

**Case Summary of**  
***The Hong Kong Journalists Association v the Commissioner for Transport***  
**HCAL 559/2024; [2026] HKCFI 917**

**Background**

1. Following the Court of Final Appeal’s decision in *HKSAR v Choy Yuk Ling* [2023] 26 HKCFAR 185, the Commissioner for Transport (“**Commissioner**”) introduced and implemented a policy (“**Policy**”) governing applications for particulars kept in the Register of Vehicles (“**Register**”) and prescribing the conditions on which the Commissioner will issue Certificates of Particulars of Vehicle (“**Certificate**”). The Policy, which is contained in the Guidance Notes on the Applications for a Certificate of Particulars of Vehicle, was issued by the Transport Department in January 2024 (“**Guidance Notes**”).

2. Under the Policy, a Certificate will only be issued under the following conditions: (1) the applicant is the registered owner of the vehicle, (2) the applicant has obtained the written consent of the registered owner of the vehicle, or (3) the applicant’s interests are directly affected by the ownership or use of the vehicle and the information obtained would only be used for specified purposes (“**Specified Purposes**”) set out in the Guidance Notes (“**Automatic Route**”). Journalistic purposes are not one of, and do not fall within one of, the Specified Purposes.

3. Where an application does not meet the conditions specified but there is a need to ascertain the registered particulars of a vehicle due to other circumstances that involve the ownership or uses of the vehicle and significant public interest, and the applicant wishes the Commissioner to give special consideration for issuance of the Certificate, the applicant may make an application under exceptional circumstances through a written submission to the Commissioner (“**Public Interest Route**”).

4. **An application under exceptional circumstances will only be approved if the Commissioner is satisfied that (1) the applicant’s obtaining and disclosure of the vehicle particulars (or part of the particulars) to the applicant is lawful and legitimate; (2) the public interest in disclosing the vehicle particulars (or part thereof) to the applicant outweighs the registered owner’s right to privacy, and the lawful rights and interests of other persons and society as a whole in the overall circumstances of the case; and (3) the concerned particulars will be used by the applicants solely for the stated purpose(s) without any misuse or abuse.**

5. Against this background, the Hong Kong Journalists Association (“**HKJA**”) brought the judicial review to challenge the legality and constitutionality of the Policy. HKJA also challenged the Commissioner’s failure to make decisions promptly and within a reasonable time on applications for such information made by individual members of the press, and the Commissioner’s decisions to refuse a number of those applications by operation of the Policy (“**Rejections**”).

## **The Court’s Rulings**

### ***Ground 1 – Ultra Vires Ground***

6. HKJA argued that the Policy was *ultra vires* as it fails to give effect to the statutory purpose of section 6(1)(e) of the Road Traffic Ordinance (Cap. 374) and Regulation 4 of the Road Traffic (Registration and Licensing of Vehicles) Regulation (Cap. 374E) (which in turn taints the overall design of the Policy), and frustrates the broad statutory purposes confirmed by the Court of Final Appeal in ***Choy Yuk Ling***.

7. Having regard to the broad interpretation of “other traffic and transport related matters” in ***Choy Yuk Ling*** that bona fide journalism should not be excluded therefrom, the Court accepted HKJA’s submissions that the addition of the word “directly” in the Policy (i.e. “*the applicant’s interests are **directly** affected by the ownership or use of a vehicle who as a result need to ascertain the particulars of that vehicle*”) is a misinterpretation of the broad statutory purposes of Regulation 4. However, the Court noted that the Policy foresees the possibility of journalistic applications, and allows for them under the Public Interest Route, and found that the exercise of the Policy by the Commissioner is consistent with the Court of Final Appeal’s decision in ***Choy Yuk Ling*** (§§109 – 120).

8. The Court held that **the Commissioner has not acted beyond the powers prescribed to her in developing a policy that scrutinises certain applications for particulars of vehicles more closely.** It is observed that an application under either route may infringe privacy rights if the application is granted (unless the application is made by the person who provided the particulars); any application for particulars will require the Commissioner to engage in some consideration of the balance of rights. The balancing exercise has already occurred for Automatic Route applications, and the Public Interest Route also recognises the possibility of other applicants being able to demonstrate that they, on balance, should also be entitled to disclosure of particulars. Obviously, journalistic activities are capable of being one type of application which can lead to the disclosure of vehicle particulars (§§125 – 126).

## *Application of the Personal Data (Privacy) Ordinance and/or Right to Privacy*

9. In Section H2 of the judgment, the Court specifically considered the application of the Personal Data (Privacy) Ordinance (“PDPO”) or the constitutional right to privacy in the context.

10. **The Court accepted that neither DPP3 nor section 61(2) of the PDPO apply as blanket exemptions for news activity and journalists. While personal data is exempt from the provisions of DPP3 under section 61(2), section 61(2)(b) requires that such disclosure of personal data is made by a person who has reasonable grounds to believe (and reasonably believes) that the publishing or broadcasting is in the public interest.** Having regard to the relevant factors to assist the Commissioner when deciding if the public interest in disclosure outweighs the registered owner’s right to privacy and lawful rights and interests of other persons and society as a whole (as set out in the Guidance Notes), the Court did not find that the Policy is “markedly more restrictive” than section 61 of the PDPO (§124).

11. **Further, section 61(2) of the PDPO is only an exemption, and does not place a positive duty on the Commissioner to disclose personal data.** The Commissioner must nevertheless conduct the balancing exercise, which effectively encompasses the “public interest” considerations of DPP3 and section 61(2) respectively (§124).

### *Ground 2 – Proportionality Ground*

12. HKJA contended that the Policy constitutes a disproportionate and unjustified restriction on the common law and constitutionally protected freedom of expression, freedom of the press and/or the right to seek, receive and impart information under Article 27 of the Basic Law and Article 16 of the Bill of Rights.

13. On the application of the double proportionality test and the ultimate balancing exercise, the Court found that the restrictions imposed on journalistic applications by the operation of the Public Interest Route of the Policy are **rationally connected and no more than necessary for the achievement of the legitimate aim of protecting the right to privacy of vehicle owners and society at large, and they do not result in an unacceptably harsh burden on HKJA or its members or other parties seeking disclosure of particulars for journalistic purposes. The Policy does not constitute a disproportionate and unjustified restriction on the right to freedom of expression and freedom of the press under Article 27 of the Basic Law and Article 16 of the Bill of Rights** (§§184 – 186).

### ***Ground 3 – Wednesbury Ground***

14. The Court observed that the Policy does not aim to specifically exclude journalistic applications and the Public Interest Route is available to those who wish to apply for the disclosure of particulars for journalistic purposes. It is true that there are some limitations in the Public Interest Route such that it is not as expedient as the Automatic Route, but this is for good reason. The Commissioner exercises a duty to protect the right to privacy of vehicle owners (§194).

15. The Court referred to *Society for Protection of the Harbour Ltd v Chief Executive in Council and others* [2004] 2 HKLRD 902, which stated that the greater the degree of interference with a fundamental right, the more the court will require by way of justification before it is satisfied that the decision is reasonable in the public law sense. Even applying such standard of scrutiny, **the Court was not convinced that the Policy is irrational in the Wednesbury sense** (§196).

### ***Ground 4 – Fettered Discretion Ground***

16. Under the Policy, personal data of the applicant for a Certificate may be disclosed to the vehicle owner to whom the particulars relate. All registered vehicle owners can subscribe to a free-of-charge email notification service for “the issue of the Certificate of Particulars of Vehicle” through the GovHK website, whereby in the case of a Certificate being issued for a vehicle owned by a subscribed vehicle owner, a notification email containing the information of the applicant concerned will be sent to the subscribed vehicle owner (“**Notification Service**”).

17. HKJA sought to challenge the Policy and the Notification Service on two limbs: (i) that the Policy is unlawful because the Commissioner fettered her discretion by committing herself to the compulsory disclosure of all applicants’ personal data to the vehicle owners concerned through the Notification Service, hence utilising a “blanket policy”; and (ii) that such compulsory disclosure is inconsistent with the journalist applicants’ constitutional rights to freedom of expression and the freedom of the press.

18. It is noted that the Notification Service is not particular to applications under the Public Interest Route, but a general policy for all successful applications where there is a Certificate issued, including applications under the Automatic Route. Two requirements must be satisfied: first, the application is successful, and second, the vehicle owner in question has subscribed to the Notification Service. It is not the case that all applicants’ personal data is disclosed, nor is it disclosed to a “wide and uncertain range of recipients”. **The Court found that the disclosure is rationally connected to**

**the legitimate aim (i.e. the protection of personal data and privacy of vehicle owners), and is no more than necessary to achieve that legitimate aim** (§§205 – 206, 212 – 213).

19. Further, **the Court found that a reasonable balance has been struck between the restrictions imposed by the Notification Service and the right to expression and freedom of press exercised by applicant journalists** (§§214 – 215).

20. In any case, the Court reiterates that it exercises a supervisory jurisdiction on review only, and the issue at question is whether the Commissioner exercised his discretion in a manner that accords with his duty to promote the statutory purpose for which the discretion is given. It is not for the Court to substitute its own views in place of that of the Commissioner on the facts. **The Court did not find that the compulsory disclosure of applicants’ personal data through the Notification Service constitutes an unlawful fetter of the Commissioner’s discretion** (§§216 – 217).

#### *Ground 5 – Refusal/Rejection Ground*

21. Ground 5 is a fact-specific challenge. **Having regard to the circumstances of each case, the Court found that there were no clearly unreasonable delays, and the delays did not cross the threshold so as to amount to a breach of natural justice or other public law failure** (§§232 – 235).

22. As regards the Rejections, on the evidence, **the Court is satisfied that the Commissioner’s decisions were reached in accordance with the guidance and discretion afforded to her by the Policy, and are not irrational or unconstitutional** (§§243 – 246).

23. On the basis of the above, **the Court rejected HKJA’s grounds of appeal and dismissed the application for judicial review.**

24. As a postscript, the Court remarked that the present case is of public importance and has a significant impact on any applicant seeking disclosure of vehicle particulars for the purposes of bona fide investigative journalism. It is noted that the Policy itself mentions, amongst the relevant rights and interests to be taken into account in the balancing exercise, “the lawful rights and interests of other persons and society as a whole”, and this is where the fundamental rights of freedom of expression incorporating the freedom of the press come firmly into play (§§251 – 254).