

Administrative Appeal Board

Administrative Appeal No. 40/2007

BETWEEN

MAN FUK-YUEN

Appellant

and

PRIVACY COMMISSIONER FOR

Respondent

PERSONAL DATA

Coram: Administrative Appeals Board

Hearing Date : 20 May 2008

Date of handing down Decision with Reasons : 27 May 2008

Decision

Introduction

1. Modern society handles industrial accident claims through insurers. This case concerns whether an employer has to seek consent from his employee when disclosing the name and address of the employee in his industrial accident claim.
2. The appeal therefore concerns Data Protection Principle 3 ("DPP3") in Schedule 1 to the Personal Data (Privacy) Ordinance (the "Ordinance"). It

provides that personal data shall not, without the prescribed consent of the data subject, be used (including disclosed or transferred) for any purpose other than the purpose for which the data were to be used at the time of collection of the data, or for a directly related purpose.

3. In other words, if the personal data are used for a purpose within or directly related to the purpose of collection, no consent from the data subject is required.

Background

4. The Appellant was formerly employed by Lo Hing Kwong (1995) & Co. Ltd. ("LHK"). The Appellant had apparently suffered injury while at work on about 13 July 2006.

5. On 9 November 2006, when he was still employed by LHK, he received a telephone call from one Mr. Peter Tang ("Mr. Tang") of Miller International Loss Adjusters (H.K.) Limited ("Miller") trying to arrange an interview with him about the incident giving rise to his injury at work on 13 July 2006. Miller was the loss adjustor acting for the employees' compensation insurer of LHK.

6. The Appellant asked Mr. Tang to send him a letter explaining the purpose of their investigation of the incident. Mr. Tang asked for the Appellant's address. The Appellant told Mr. Tang to find it out for himself.

7. On or about 11 November 2006, the Appellant received a letter dated 9 November 2006 (the "Letter") from Miller about the incident, which was sent to the address of the Appellant (the "Address"). That letter was copied to LHK and signed by Mr. Tang for and on behalf of Miller. It stated, in so far as may be relevant :-

"We ... confirm that we are the Loss Adjusters acting for the Employees' Compensation Insurers of your employer to carry out a thorough investigation in relation to the captioned incident ..."

8. The Appellant complained against LHK for disclosing the address to Mr. Tang without his permission. The Appellant considered that the address should only be used by his employer (i.e. LHK) to contact him. It should not be disclosed to third parties without his permission.

9. The Respondent received the Appellant's complaint on 13 July 2007. The Appellant clarified on 20 July 2007 that the complaint was made against LHK for having disclosed his residential address to Mr. Peter Tang without his consent.

10. After receiving the complaint, the Respondent contacted the Appellant, LHK and Miller respectively. The Respondent obtained certain information and examined the relevant documents.

11. After carrying out an enquiry, the Respondent notified the Appellant on 12 October 2007 of his decision that any investigation or further investigation was unnecessary under section 39(2)(d) of the Ordinance. The Appellant lodged the present appeal.

Role of Miller

12. It transpired that Miller was the loss adjuster acting for LHK's employees' compensation insurer, Falcon Insurance Co., (HK) Ltd. Because of the incident, LHK had provided a "Notice by Employer of the Death of an Employee or of an Accident to an Employee Resulting in Death or Incapacity (Form 2 of the Employees' Compensation Ordinance)" (the "Form") to Miller for Miller's handling of the Appellant's claims arising from the incident. The Form contained the address which was obtained from the employment record of the Appellant with LHK.

13. Miller confirmed that they had used the address on the Form provided by LHK to send the Letter to the Appellant.

Decision

14. We agree with the Respondent's submission that the question is whether the disclosure of the address by LHK to Miller was within or directly related to the original purpose of collection of the address. If not, the Appellant's consent was required. If yes, there was no contravention of the requirement of DPP3 of the Ordinance.

15. In the Letter, Miller had explained to the Appellant about their role and requested to have an interview with the Appellant about the incident.

16. It is clear that the purpose of using the address to send the Letter to the Appellant was to deal with employees' compensation claims arising out of the incident.

17. It is also apparent that the original purpose for which the address was collected by LHK was for the handling of matters relating to the Appellant's employment. It is clear that matters relating to the Appellant's alleged work injury fall within the scope of employment-related matters.

18. The disclosure of the address by LHK to Miller, who subsequently used the address to send the Letter to the Appellant, was for a purpose closely and directly related to the original collection purpose, namely, for employment-related matters about the Appellant.

19. The Appellant also complained that it was unnecessary for Miller to send the Letter to the Appellant's residential address, as the Appellant visited the Employer's office once a week and could collect any letter there.

20. We reject such complaint. Employee compensation is statutory and employer purchasing employee compensation insurance is common practice in Hong Kong. The Appellant is not entitled to dictate a particular mode of communication between him and his previous employer or the insurer of his previous employer, so long as the mode of communication is lawful and effective.

21. The Appellant also complained that LHK had used the Appellant's personal data to call and send letter to his doctor without his consent.

22. This complaint is a new one and the Appellant is not entitled to make. We do not have the details of the complaint and we do not understand how this can be a complaint. In so far as the Appellant's name and address are concerned, we believe the Appellant's own doctor should have access. However, since we do not know what personal data is in question, we say no more about it.

23. The Appellant further complained that LHK's disclosure of his personal data would cause him stress.

24. The Appellant's case is that the Letter should not be sent to the Appellant's residential address but should be sent to his office address. In relation to the employee compensation, we do not accept this ground. We have no evidence before us that that the matter complained of had caused harm of more than a trivial nature. We are not satisfied the Appellant had proved his case.

25. Finally, and for what it is worth, at the hearing the Appellant attempted to put in evidence to show that his previous employer had the tendency of opening his letters without his prior consent. It transpired that the evidence in question was a letter addressed to LHK rather than the Appellant by the Inland Revenue Department requiring LHK to perform its duties under Section 76(1) of the Inland Revenue Ordinance. In any case this incident was not a complaint that forms part of the present appeal.

Conclusion

26. The Appeal should accordingly be dismissed.



(Andrew Mak)
Deputy Chairman
Administrative Appeals Board