

ADMINISTRATIVE APPEALS BOARD
ADMINISTRATIVE APPEAL NO. 54/2024

BETWEEN

BONG LI FONG

Appellant

and

**PRIVACY COMMISSIONER
FOR PERSONAL DATA**

Respondent

Coram: Administrative Appeals Board

Ms Jay Ma Suk-lin (Deputy Chairman)

Mr Chan Tak-ming (Member)

Mr Alfred Chang Yu-ching (Member)

Date of Hearing: 14 July 2025

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

DECISION

INTRODUCTION

1. This is an appeal lodged by the Appellant against the decision ("the Decision") of the Privacy Commissioner for Personal Data ("the Respondent"), dated 28 June 2024, not to carry out a specified investigation pursuant to s.64 of the Personal Data (Privacy) Ordinance (Cap. 486)

(“PDPO”).

BACKGROUND

2. The Appellant filed a complaint form pursuant to s.64 of the PDPO (“the Doxxing Complaint”) dated 14 March 2024 with the Respondent. Her Doxxing Complaint was that due to a dispute arising from the employment of a foreign domestic helper through the Appellant’s recruitment company, a Mr Tang posted her personal data on a public social media platform, Facebook, causing emotional disturbance and pressure on her. In addition, her business suffered a loss.

3. By email dated 15 March 2024, the Respondent replied to the Appellant acknowledging receipt of her complaint and enclosing a copy of the “Complaint Handling Policy” (“CHP”), “Information required to establish a complaint under section 37 of the Ordinance – Flow Chart” (“Flow Chart”) and “Notes to Complainants”.

4. By email dated 2 April 2024, the Respondent invited the Appellant to provide information regarding the following:

- (i) Whether the Respondent’s understanding of her complaint concerning a disclosure of her personal data which arose from a dispute regarding the employment of a foreign domestic helper via the Appellant’s company was correct;
- (ii) Appellant’s personal data posted on the social media platform;
- (iii) A hyperlink in respect of (ii);
- (iv) Whether the name of Mr Tang shown from her complaint and the account holder who posted on the said social media platform

referred to the same person; and

- (v) Relevant information or document relevant to her complaint.

5. In reply, by email dated 5 April 2024, the Appellant provided an account of events leading to the dispute between Mr Tang and her. The dispute arose from the employment of a foreign domestic helper through the Appellant's company. She complained that Mr Tang disclosed her personal data including photographs of her and her husband, the name cards of her two companies which showed her name, company names, telephone numbers, the company address and the email address, on Facebook. In addition, the Appellant named, with attachments, various social media groups concerning employment of foreign domestic helpers. The attachments, as complained by the Appellant, showed the apparent defamatory comments posted by Mr Tang. She further confirmed that in respect of para. 4(iv) above, the name(s) referred to the same Mr Tang.

6. By email dated 15 April 2024, the Respondent replied to the Appellant stating, inter-alia, that her complaint was not about doxxing. Citing the case of AAB No. 49/2005, the Respondent informed the Appellant that her and her company's reputations did not fall within the jurisdiction of the Respondent. In respect of the photographs, the Respondent stated that since part of the face of the persons shown was redacted, it was not sufficient for the purpose of identification. The Appellant was, therefore, invited to indicate her expected result from this Doxxing Complaint. The Respondent further invited the Appellant to provide a hyperlink regarding two of the social media groups, as they could not be located when the Respondent tried to search them on Facebook.

7. According to a telephone record dated 16 April 2024, the Appellant

repeated the account of the alleged doxxing incidents to the Respondent. In addition to repeating the explanation in para. 6 above, the Respondent further explained to the Appellant that the information printed on the name cards was for contact purpose. The Respondent considered the comments by Mr Tang to be expressing his views regarding the Appellant's service, without a doxxing intent.

8. By email dated 18 April 2024, the Appellant acknowledged her and her company's reputations, and their associated defamation did not fall within the jurisdiction of the Respondent. The Appellant, however, expressed her concern over the possible illegal or/misuse of the information by others, as her company's service was offered to the public. She further stated that such acts by Mr Tang caused her considerable emotional disturbance, and that some potential transactions were cancelled as a result of Mr Tang's posts.

9. By email dated 8 May 2024, the Respondent informed the Appellant that her Doxxing Complaint did not involve s.64 of the PDPO. In other words, there were no elements of doxxing found. The Appellant was advised that should her concern over any illegal or/misuse of her information including deception-related matters arise, she should approach the respective legal enforcement agencies such as the police. The Respondent further stated that under s.39(2) of the PDPO, she may refuse to carry out or decide to terminate an investigation if she is of the opinion that the primary subject matter of the complaint is not related to privacy of individuals in relation to personal data. In respect of such, the Respondent provided some examples including disputes arising from consumer, employment and contract. However, the Respondent offered to write to Meta, with the Appellant's consent, inviting them to delete the relevant posts.

10. By email dated 15 May 2024, the Appellant replied to the Respondent that Mr Tang posted her personal data on Facebook without her prior consent, which was in breach of s.64(3A) of the PDPO.

11. By email to the Appellant dated 28 June 2024, the Respondent issued her Decision where it was stated that the Appellant's complaint did not amount to doxxing offences pursuant to s.64 of the PDPO.

12. By a Notice of Appeal dated 23 July 2024, the Appellant lodged the appeal with the Administrative Appeals Board ("this Board") enclosing her grounds of appeal.

GROUND OF APPEAL

13. In her Notice of Appeal, the Appellant set out the following two (2) grounds of appeal:

- (1) That "[t]he PCPD has erred in categorising the primary subject matter of the complaint as not related to the privacy of individuals in relation to personal data, or stems essentially from consumer, employment or contractual disputes"¹;
- (2) That "[t]he PCPD has erred in deciding that the data involved is insufficient to [ascertain] personal identity."²

Ground (1)

14. The Appellant contends that pursuant to s.39(2)(ca) of the PDPO,

¹ Appeal Bundle ("AB") on P.247

² Supra

“ ‘primary subject matter’ should be interpreted as the ulterior motive behind the complaint, instead of the complaint itself.”³ Paragraph 29 of AAB No. 10/2020 was cited by the Appellant in support of her contention: “ “29. 答辯人亦在陳詞中指出，若投訴人的行為令其有合理理由相信作出投訴的真正動機，並非是為了保障個人資料私隱，縱使投訴中涉及他的個人資料，答辯人仍有權根據《私隱條例》第 39(2)(ca)條拒絕處理他的投訴。《條例》自新加入的第 39(2)(ca)條生效後，答辯人隨後修訂了《處理投訴政策》加入(B)項第 8(d)段，答辯人亦曾在行政上訴案件 2016 年第 21 號一案，成功引用此理由不繼續處理有關投訴。” (emphasis added)”⁴

15. The Appellant, referring to her email reply to the Respondent dated 18 April 2024, submitted that her concern, and hence her motive, had all along been about her personal data: “ “現今涉及的群組仍然在公眾網上平台存在，當中有我照片及個[人]和公司的資料，本人擔心有人利用有關資料進行不法行為或行騙，由於我公司是開門營業的，任何人都可以到我公司作滋擾及破壞，本人擔心本人和公司以及公司職員的安全，起底事件引致本人精神上十分困擾，如情況繼續下去我要看醫生接受治療，而有關我及我公司資料在公眾平台上披露後，我公司有多宗交易無故取消而[造]成我經營上的損失。” (emphasis added)”⁵ “ “有人未經我同意下披露本人的個人資料而令我心理傷害及擔心本人福祉傷害及財產受損。我擔心有人從事不法行為或行騙涉及我的福祉，當然，如有發現我會報警處理，我現在投訴的不是關於被行騙或其他不法行為或消費、僱傭或合約糾紛等問題，我公司多宗交易無故取消[造]成經[營]的損失我會[另]行向有關人[士]追討。這些都不是貴署的範疇，我亦不是尋求貴署[協]助追討或[索]

³ AB on P.253 at para.18

⁴ Supra at para.17

⁵ AB on P.254 at para.22

償，現在的投訴是有人未經我同意之下將我個人資料在公眾平台上[發]違反私隱條例向我進行起底” (emphasis added)”⁶

16. In addition, the Appellant contends that the harm suffered by her fell within the definition of “specified harm” under s.64 of the PDPO, as “causing the person reasonably to be concerned for the person’s safety or well-being;”⁷, and the Respondent’s Decision was, therefore, unreasonable.

Ground (2)

17. The Appellant contends that the photographs showing her and her husband were sufficient for the purpose of identifying them. She argued that “[a] photograph, therefore, does not necessarily have to be completely unredacted to contain personal data, ...even if the photograph cannot sufficiently ascertain the identities of the Appellant [on] its own virtue, they can be relied upon to do so supplemented by the other data disclosed, including her full name, telephone number, occupation, company address, and email address.”⁸, with reference to the dissenting judgement in *Eastweek Publisher Ltd And Anor v Privacy Commissioner for Personal Data*, CACV 331/1999. The Appellant further contends that the photographs could never be considered in isolation, referring to the case of *Re Hui Kee Chun* CACV4/2012.

REPLY BY THE RESPONDENT

⁶ Supra at para.23

⁷ AB on P.255 at para.25 and the meaning of “specified harm” under subsection c of s.64(6) of the PDPO

⁸ AB on P.257 at paras.31 and 32

Ground (1)

18. The Respondent submitted that she had “duly exercised her discretion under section 39(2)(ca) of the PDPO not to carry out an investigation into the complaint since the primary subject matter of the complaint is not related to the privacy of individuals in relation to personal data.”⁹

19. Having considered the posts by Mr Tang, the Respondent stated that “[b]y expressing his dissatisfaction with the quality of the services provided by the Centre, the focus of the Posts appears to be unrelated to personal data privacy.”¹⁰ The Appellant’s account of her complaint, according to the Respondent, was nevertheless concerned about the loss of business income, due to cancellation of some of the transactions after Mr Tang’s publication of the posts which adversely affected the reputation of her business.

20. The Respondent therefore concluded that the Appellant’s concern for lodging her complaint with the Respondent was not related to protection of personal data.

Ground (2)

21. The Respondent submitted that what she found in respect of the redacted photographs was not relied upon in arriving at her decision pursuant to s.39 of the PDPO. She clarified that despite her observations regarding the photographs in the email in April¹¹, the Respondent had not reached a conclusion at that time, as the Appellant was being invited to provide further

⁹ AB on P.412 at para.56

¹⁰ AB on P.415 at para.63

¹¹ AB on P.409 at para.44

information.

22. The Respondent submitted that pursuant to s.2 of the PDPO, one of the criteria for the data to be regarded as personal data was that it must be practicable for the identity of the individual to be ascertained from the data. As regards the photographs, she made some observations including the features that the eyes of the individuals were redacted, the photographs were taken from a distance, and the resolution was low. In particular, the Respondent observed that the facial features were unclear. It would, therefore, be impracticable for people to ascertain the identity of the individuals depicted.

23. The Respondent submitted that the redacted photographs did not meet the definition of personal data under s.2 of the PDPO.

THE APPEAL HEARING

24. At the hearing, the Appellant, via her representative Mr Wong, adopted the written submissions filed with this Board. In addition, he advanced further arguments in respect of this Board's jurisdiction in hearing the present appeal against the Decision.

25. Mr Wong contends that, since the Respondent exercised her discretion pursuant to s.39 of the PDPO, where she terminated the investigation of the Appellant's complaint, such decision was covered by the Schedule of the Administrative Appeals Board Ordinance, Cap. 442 ("AAB Ordinance"). In other words, this Board is entitled to hear the present appeal.

26. Mr Wong further stated that as failure to comply with s.50 (Enforcement

Notice) and s.66M (Cessation Notice) would be liable to criminal prosecution, there was no reason why this Board could not hear the present appeal as committing an offence under s.64 of the PDPO was a criminal offence.

27. In respect of the allegedly defamatory comments posted on Facebook, as claimed by the Appellant, Mr Wong advised that even if there were complimentary comments posted by other users on Facebook with the same set of allegedly personal data, the Appellant would still be worried about the illegal use or/misuse of her information. When asked to explain the purpose of handing out name cards, the Appellant advised that it was for advertising purposes.

28. Mr Wong reiterated the two grounds of appeal as set out in the Appellant's earlier written submissions.

29. Mr Wong confirmed that the Appellant's complaint lodged with the Respondent was a Doxxing Complaint pursuant to s.64 of the PDPO¹², and that the present appeal was against the Decision¹³ by the Respondent in respect of such complaint.

30. The Respondent submitted that despite the criminal consequences in connection with s.50 and s.66M, it has nothing to do with her discretion in deciding whether she should issue those Notices. She contended that her Decision was not to carry out the specified investigation in relation to doxxing offences under s.64 of the PDPO.

31. The Respondent further submitted that the Appellant's Doxxing

¹² AB on P.425

¹³ AB from P.260 to P.261

Complaint was lodged pursuant to s.64 of the PDPO. Her reply to the Appellant in respect of s.39 was not the position relied upon in her Decision dated 28 June 2024.

32. In respect of the redacted photographs, the Respondent submitted that with the level of obscurity of the facial features, it would be impracticable for a reasonable bystander to ascertain the identities of the persons shown, even considering other information provided.

THE RELEVANT LAW AND POLICY

Principles to be applied

33. Under the AAB Ordinance, the Board is given wide powers in the determination and disposal of the appeals before it. In particular, section 21(1)(j) provides that the Board may “*subject to subsection (2), confirm, vary or reverse the decision... or make such other order as it may think fit.*”

34. Section 21(3) of the AAB Ordinance further provides that “[t]he Board, on the determination of any appeal, may order that the case being the subject of the appeal as so determined be sent back to the respondent for the consideration by the respondent of such matter as the Board may order”. As commented by Stock J, this subsection (3) “*appears to be unusual, and is a power not available to a number of statutory appeal boards ...*”,¹⁴ and that “*the Board can do more than this court ---- it can substitute its own view on the merits.*”¹⁵

¹⁴ *Happy Pacific Limited and another v Commissioner of Police*, unreported, HCAL 115/1999, judgement dated 11 November 1999 at p.12

¹⁵ *Supra*, p.14

35. Section 21(2) of the AAB Ordinance provides that “[t]he Board, in the exercise of its powers under subsection (1)(j), 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 subject of the appeal, the appellant was or could reasonably have been expected to be aware of the policy.”

36. The Respondent, upon receiving the complaint from the Appellant, provided the Appellant by email dated 15 March 2024 with information concerning the CHP, Flow Chart, and Notes to Complainants¹⁶. The Appellant therefore was, or could reasonably have been expected to be, aware of the policy. Section 21(2) of the AAB Ordinance was satisfied.

37. The appeal before the Board is a hearing *de novo*. The Board is entitled to determine the merits of the decision appealed against and exercise its discretion afresh if, upon consideration of the case under appeal, it is satisfied that the decision appealed against is “*either wrong in principle or in any way excessive*”. (*Jen Co Men v Commissioner of Police* AAB No. 28/2007) “*A decision that involves the exercise of a discretion may be found to be wrong or excessive if the discretion is found to have been exercised unreasonably or disproportionately.*” (*Chan Wing Sang v Commissioner of Police* AAB No. 220/2013)

The Relevant Legislation

38. The present appeal is mainly concerned with the following provisions of the PDPO:

¹⁶ Please refer to para.3

Section 39(2) states that:

The Commissioner may refuse to carry out or decide to terminate an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case —

...

- (ca) the primary subject matter of the complaint, as shown by the act or practice specified in it, is not related to privacy of individuals in relation to personal data; or

...

Section 64 states that:

- (1) A person commits an offence if the person discloses any personal data of a data subject which was obtained from a data user without the data user's consent, with an intent —

- (a) to obtain gain in money or other property, whether for the benefit of the person or another person; or
 - (b) to cause loss in money or other property to the data subject.

...

- (3A) A person commits an offence if the person discloses any personal data of a data subject without the relevant consent of the data subject —

- (a) with an intent to cause any specified harm to the data subject or any family member of the data subject; or
 - (b) being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject.

DISCUSSION

Ground (1)

39. The Appellant lodged her complaint with the Respondent by filling out a specific complaint form, dated 14 March 2024, pursuant to s.64 of the PDPO.¹⁷ In the said form, under the heading of “Describe the matter being complained”, the Appellant stated that due to a dispute arising from the employment of a foreign domestic helper through the Appellant’s company, the person being complained against, (i.e. Mr Tang), disclosed her personal data on a public social media platform, (i.e. Facebook).

40. When requested by the Respondent to provide further information regarding her complaint, the Appellant provided a detailed account, in three lengthy paragraphs, of the background to the dispute arising from Mr Tang’s employment of a foreign domestic helper through the Appellant’s company. In the fourth paragraph, she concluded that Mr Tang had posted allegations based on fabricated and distorted facts, attempting to ruin the reputations of her and her company.¹⁸

41. The Appellant’s complaint concerns alleged fabricated facts and comments posted by Mr Tang on Facebook following Mr Tang’s engagement of her company in the employment of a foreign domestic helper. The Appellant claims that, as a result, the reputations of her and her company were adversely affected.

42. This Board is of the view that the primary subject matter of her complaint does not fall within the jurisdiction of the Respondent in

¹⁷ AB on P.425

¹⁸ AB on P.454

accordance with the PDPO. This view is supported by the previous decision (AAB No. 49/2005), where the appellant's complaint "主要是投訴社署在提供與法援署的報告中製造虛假證據，誣蔑他與妻子和兒子的關係，誹謗他的人格..."¹⁹, therefore, "虛假的事實和虛構的證據都不屬個人資料。個人聲譽也不是個人資料。同樣不受私隱條例的保障。該條例亦不適用於防止例如破壞家庭關係，和誹謗等侵權行為，更不是檢控妨礙司法公正刑事行為的依據。"²⁰

43. We, therefore, find that the Respondent has not acted unreasonably in explaining to the Appellant the legitimate position of the Respondent in dealing with her complaint. In addition, paragraph 8 of the Respondent's CHP provides further information in respect of the policy, pursuant to s.39(2) of the PDPO, where she has the discretion to refuse to carry out or decide to terminate an investigation. This discretion includes, inter-alia, a situation where the primary subject matter of the complaint is considered not to be related to personal data privacy. For example, if the complaint stems essentially from consumer, employment or contractual disputes.²¹

44. Despite the Appellant's representations that her complaint concerned protection of personal data, she accepted, as concurred by Mr Wong at the hearing, that handing out her name cards was acceptable for advertising purposes. It is, therefore, evident that her concern was not about disclosure of the details on her name cards per se, but the negative impact of the associated allegedly defamatory comments posted by Mr Tang. In essence, the Appellant's primary concern was for her and her company's reputations,

¹⁹ AAB 49/2005 at para.17

²⁰ Supra at para.19

²¹ AB on P.433 at para.8d

which are not within the Respondent's jurisdiction.

45. As seen from above, we are satisfied that the exercise of the Respondent's discretion pursuant to s.39(2) of the PDPO was not exercised unreasonably or disproportionately. Ground (1), therefore, fails.

Ground (2)

46. Having considered the information provided by the Appellant, it became clear that the alleged personal data referred to by her included two photographs depicting a female and a male, both apparently sitting behind a desk in an office, two company name cards, and comments posted by Mr Tang on Facebook. It can be seen that part of the face was redacted on both photographs.

47. In respect of the said redacted photographs, it is clear that the one depicting a male could not possibly be considered to be the Appellant's personal data. The other, depicting a female, was agreed by both the Appellant and the Respondent at the hearing as the subject of the appeal.

48. The Respondent explained in her statement that the redacted photograph was not relied upon in arriving at her decision under s.39(2) of the PDPO, albeit that some observations had been made by her as to whether the redacted photograph was sufficient for the purpose of identifying the Appellant²². This Board agrees with the Respondent's observations in this regard.

²² Please refer to paras.22, 32 and AB on P.411 at para.50

49. This Board is of the view that the Respondent has made an objective and reasonable analysis of the information provided by the Appellant and has explained the scope of the PDPO. Specifically, by an email dated 15 April 2024, the Respondent explained that false allegations, fabricated evidence and defamation were not within the Respondent's jurisdiction. Although having informed the Appellant of the Respondent's observations regarding the photographs, the Respondent continued to investigate the Appellant's complaint, including conducting an unsuccessful search on Facebook of two social groups mentioned by the Appellant in her previous reply. We therefore accept the Respondent's submission that she did not rely on the redacted photograph for her s.39(2)'s decision, and that her initial observations in relation hereto were merely part of the preliminary enquiry process.

50. This Board, therefore, does not find any merits to this ground. Ground (2) fails.

EXERCISE OF DISCRETION

51. Pursuant to section 39(2)(d) of the PDPO, the Respondent "may refuse to carry out an investigation ...". The word "may" suggests that the Respondent has a discretion as to whether to carry out an investigation. In exercising her discretion, it should be considered that:

- “(1) There is no absolute or unfettered discretion in law;*
- (2) The question is whether the discretion is wide or narrow. For this purpose, everything depends upon the true intent and meaning of the empowering statute;*
- (3) The discretion can only be validly exercised for reasons relevant to*

the achievement of the purpose of the statute; and

(4) The discretion must be exercised reasonably, i.e. to take account of relevant considerations and exclude irrelevant considerations in the decision making.”²³

52. Even if this Board exercises the discretion afresh, we are not satisfied that the Respondent was either wrong in principle or acted unreasonably or excessively.

Appeal lodged to this Board

53. Section 3 of the AAB Ordinance states that:

This Ordinance applies to —

- (a) the Ordinances mentioned in column 2 of the Schedule in relation to any decision of the description mentioned in column 3; and
- (b) any other decision in respect of which an appeal lies to the Board.

54. Item 29 of the said Schedule is as follows:

Personal Data (Privacy) Ordinance (Cap. 486)	A decision of the Privacy Commissioner for Personal Data—
	(a) to impose conditions on his consent to the carrying out of a matching procedure under section 32(1)(b)(i);
	(b) to refuse to consent to the

²³ *The Incorporated Management Committee of SKH Tsing Yi Estate Ho Chak Wan Primary School v Privacy Commissioner For Personal Data* (AAB No.4/2017 at para.68)

	carrying out of a matching procedure under section 32(1)(b)(ii);
	(c) to refuse under section 39(3) to carry out an investigation initiated by a complaint;
	(ca) to terminate under section 39(3A) an investigation initiated by a complaint;
	(d) not to delete under section 46(5) a matter from a report under the Ordinance;
	(e) not to serve an enforcement notice under section 47;
	(f) to serve an enforcement notice under section 50;
	(g) to serve a cessation notice under section 66M.

55. The Appellant lodged her Doxxing Complaint with the Respondent pursuant to s.64 of the PDPO, to which the Respondent made the Decision²⁴. Such Decision does not, however, fall within the said Schedule. We are, therefore, of the view that this Board has no jurisdiction to deal with the appeal against the Decision.

CONCLUSION

²⁴ Please refer to paras. 29 and 31

56. The Appellant's appeal is unanimously dismissed with no order as to costs.

(signed)

Ms Jay Ma Suk-lin

Deputy Chairman

Administrative Appeals Board

Appellant: Represented by Mr Wong Cheuk Hin, Authorized representative
for the Appellant

Respondent: Represented by Ms Tomomi Takahashi, Assistant Legal Counsel