

ADMINISTRATIVE APPEALS BOARD

Administrative Appeal No. 8 of 2005

BETWEEN

HUNG KWOK CHING

Appellant

and

PRIVACY COMMISSIONER
FOR PERSONAL DATA

Respondent

Coram : Administrative Appeals Board

Date of Hearing : 19 December 2006

Date of handing down Decision with Reasons : 16 February 2007

D E C I S I O N

1. The appellant Hung Kwok-ching was registered as a student of the PRC Law Programme offered by Tsinghua University in collaboration with the School of Professional and Continuing Education of the University of Hong Kong ("HKU SPACE"). He completed the programme in 2003.
2. On 3.1.2003, the appellant received an e-mail from Ms Chung Mei-ling, a member of the appellant's class concerning graduation ceremony arrangement. The e-mail was addressed to the appellant and other members of the class by name. It is as follows:

“Re: Graduation ceremony arrangement

Dear All,

Please refer to the attached document for the graduation ceremony arrangement.

Regards!”

3. The attached document is in Chinese and the relevant part for the purpose of this appeal is as follows (translation):

“Fellow students:

Congratulations! We graduate at last. The following are the various arrangements concerning the graduation ceremony. Please take note of them and act in time ...”

4. On 4.1.2003, HKU SPACE sent out the examination results to members of the class but did not inform them whether they would be recommended for graduation. The pass list was not officially announced until the Degree Congregation on 18.1.2003.

5. The appellant considered that in these circumstances, no student could have known about the examinations results on 3.1.2003 since the results could not have reached them before 6.1.2003, (4.1.2003 being a Saturday). He suspected that HKU SPACE had, on or before 3.1.2003 passed to Ms Chung a list of those recommended for graduation, otherwise she could not have been able to prepare the graduation trip on that date.

The appellant also considered that the list might also have been used for commercial purposes.

6. On 16.9.2004, the appellant complained to the Office of the Privacy Commissioner ("Commissioner") that the Hong Kong University ("HKU") had a statutory duty to maintain security of the examination results which were the personal data of the candidates and HKU in passing the results to Ms Chung had violated various data protection principles. He asked the Commissioner to investigate whether HKU in allowing Ms Chung to have access to his examination results had breached the duty to secure his personal data and whether such data had been used for business promotion.

7. The Commissioner, after considering all the information furnished by the appellant in respect of his complaint, informed the Appellant on 25.1.2005 that no investigation would be carried out by the Commissioner in respect of his complaint. The Commissioner told the appellant that HKU and HKU SPACE were two separate legal entities and HKU was not the data user regarding the data in question. There was also no evidence to show that HKU SPACE had disclosed the data to Ms Chung and there was nothing to show where Ms Chung acquired the information above who had passed the examination. If HKU SPACE had disclosed the data to Ms Chung, it was an administrative matter of HKU SPACE and outside the ambit of the Personal Data (Privacy) Ordinance.

8. The Commissioner also considered that the appellant was motivated to complain against HKU by factors not related to concern for his

privacy but out of a dispute between the appellant and the university which was not the Commissioner's function to resolve. The Commissioner also considered that HKU was not a data user in respect of the appellant's personal data.

9. The appellant appealed against the Commissioner's decision.

10. The present appeal is against the Commissioner's decision in respect of the appellant complaint against HKU for violation of the requirements of the Ordinance, principally non-compliance with the data protection principles regarding the collection, accuracy, use and security of his personal data. This complaint is one of three complaints made by the appellant against HKU and the background giving rise to such complaints as contended by the appellant has been set in our decision in his appeal on the question of data access request.

11. Data Protection Principles (DPP) 1 relates to the purpose and manner of collection of personal data; DPP 2 ensures accuracy of personal data having regard to the purpose of their use, DPP 3 requires use of personal data only for the purpose for which they are collected and DPP 4 ensures security of personal data held by a data user. These principles only apply to a person who collects, use or holds the personal data concerned i.e. a data user as defined in section 2 of the Personal Data (Privacy) Ordinance (Ordinance). The question whether HKU had failed to comply with any of these principles will only arise if HKU was a data user in relation to the personal data which the appellant alleged in his complaint.

12. The appellant's complaint relates to the e-mail of Ms Chung in which his name was included in the list of recipients. The e-mail related to arrangements for the trip to the Tsinghua University to attend the graduation ceremony and was sent to all members of the class in the PRC Law Degree programme. This was neither the concern of the HKU or the HKU SPACE. That being the case, we are unable to see how HKU could be regarded as data user in relation to the data contained in this e-mail, in the sense that HKU controlled the collection, holding and use of such data. Further, including the name of the appellant in the list of recipients of the e-mail without more does not make the e-mail the appellant's personal data and it is a far cry from a compilation of information about the appellant.

13. In the appeal on the question of HKU failing to comply with the appellant's data access request, we concluded that HKU did not hold any of the appellant's personal data in relation to his study programme for the PRC Law degree. We gave detail reasons for our conclusion and we do not propose to repeat them here. For those reasons and what has been stated above, we conclude that HKU is not a data user in relation to the data in the e-mail in question.

14. As regards the examination results, they came from HKU SPACE and Tsinghua University and not HKU. The Commissioner was right to say that HKU was not the data user of these data. In any case, we see no evidence to support the appellant's allegation that these data had been passed to Ms Chung by HKU or HKU SPACE prior to their official release to

members of the class. Neither do we see any evidence that the data had been used for business purpose by any one.

15. The Commissioner was correct in his decision not to investigate and we see no reason to disturb that decision. The appeal must fail.

A handwritten signature in black ink, appearing to read 'A. Leong', with a stylized flourish at the end.

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