

ADMINISTRATIVE APPEALS BOARD

ADMINISTRATIVE APPEAL NO. 54 OF 2011

BETWEEN

MICHAEL REEVE

Appellant

and

PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Coram: Administrative Appeals Board

Date of Hearing: 5 July 2012

Date of handing down Written Decision with Reasons: 29 August 2012

DECISION

Background

1. This is an appeal from the decision of the Respondent not to pursue further the complaint by the Appellant against the Spiritual Assembly of the Baha'is of Hong Kong, the Party Bound, in these appeal proceedings. The complaint relates to the alleged non-compliance of a Data Access Request. Baha'is faith is a religion with a worldwide following. The Party Bound is incorporated in Hong Kong, to govern the affairs of Baha'is community in Hong Kong. The supreme governing body of the worldwide Baha'is faith is the Universal House of Justice.

2. In the summer of 2008 the Appellant moved to Hong Kong after spending time in Korea and Africa. He had been an active member of the Baha'is community and as a pioneer of the Baha'is community had undertaken teaching and promoting work for the Baha'is faith. When he came to Hong Kong the reception by the Party Bound and the local Baha'is community is far from what could be described as warm welcome, if there was any welcome at all, which he expected to be extended normally to a fellow Baha'is pioneer. In particular there was no effort from the Assembly to initiate him into the local custom and culture.

3. Soon after his arrival, a complaint was made against him to the Party Bound by a female member and her family. The complaint related to allegations of inappropriate conduct towards the female member of the local Baha'is community. This Board was not informed of what the exact nature and particulars of these allegations were. According to the Appellant, there were no less than fifteen allegations, all of them misunderstandings and fabrications by the female member in question. The best understanding of these allegations this Board can collect is from an allusion or insinuation employed by the Appellant in his letter to the Universal House of Justice in regard to these allegations putting forward the argument¹: "In his blog, the former Chairman of the Spiritual Assembly of the Baha'is of the United Kingdom shares his delight in 'seeing and hugging old friends and new' at a Baha'i conference. He is not alone. However, if he were to visit Hong Kong and continue with his hugging, he would be accused of 'inappropriate behaviour' and sanctions would be imposed on him without any thought as to his feelings."

4. The way the Party Bound handled the complaint is severely criticised by the Appellant as unfair and not following the procedures of the Baha'is faith. He believed that his cold reception here in Hong Kong had something to do with his prior unhappy experiences with other Baha'is institutions. One such unhappy incident took place in Lesotho for which he received a letter of reprimand. He did not think the reprimand was fair. On the day in question, while on his way to attend

¹ Appeal Bundle at p.232 para.2

a regular Baha'is class in a village out of town, he and his team visited the home of a student of his, and he asked her parents for permission for her to go with the team to attend the Baha'is class. The parents refused permission and later on made a complaint to the school against the Appellant. As a result of the complaint, the school reversed its decision to renew his teaching contract. He signed a document concerning that but it was not a resignation as conceived by the Party Bound. The incident was reported, but not in its whole or accurate context, to the Universal House of Justice resulting in the letter of reprimand which he claimed he did not deserve. The Universal House of Justice at the same time asked him to forget about the matter and to move on.

5. In the course of dealing with the Party Bound concerning the complaint against him here in Hong Kong, he came to know the member of the Continental Board of Counsellors for Africa (a Baha'is institution) with special responsibility for that particular area in Lesotho had shared the allegations regarding the incident with the Party Bound. On 30 May 2011, he made a Data Access Request, the subject-matter of the present appeal, the requested data were specified as follows:

1. Spiritual Assembly's letter to Continental Board of Counsellors for Africa (CBC). Reply from CBC (Africa);
2. Announcement in Hong Kong Baha'is Newsletter about Michael Reeve.

The date around which or period within which the requested data under item 1 were collected was specified in the Request Form² to be "Late in 2008 or Early in 2009." The Party Bound provided the Appellant with the Newsletter under item 2 but claimed they were not in possession of the data requested under item 1 as they never existed.

6. Because of the view taken by the Party Bound on the behaviour and conduct of the Appellant here in Hong Kong, the Party Bound imposed

² Appeal Bundle at p.162

administrative sanctions on the Appellant on 2 April 2009. The Appellant appealed to the Universal House of Justice against the sanctions. In the covering letter dated 29 January 2010 when forwarding the letter of appeal to the Universal House of Justice, the Party Bound made known the fact, to quote: "We conducted some background check on Mr Reeve with the Administrative Committee of the Baha'is of Korea and even spoke to the Counsellor who had been involved in a similar situation involving Mr Reeve when he was living in Africa." Noting that the Party Bound had communicated with its counterpart in Africa, but that it might not be in the form of letters or E-mails, the Appellant sought to extend its scope of data access request. For that purpose, he wrote to the Party Bound on 6 July 2011 asking for details of any such communications and giving it seven additional days to provide the requested materials. No reply was given. On 14 July 2011, the Appellant made the present complaint to the Respondent.

The Complaint and the Decision of the Respondent

7. The complaint lodged on 14 July 2011, the Present Complaint, relates to non-compliance with requests for materials. It consists of two allegations. The first one is the failure to provide the correspondence mentioned in the Data Access Request of 30 May 2011. The other is the failure to provide details of the communications mentioned in the letter of 6 July 2011.

8. The Appellant stated to the Respondent that in the period specified in the Data Access Request of 30 May 2011, the Party Bound has checked on his background in Korea and Africa. In fact this is not disputed by the Party Bound which also indicated that in the course of the background check, it spoke over the phone with one Counsellor of the Board of Counsellors for Africa. The Party Bound denies that there have been such correspondence as requested and therefore naturally it cannot meet the request of the Appellant. As to the failure to provide the

details of communications requested in the letter, the Party Bound informed the Respondent on 5 September 2011 that all records relating to the instance complained of had been deleted.

9. Based on the information gathered from both sides, the Respondent formed the view that there is no *prima facie* evidence to substantiate the possibility of a contravention of the Personal Data (Privacy) Ordinance (“the Ordinance”). That being the case, the Respondent exercised his discretion under section 39(2)(d) of the same Ordinance not to pursue the complaint further.

Discussion of Grounds of Appeal and Decision of the Board

10. The first ground of appeal is a criticism of the wording used by the Respondent when he states that the Appellant was expelled by the Party Bound. The Appellant did not enlighten this Board, nor the Respondent the more appropriate or the correct wording. Whatever it is, it should not have affected the decision of the Respondent. This ground of appeal must fail.

11. There is no burden of proof on persons complained against to negative each and every allegations made against them. Nor is it an absolute duty on the part of the Respondent to envisage out of nothing or make an effort to imagine the possible contraventions by the persons complained against so as to ask them to adduce evidence to clear themselves of these contraventions so conjured up. The Respondent should only act on evidence and on reasonable grounds. While it is the statutory duty of the Respondent to render assistance to complainants to formulate their complaint and preliminary enquiry and gathering information from parties concerned would be helpful in this respect, one should not lose sight of the principle that it is always the duty of the complainant to show *prima facie* evidence that there is a realistic probability that there has been a contravention of the Ordinance. The

case of Administrative Appeal No.8 of 2007 cited by the Respondent is a good example to illustrate this principle.

12. In the instant case, apart from the Data Access Request dated 30 May 2011, the subject-matter of the present complaint and appeal, there are other previous Data Access Requests and a Data Correction Request served on the Party Bound by the Appellant. The full circumstances of these other matters have not been put before this Board. Materials about them which the parties do not care to disclose, must be taken as irrelevant to this appeal.

13. The Respondent has conducted preliminary enquiry into the complaint. The Party Bound has informed the Respondent that the correspondence requested in the Data Access Request of 30 May 2011 never exists. It is not the question of the Respondent should or should not accept the information as true, but a question of whether there are reasonable grounds to pursue further. The Respondent looks naturally to the ground advanced by the Appellant who seeks to cast doubt on the non-existence of the correspondence as claimed. The main ground relied on by the Appellant to support his complaint and to support this appeal is the aforementioned letter of 29 January 2010. As rightly pointed out by the Respondent, the Party Bound only admitted to having spoken to the Counsellor in question when checking the background of the Appellant. Indeed it would be odd that the Party Bound did not refer to the correspondence in the same letter, if it ever existed. It is reasonable for the Respondent to form the view that this letter alone cannot substantiate the allegation that there has been such correspondence.

14. The aim of the rest of the arguments advanced in the other grounds of appeal is to discredit the Party Bound. The Appellant complained that he has been persecuted for about five years by the Baha'is institutions here and abroad. His reprimand while in Africa, the cold, hostile and insulting attitude towards him here, the unfair and unsympathetic treatment of him by the Party Bound in dealing with the complaint against him and the imposition of administrative sanctions and the

subsequent termination of his Baha'is membership etc, he alleges, are evidence of persecution. In support his contention, he cites at length various passages from teachings and literature of Baha'is faith. With regard to the incident in Lesotho, he stressed that he did nothing to infringe the teachings of Baha'is faith, and its guidelines for pioneer work. He seems to accept the explanation given by his lawyer for cause of complaint. The lawyer said it might have something to do about a case in newspapers of kidnapping and brainwashing young people. The Appellant blames the Baha'is institutions for not supporting his labour dispute with the school about not renewing his contract. He believes the institutions concerned should make use of the opportunity to turn things around to the advantage of Baha'is faith. All these the institutions fail to do for lack of courage and instead he received a letter of reprimand for the matter. It is hardly competent for the Respondent nor for this Board to determine if the events in Africa, as related to us by the Appellant, amounts to persecution in the light of Baha'is faith. Suffice to say that it is understandable for a religious faith to be conservative in its approach in spreading the light of its faith and a reprimand for a pioneer for his over zealous conduct is not necessarily an act of persecution.

15. As to the events in Hong Kong, a less than warm welcome or reception by itself is not evidence of persecution. The Appellant was in any event able to participate in Baha'is activities. That he was not invited to some private gatherings arranged by some members is not necessarily an act of persecution. From the point of view of the Party Bound, that a female member and her family have lodged a complaint about his allegedly inappropriate conduct, that he has threatened legal proceedings for defamation against the female member (such action of course the Appellant is entitled to take as a matter of civil law), that he insisted on meeting face to face with the female member in a counselling section concerning the complaint when the latter indicate her unwillingness to meet him face to face, and his subsequent demand to the female member to attend a meeting with him at his solicitors' office, and that all these leading to the disgruntling remarks of the

family : “What kind of religion it is that the family has joined”, are rightly matters for their concern for the harmonious running of the affairs of the Baha’is community in Hong Kong. Attempts have also been made for the Appellant to attend a counselling session to sort out the complaint but he failed to attend because of illness and the death of his mother in the U.K. In this regard he complained that the Party Bound failed to show sympathy for his reasons for not attending. He claimed that handling of the complaint falls foul of the declared policies and teachings of the Baha’is faith and administrative sanctions should not have been put on him. Be that as it may, it is not necessarily a persecution looking at the circumstances of the case.

16. The label of persecution is begging the real issue. This Board understands that the crux of the argument of the Appellant is that these matters putting together tend to discredit the claim by the Party Bound that the correspondence never exists. In this regard, it is noted that the Party Bound never hides the fact that it has checked his background with a Counsellor in Africa and the comment received is adverse. The Appellant confirms at this appeal hearing he knows the nature of it. In fact he has served a Data Correction Request to rectify such data. The full circumstances of this request and the handling of related complaint by the Respondent is not made known to this Board. What it appears to this Board is that withholding such correspondence would not serve any useful purpose for the benefit of the Party Bound or other Baha’is institutions.

17. As to the request for details of communications there was a summary kept by the Party Bound which it has deleted it along with other unnecessary personal data of the Appellant one day before his letter of request. The Appellant argues that this is suspicious. However the request in the letter is not a formal request and the Party Bound is under no duty to comply with it. Further the Respondent was at the time handling the complaint relating to the Appellant’s personal data and raised no objections to the proposed deletion. Two matters should be noted. Firstly, the Appellant at the time was no longer a member of the Baha’is. His personal data was deleted except those contained in documents essential to the record of the Party

Bound's decisions, e.g. those relating to disciplinary action. Adverse comments received from the African counsellor over the phone is not the main reason for taking away the administrative rights of the Appellant or in the subsequent termination of Baha'is membership. Secondly, on 16 September 2011, during the routine maintenance of its electronic records, an executive officer of the Party Bound found on the hard drive and the back up drive some not previously discovered electronic files containing personal data of the Appellant. The possession by the Party Bound of these files is relevant to an appeal involving the same parties pending before this Board (differently constituted). Among these electronic files, there was one containing the summary of the telephone conversation between the Party Bound and the Counsellor in Africa. The Appellant argues that this incident shows that the Party Bound is not trustworthy. This Board cannot agree if the Appellant means this incident shows the Party Bound is covering up its record of correspondence or record of the telephone conversation. It should be stressed again that the Party Bound never covered up the fact that it checked the background of the Appellant in Africa. The Party Bound has been consistent in stating its case that it has checked the background of the Appellant over the phone with the African Counsellor but that there is no correspondence between them in this regard. As has been said, withholding the primary source of evidence serves no useful purpose for the Party Bound. Obviously, it would only make it more difficult to justify its low esteem on the Appellant who at pains seeks to demonstrate that he does not so deserve.

18. At the time of making the decision not to pursue further the complaint, the Respondent was of the view that there is no prima facie evidence that the correspondence ever exists. For the above reasons, this Board cannot find fault with this view. Even with the benefit of hindsight of the events that occurred later in September, the view he has taken is reasonable. That being the case, he is entitled to exercise his discretion not to pursue further the complaint when there is no prima facie evidence of any contravention of the requirement of the Personal Data (Privacy) Ordinance. Furthermore, in the exercise of his discretion the Respondent is

following the provisions enunciated in his Complaint Handling Policy. This Board is bound by section 21(2) of the Administrative Appeals Board Ordinance to have regard to this Complaint Handling Policy.

19. In the premises the appeal is dismissed. This Board notes that the Respondent reserves his position to ask for costs. In this regard this Board notes that costs may be awarded against the Appellant only if he conducts his appeal in a frivolous and vexatious manner. If the appeal is looked at in isolation without reference to other appeals, pending or concluded, or to other matters which have not been made known in this appeal, this Board cannot award costs without hearing arguments.

(signed)

(Yung Yiu-wing)

Deputy Chairman

Administrative Appeals Board