

ADMINISTRATIVE APPEALS BOARD

Administrative Appeal No. 46 of 2006

BETWEEN

HUI KEE CHUN

Appellant

and

PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

Date of Hearing: 27 March 2007

Date of handing down Decision with Reasons: 17 April 2007

DECISION

1. Mr. Hui Kee Chun (“Appellant”) and Mr. Tam Wing Kwong (‘Mr. Tam’) both worked at the Hong Kong Institute of Vocational Education (Morrison Hill) (the “Institute”) of the Vocational Training Council (“VTC”). Mr. Tam was head of Department of Business Services and Management. The Appellant was a term lecturer under the supervision of Mr. Tam.

2. On 26 October 2005, Mr. Tam and the Appellant met for lunch. Over lunch, the Appellant’s performance was discussed. Unknown to Mr.

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Tam, their conversations were secretly recorded by the Appellant.

3. On 23 November 2005, a report titled “專教院教師被迫為學生做功課” (“Report”) was published in a local newspaper. According to the Report, at the meeting on 26 October 2005, Mr. Tam told the Appellant that he had completed the assignments for his students and the Appellant should do the same. Part of the recording was transcribed and published in the Report. This was in the form of a dialogue between “Tam” and “Hui” with the caption “譚永光與許其俊飯局對話摘錄” and references that 譚 means 譚永光 and 許 means 許其俊. The Report also stated that the Appellant told the reporter that because he could not accept what Mr. Tam said, he decided to disclose the incident to the public.

4. Subsequently, an article titled “您們要一個怎樣的香港?” (“Article”) written by the Appellant was posted on two websites. (<http://www.leadinghongkong.com/media/> and <http://whatisvalue.com/media/>) (“Websites”). In the Article, the Appellant referred to the conversations mentioned in the Report and provided hyperlinks through which two extracts of the conversations, one of 5 minutes duration and the other 1 hour and 27 minutes long (“Recorded Conversations”) could be downloaded from the internet.

5. On 26 November 2005, messages were posted on the internet Forums (討論區 of <http://hk.message.yahoo.com> and 傳媒討論區 of <http://www.hkedcity.net/mediaEd/forum>) showing hyperlinks to the Websites and readers were invited to download.

6. As a result of the disclosure, the VTC initiated an investigation into allegations of teaching misconduct by Mr. Tam, i.e. completing assignments for his students. Subsequently, the VTC issued a press release stating that after investigation, the VTC found the allegations unsubstantiated. Mr. Tam was therefore completely vindicated.

7. Mr. Tam complained to the Privacy Commissioner for Personal Data (“Commissioner”) that the Appellant had collected and disclosed his personal data on the Websites and the Forums without his consent contravening the requirements of the Personal Data (Privacy) Ordinance (“Ordinance”).

8. The Commissioner conducted an investigation of the complaint pursuant to section 38 of the Ordinance. In the investigation, the operator of the Forums at <http://www.hkedcity.net/mediaEd/forum> confirmed that the person who posted the message in the 傳媒討論區 on 26 November 2005 was the Appellant. The Commissioner wrote to the Appellant several times asking him to respond to the complaint. The Appellant did not provide any information or representation to the questions raised by the Commissioner in respect of the complaint.

9. Based on the Article written by the Appellant, the references therein to the Report, the hyperlinks for the Recorded Conversations, and the confirmation from the Forums operator, the Commissioner concluded that the Appellant had created the hyperlinks for the Recorded Conversations and uploaded them together with the Article and messages via the Websites and the Forums.

10. The Commissioner further concluded that the Appellant had secretly recorded the conversations at the lunch meeting on 26 October 2005. However, since the Recorded Conversations contained only matters relating to Mr. Tam's views on teaching method and the Appellant's performance and prospect of continued employment with the Institute, they could be regarded as matters concerning the management of the Appellant's personal affairs and personal data held for such purposes are exempt under s. 52 of the Ordinance from the Data Protection Principles ("DPP") of the Ordinance.

11. The Commissioner considered that even though the Recorded Conversations alone would not render it practicable for the identity of Mr. Tam to be ascertained, but when considered with the Article, they revealed that Mr. Tam was the person who expressed the views on teaching method during the conversations. The Appellant had without the consent of Mr. Tam uploaded on the internet for public access the Recorded Conversations together with the Article which contained particulars of Mr. Tam from which it would be practicable to ascertain his identity.

12. The Commissioner also considered that although it could be argued that the purpose of collecting the personal data of Mr. Tam was to report the impropriety of Mr. Tam's teaching method, there was no evidence that the Appellant reported the matter to the VTC. Instead, the Appellant chose to expose it through the media and via the Websites and Forums to the public and it remained so exposed even after the VTC investigation. The Appellant had provided neither justification nor explanation for his action. The subsequent disclosure of Mr. Tam's personal data was for a purpose different from the purpose for which the data were collected and this was contrary to DPP3.

13. The Commissioner finally concluded that there was no proof of seriously improper conduct, especially when the VTC investigation had found the allegations of misconduct unsubstantiated. Further there was no information from the Appellant that could prove how the non-disclosure of Mr. Tam's identity would prejudice the purpose of remedying seriously improper conduct. The exemption under s. 58(1) of the Ordinance was therefore not applicable.

14. On 16 August 2006, the Commissioner notified the Appellant of his decision. The Commissioner also issued an enforcement notice against the Appellant on the ground that he had contravened the requirements of DPP3 in circumstances that made it likely that the contravention would continue or be repeated, in that the Article and the messages and the Recorded Conversations containing the personal data of Mr. Tam were still available on the Websites and the Forums and that the

Appellant did not appear to have taken any steps to cease using the personal data of Mr. Tam in association with the Recorded Conversations for public dissemination. The enforcement notice requires the Appellant to remove the Recorded Conversations from the Websites and the messages on the Forums and the personal data of Mr. Tam from the Article and to cease using the personal data of Mr. Tam in association with the Recorded Conversations for public dissemination.

15. The Appellant appealed to this Board against the decision of the Commissioner. The Appellant submitted 16 grounds of appeal. Briefly they are as follows -

16. Grounds 1- 4 are requests to the Commissioner to provide information relating to the case and the procedures on handling the case. They state that on receipt of such information, the Appellant would submit further grounds of appeal.

17. Ground 5 relates to the personal data of Mr. Tam that the Commissioner had indicated to the Appellant.

18. Ground 6 recites the Commissioner's letter of 16 August 2006 and makes reference to the objectives of the Ordinance.

19. Grounds 7 and 8 state that Mr. Tam's personal data had been publicized in news papers , by the VTC and in the VTC press release.

20. Grounds 9 and 10 state that the Appellant had through public access obtained Mr. Tam's personal data from the VTC's electronic telephone directory. Mr. Tam's personal data were also available for public access through the internet and the Appellant obtained Mr. Tam's personal data through search engine Google.

21. Ground 11 states that Mr. Tam had been dishonest to the VTC in that he told the Commissioner that he was a party to the Recorded Conversations but he did not tell the VTC about it.

22. Ground 12 relates to the investigation report of the VTC as reported in Ming Pao which stated, inter alia, that the Recorded Conversations did not prove that the speaker was Mr. Tam. It also stated that Mr. Hui who publicized the recording did not appear at the hearing of the inquiry nor accuse Mr. Tam. In the absence of the accuser, the recording would not be accepted as evidence.

23. Ground 13 is an extract from the statement of the VTC to show that Mr. Tam did not admit to the VTC that he was a party to the Recorded Conversations.

24. Ground 14 complains that the Commissioner did not provide the Appellant with the information that the Commissioner mentioned in his letter that had appeared in the Websites and the Forums.

25. Ground 15 states that the Article did not contain the personal data of Mr. Tam which only appeared in the Websites and the Article. It states that the Recorded Conversations were in the Websites. The Commissioner did not provide copies of the Article as evidence to show that the Article contained Mr. Tam's personal data.

26. Ground 16 states that the Recorded Conversations in the Websites do not contain Mr. Tam's personal data.

27. Before we proceed further, we need to deal with, as a preliminary issue, the 37 further grounds of appeal submitted by the Appellant at the last minute before the hearing. Having heard Counsel for the Commissioner, the Appellant and Mr. Tam, we conclude as follows -

(a) Grounds 1 to 8 complain that the Commissioner did not state in his decision what personal data he referred to in making his decision. The Commissioner did not attach a copy of the Recorded Conversations to his decision and did not state what personal data were in the Recorded Conversations as facts. These are substantially the same as grounds 15 to 16 of the grounds of appeal. They may be regarded as submissions in support of those grounds and will be considered in the appeal.

(b) Grounds 9 to 12 raise the point that there was no contravention of DPP3. Since the Commissioner's decision to issue an enforcement notice was based on his finding that there was a

contravention of DPP3 by the appellant in posting the Recorded Conversations and the Article on the relevant websites, it would be open for the Appellant to argue that there was no contravention of DPP3 and enforcement notice should not have been issued.

- (c) Grounds 13 – 15 raise the question of exemption under section 61 for the first time. The appellant had never brought to the notice of the Commissioner that he had reasonable grounds to believe and did so believe that the publishing or broadcasting of the data was in the public interest. Apart from his mere assertion in these grounds, there is no evidence to support his allegations. Since the Appellant did not respond to the Commissioner’s enquiry into the complaint at all, the Commissioner was unaware of the Appellant’s reliance on section 61. There were no circumstances suggesting that section 61 might apply, so that the Commissioner ought to consider it. This was not one of the questions considered by the Commissioner in coming to his decision. The Commissioner is not bound by the Ordinance to consider the issue of exemption at large. If he is to do so, as Professor Raymond Wacks pointed out in [Hong Kong Data Privacy Law], there is the danger that “a data subject will have to eliminate the possible application of all the exemptions. To require a complainant to anticipate and rebut a series of negatives in this manner would nullify the protection that the Ordinance affords. (p.342)...as mentioned above, the exemptions are not mandatory – whether a data user invokes an exemption is a discretionary exercise, and unless the data user invokes a particular exemption it

will be difficult for the Commissioner to assess the matter.” The present appeal is to consider whether the Commissioner had properly come to his decision in the light of all the circumstances available to him at the time of his decision and not a re-investigation of the complaint. It would not be appropriate for us to consider these grounds.

- (d) Grounds 16 – 35 deal with exemption under s. 58(1)(d). These grounds rely on admissions of misconduct (completing reports for students) allegedly made by Mr Tam in the Recorded Conversations and the investigation report of the VTC. These grounds also seek to introduce into the appeal the VTC Report as new evidence. The report was never disclosed to Mr. Tam and it did not form part of the materials considered by the Commissioner in reaching his decision. Although we may under s.21 of the Administrative Appeals Board Ordinance admit new evidence, we are not bound to do so. We consider that in the circumstances of the present appeal, to admit the VTC Report that was not originally before the Commissioner, is to re-investigate the complaint, which, as we said before, is not our function. However, since the Commissioner’s decision also deals with the application of section 58(1)(d), it would be appropriate for us to allow the Appellant to argue these further grounds of appeal in so far as these relate to the application of the exemption under section 58 of the Ordinance.

- (e) We agree with the Commissioner that grounds 36 and 37 are no more than repetition of grounds 7 to 10 of the grounds of appeal. They may be treated as submissions by the appellant in support of his original grounds of appeal.

28. As to the grounds of appeal referred to in paragraphs 16 to 26 above, only grounds 15 and 16 are real grounds of appeal. We will consider them later. The rest of the grounds are disposed as follows:

- (a) Grounds 1 to 5 are requests and answers to requests for information.
- (b) Ground 6 is a matter for submission.
- (c) Grounds 7, 8, 9 and 10 are not relevant since the issues in this case concern whether the collection and use of Mr. Tam personal data in the Recorded Conversations and the Article by uploading them in the Websites and Forums for public access comply with the requirements of the Ordinance. The fact that Mr. Tam's personal data are available for public access elsewhere is not relevant to the determination of these issues.
- (d) Grounds 11, 12 and 13 allege that Mr. Tam was dishonest in not telling the VTC or the VTC inquiry that he was a party to the Recorded Conversations. It is not disputed that only the Appellant and Mr. Tam were at the lunch meeting. There was

nothing to show that it was otherwise. The Report stated that the Appellant told the reporter that he would disclose what was said between him and Mr. Tam to the public. The Appellant never denied the truth or accuracy of the Report. The only reasonable inference is that apart from the voice of the Appellant, the other voice in the Recorded Conversations must be that of Mr. Tam. Mr. Tam acting on legal advice remained silent in the VTC investigation was not dishonest. In any event, whether Mr. Tam had been dishonest is immaterial to whether the Recorded Conversations contained his personal data.

- (e) On Ground 14, the Commissioner had considered the complaint by taking into account all the information available to him after his investigation and this included the Article, the Websites and the Forums which are available in the internet open to public access. All these were made clear to the Appellant by the Commissioner in his letter of 16 August 2006. The Appellant did not respond to the inquiry from the Commissioner nor did he enquire from the Commissioner about the information. This ground is without substance.

29. What we really need to consider in this appeal is whether the Commissioner's decision that the Appellant had contravened DPP3 in disclosing the personal data of Mr. Tam on the Websites and Forums and to issue the enforcement notice is correct. This involves the following questions:

(a) Whether the Websites and Forums with links to the Recorded Conversations contained personal data of Mr. Tam and in making them available to the public contravened DPP3.

(b) Whether secret recording of the Recorded Conversations contravened DPP1(2).

(c) Whether the exemptions under section 52 and section 58 of the Ordinance applies.

30. The Appellant in his submission asks us to hear the Recorded Conversations. He argues that there were no personal data in the Recorded Conversations and neither were there any in the Article. He contends that there was no collection of personal data by him. He complains that the Commissioner did not state in his decision whether there was any collection of personal data and how they were collected.

31. The Appellant further argues that Mr. Tam was dishonest in not admitting to the VTC that he was one of the parties in the Recorded Conversations. The Appellant argues that Mr. Tam had committed seriously improper conduct and malpractice because in the Recorded Conversations, Mr. Tam told him to do assignments for the students and had admitted that he (Mr. Tam) had done the same.

32. The Appellant finally submits that since Mr. Tam's personal data

were publicized in the newspapers and available to the media through the VTC press release and on the internet for public access, there is no privacy and protection concern for Mr. Tam's name, job title and employer.

33. Mr. Tam submits that the informal lunch meeting was to provide counseling to the Appellant but the Appellant without prior notice to him secretly recorded their conversations. The Appellant subsequently edited the conversations and made extracts of them in an abridge version posting his remarks alongside in the Websites and made complaints to the media. This was done maliciously and with intent to put him into disrepute. The Appellant's allegations of his misconduct are not supported by facts or evidence and the VTC had found these allegations unsubstantiated.

34. Mr. Tam says that the Appellant never complained to the VTC about his misconduct and if the Appellant honestly believed that there was such serious misconduct, the Appellant should have complained to the VTC and not to resort to external means by complaining to the media and he should have appeared at the hearing of the Investigation Panel of the VTC.

35. Counsel for the Commissioner submits that the Article clearly disclosed the personal data of Mr. Tam namely his name, job title and his employer and these data rendered Mr. Tam's identity explicitly ascertainable. The Article clearly stated the links to the Recorded Conversations and invited downloading by viewers. In this manner, Mr.

Tam was identified as the person who spoke in the Recorded Conversations.

36. Counsel submits that the case officer who heard the Recorded Conversations confirmed that the Recorded Conversations did contain the extracts reported in the newspaper as spoken by Mr. Tam. The links to the Recorded Conversation were also posted on the Forums inviting downloading by viewers and evidently the contents were written by the Appellant.

37. Being the author of the Article and the messages on the Forums, the Appellant was sufficiently informed of what personal data of Mr. Tam were disclosed by him in contravention of the Ordinance.

38. Counsel submits that the original purpose of collection of the Recorded Conversations related to the management of the Appellant's personal affairs but the manner and magnitude of the subsequent disclosure and the purpose of disparaging Mr. Tam by such disclosure exceeded the original purpose of collection. This was contrary to DPP3.

39. There was no evidence of seriously improper conduct on the part of Mr. Tam. The Commissioner after listening to the Recorded Conversations and considering all the information did not find evidence that showed that Mr. Tam had committed such misconduct. Further the Appellant had failed to satisfy the 'prejudice test' under section 58(2) of the Ordinance i.e. the application of DPP 3 prejudice the matters referred

to in section 58(1)(d).

40. Counsel further submits that it is for the party complained against to invoke and rely upon the exemption provisions in the Ordinance to justify his act or practice complained of. The Appellant during the course of the Commissioner's investigation had refused to furnish information and particulars requested by the Commissioner or to respond to the complaint against him. Without any information provided, it is outside the regulatory remit of the Commissioner to find a valid ground of exemption to suit the Appellant's case.

41. Counsel finally submits that the enforcement notice was properly issued to enable the personal data of Mr. Tam to be removed from the Article and Websites and Forums together with the Recorded Conversations to guard against future misuse. On the date of hearing of the appeal, Mr. Tam's personal data were removed from the Forums but they still remained on the Websites.

42. The Commissioner admits that the Recorded Conversations by themselves do not contain any information from which it would be practicable for the identity of Mr. Tam to be ascertained. However, when the Recorded Conversations are put together with the Article on the Websites or the messages on the Forums, the identity of Mr. Tam is readily ascertainable from the Recorded Conversations by the references made in the Article and the messages.

43. The Appellant has urged us to hear the Recorded Conversations to confirm his contention that the Recorded Conversations do not contain the personal data of Mr. Tam. In our opinion, having regard to the admission of the Commissioner that the Recorded Conversations by themselves do not enable the identity of Mr. Tam to be ascertained, it would not be necessary for us to listen to the Recorded Conversations. To do so only prolongs the hearing but does not take the matter further. What is for us to consider is whether a viewer of the Article on the Websites or a reader of the messages on the Forums would readily go to the Recorded Conversations via the links and whether the identity of Mr Tam could practicably be ascertained by reading the Article or the messages together with listening to the Recorded Conversations.

44. The Article on the Websites starts with the following preamble:

“敬啓者：

有關 2005 年 11 月 23 日明報等報章報道中我與香港專業教育學院摩里臣山分校（Institute of Vocational Education (IVE) Morrison Hill）部門主管譚永光（Tam Wing Kwong, David)先生談話的內容可於下列網頁下載：”

The hyperlinks that follow give a choice of (三段重要談話內容) or （全部談話內容） for viewers to select for downloading.

45. The Article opens with the following remarks :

“把這件事情公開可以有很多後果，其中有未能考慮到及未知的問題及後果，在此我向各界受影響的人仕致萬二分的歉意...”

The Article later refers to the following -

“...例如寫文章不能抄襲(plagiarism), 老師更不能替學生寫文章...”

46. A preamble and links similar to those described in paragraph 44 above also appear in the messages in the Forums.

47. Section 2 of the Ordinance defines “personal data” as any data –

- (a) relating directly or indirectly to a living individual;
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- (c) in a form in which access to or processing of the data is practicable.

48. It should be noted the access to the Recorded Conversations could only be made via the links in the Websites or the Forums so that the Recorded Conversations do not stand on their own. The Recorded Conversations are an integral part of the information on the Websites or the messages on the Forums. Having regard to the fact that the preamble

contains the personal data of Mr. Tam and clearly refers to the Recorded Conversations as being between Mr. Tam and the Appellant and that the Article refers to writing assignments for students which was what they discussed at the lunch meeting, it would be practicable for the identity of Mr. Tam to be ascertained from the Recorded Conversations.

49. As we said earlier, the fact that Mr. Tam's personal data could be found in other public domains does not mean that the Appellant could without Mr. Tam's consent use Mr. Tam's personal data in the manner he did. The Commissioner was correct to find that the Websites, the Forums and the Recorded Conversations contained personal data of Mr. Tam and uploading them on the internet was without the consent of Mr. Tam.

50. DPP1(2) provides that:

(2) personal data shall be collected by means which are-

(a) lawful; and

(b) fair in the circumstances of the case.

51. The conversations were secretly recorded by the Appellant in the informal atmosphere of a lunch meeting with his supervisor Mr. Tam. The purpose of the meeting was to discuss the Appellant's performance and to offer the Appellant some counseling. The recording was without the knowledge of Mr. Tam. Why the Appellant went to the meeting equipped with recording devices is not clear. The subsequent use of the Recorded Conversations by the Appellant indicated that it was not done with the

bona fide intention of keeping a record of the meeting. In any case, it was a collection of the personal data of Mr. Tam in circumstances that could not be regarded as fair even if it were lawful for the Appellant to do so. This was contrary to DPP1(2).

52. The Commissioner was of the opinion that despite there was contravention of DPP1(2), the personal data were exempt from the application of DPP1(2) under section 52 of the Ordinance because the personal data concerned only with the management of the Appellant's personal affairs.

53. The relevant part of section 52 of the Ordinance provides as follows –

“Personal data held by an individual and -

(a) concerned only with the management of his personal, family or household affairs; or

...

are exempt from the provisions of the data protection principles ...”

54. It should be noted that section 52 of the Ordinance applies to personal data held by an individual. It does not refer to use of personal data albeit ‘use’ includes collection of data. The scope of exemption under this section is limited. It may be argued that there must be

collection before the data can be so held. Be it as it may, the present appeal is concerned with the Appellant's collection of data and not holding data. The meaning of the section is clear. Only personal data so held are exempt from the provisions of the data protection principles. Even though the personal data may be concerned with the Appellant's management of his personal affairs, the exemption does not apply. His secret collection of the personal data of Mr. Tam was contrary to DPP1(2).

55. DPP3 provides as follows:-

“ Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than-

- (a) the purpose for which the data were to be used at the time of the collection of the data; or
- (b) a purpose directly related to the purpose referred to in paragraph (a).”

56. There is no evidence that Mr. Tam had previously completed assignments for students and the Appellant went to the lunch with the aim of getting Mr Tam to admit his misconduct and to record that admission to report to the Institute or for disclosure to the public. At the highest, the recording by the Appellant could be for his future use when the Institute comes to consider renewal of his term. This was for the management of his personal affairs. But the way in which the Appellant uploaded the

personal data of Mr. Tam on the internet for disclosure to the public has taken the purpose of the use outside the original purpose of collection. This was done without the prior consent of Mr. Tam and was contrary to DPP3.

57. The next question was whether the personal data of Mr. Tam were exempt under section 58(2) of the Ordinance from DPP3. This is dependent on whether the Appellant use them for the purpose of, as he contended, remedying (including punishment) of seriously improper conduct or malpractice on the part of Mr. Tam. It also depends on whether the application of DPP3 would likely to prejudice the purpose of remedying the seriously improper conduct or malpractice.

58. The relevant part of section 58 provides –

(1) Personal data held for the purposes of –

...(d) the prevention, preclusion or remedying
(including punishment) of unlawful or
seriously improper conduct, or dishonesty or
malpractice, by persons;

(2) Personal data are exempt from the provisions of data
protection principle 3 in any case in which-

- (a) the use of the data is for any of the purposes
referred to in subsection (1) (and whether or not
the data are held for any of those purposes); and
- (b) the application of those provisions in relation to

such use would be likely to prejudice any of the matters referred to in that subsection.

59. It is not disputed that the VTC conducted an investigation into the allegations of teaching misconduct against Mr. Tam as a result of what was disclosed in the Report. The VTC did not embark on an investigation because the Appellant had made a complaint of misconduct against Mr. Tam. The Appellant did not come forward to give evidence against Mr. Tam. The result of the investigation was that these allegations were not substantiated.

60. As we said before, the fact that Mr. Tam acting on legal advice remained silent at the VTC investigation but disclosed to the Commissioner that he was one of the speakers in the Recorded Conversation does not make Mr. Tam a dishonest person. No adverse inference should be drawn against a person exercising his right of silence in the face of allegations of misconduct. There was no other evidence of misconduct, let alone seriously improper conduct on the part of Mr. Tam, nor other circumstances showing or from which it could be inferred that there was seriously improper conduct or malpractice by any person for the Appellant to disclose Mr. Tam's personal data on the internet for the purpose of remedying or punishing such improper conduct or malpractice.

61. The Appellant has not shown or otherwise provided information to show how, if the provisions of DPP3 were to apply to the Appellant's use

of the personal data of Mr. Tam, the purpose of remedying the serious improper conduct or malpractice by any person would be likely prejudiced.

62. In these circumstances, section 58 (2) does not apply. Until the Recorded Conversations together with the Article and the messages are removed from the Websites and the Forums, it is likely that the personal data of Mr. Tam would continue to be misused. The Commissioner was empowered under section 50 of the Ordinance to issue an enforcement notice against the Appellant directing him to remove from the Websites and Forums the personal data of Mr. Tam. The circumstances of the present case fully justify the issue of such notice and we do not see anything wrong for the Commissioner to do so.

63. The appeal is dismissed.



(Mr Arthur LEONG Shiu-chung)
Chairman
Administrative Appeals Board