afresh (*Li Wai Hung Cesario v Administrative Appeals Board* [2015] 5 HKLRD 575 at 602-603).

20. A point has been raised by the Appellant that in considering the matter, the Board ought not consider the prior arguments or reasons for decision by the relevant parties. This is wrong. As set out in S.21(1)(b) of the Administrative Appeals Board Ordinance ("Ordinance"), the Board may:

> "... receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, whether or not such material would be admissible in evidence in civil or criminal proceedings."

21. The Appellant relies on *Lai Tak Shing v Director of Home Affairs*, CACV 201/2005, 9 October 2006, at §§23-26 to support this point. However, that passage, rightfully understood, is simply a general statement that a public body entrusted with duties or discretionary powers may not avoid said duties or fetter itself in the discharge of its powers. To refer to prior reasoning and consider the same is not a fettering of discretion. In fact, the Board would be remiss in its duties if it did not consider the reasoning behind the original decisions.

22. Further reference may be made to the following:

(1) S.21(2) of the Ordinance states that:

> "The Board, in the exercise of its powers under subsection (1)(j)[1], shall have regard to any statement of policy lodged by the respondent with the Secretary under section 11(2)(a)(ii), if it is satisfied that, at the time of the making of the decision being the

[1] The Board may... "subject to subsection (2), 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."

subject of the appeal, the appellant was or could reasonably have been expected to be aware of the policy."

(2) The Appellant had been provided with the relevant document setting out the relevant policy on 29 September 2023, and the same had been referred to and attached to the decision dated 23 July 2024. The Appellant was thus fully aware of the policies of the Respondent.

(3) Such policies, whilst not legally binding, are also matters which the Board may legitimately have reference to (*Leung Chung Lan Lorraine v Privacy Commissioner for Personal Data*, AAB 32/2017 at §12).

23. Having considered the parties' respective arguments, the Board has come to the conclusion that the appeal is unmeritorious and shall be dismissed. The following are the key reasons in arriving at such conclusion:

(1) First, it is abundantly clear that the two meetings (in August and September) concerned the same case, at the same level of court, and the same orders surrounding costs of the appeal. The factual and circumstantial overlap is obvious and undeniable. The Appellant's expectation that each meeting ought to be standalone and treated as an independent matter is thus misplaced.

(2) Second, it is right and proper that whatever information is gathered in relation to an applicant, if it concerns matters with such a high degree of overlap, ought to be provided to the later volunteer lawyers such that they are properly informed about the background to the

matter. This is to ensure that the applicants themselves are best assisted.

(3) Third, this also properly takes into account the policy aims of DLS and the efficient distribution of scarce resources. This manner of operating concerns the overall benefit to other members of the public as well.

(4) Fourth, considering the overall context and circumstances, the Board disagrees with the way in which the Appellant seeks to interpret the phrases "一次過" (one-off) and "絕對保密" (completely confidential). The way in which the Appellant seeks to focus on these two terms in isolation is unhelpful and does not fit with a holistic approach.

(5) The idea of a "one-off" approach in the context of DLS concerns the standalone nature of the advice as it relates to a particular applicant and their case – the implication being that there is not to be any expectation of follow up by the DLS subsequent to the meeting. It does not mean that each consultation or meeting is standalone if the same applicant comes back to make further inquiries about the same case. Indeed, this approach (to have each individual meeting be standalone) would be perverse and a misuse of public resources, enabling potential abuse of the system.

(6) Insofar as confidentiality is concerned, again this is in relation to the applicant's need for confidential treatment of his case and advice. It does not mean that where the same applicant and the same case are

concerned, there is to be no sharing of information across subsequent meetings. Such understanding would similarly be perverse.

(7) When understood within the proper context, viz. that there ought not to be repeated applications in relation to the same case where there has not been significant progress, then the Appellant's desired interpretations of those two terms cannot withstand scrutiny.

24. In the circumstances, the appeal stands to be dismissed and we so order.

25. As to costs, there will be no order as to costs.

(signed)
(Ms Rachel Lam Yan-kay, SC)
Deputy Chairman
Administrative Appeals Board

Appellant : Acted in person
Respondent : Represented by Mr Kevin Chan, Legal Counsel
Person Bound by the decision appealed against : Represented by Ms Viola Chiu, Chief Court Liaison Officer