

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE**

CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST NO 559 OF 2024

BETWEEN

THE HONG KONG JOURNALISTS Applicant
ASSOCIATION

and

THE COMMISSIONER FOR TRANSPORT Respondent

Before: Hon Coleman J in Court

Date of Hearing: 24 September 2024

Date of Further Evidence/Submissions: 2 February 2026

Date of Judgment: 6 March 2026

J U D G M E N T

A. Introduction

1. This case requires the resolution of the dispute which arises when two fundamental rights are in tension, one operating to impinge upon the other and vice versa.

2. On one side is the right to freedom of expression, encompassing freedom of the press. On the other, is the right to privacy. Freedom of expression is intrinsically important and valued for its own

A sake. But it is also instrumentally important, serving a number of broad
B objectives, including that the free flow of information and ideas informs
C public and political debate. It can act as a brake on the abuse of power
D by public officials, and it facilitates the exposure of errors in governance
E or in the administration of justice. It can also help to expose criminal
F activity. But the right to privacy or to the protection of personal
information also reflects important civilised values.

G 3. The Applicant is the Hong Kong Journalists Association
H (“HKJA”), which was established in 1968 and has been registered under
I section 5 of the Trade Unions Ordinance Cap 332 by the Registrar of
J Trade Unions. According to the HKJA website, the Applicant “is run by
K working journalists for the sole purpose of improving the working
L environment for the men and women who gather the news in Hong
M Kong ... [seeking] to enhance press freedom and the integrity of news
N coverage, and as a trade union, also aims to improve working conditions
O for journalists and to remove barriers to news gathering”.

P 4. In summary, the Applicant challenges the legality and
Q constitutionality of a policy adopted by the Commissioner for Transport
R (“Commissioner”) for the exercise of the statutory power and duty
S conferred by section 6(1)(e) of the Road Traffic Ordinance Cap 374
T (“RTO”) and Regulation 4 of the Road Traffic (Registration and
U Licensing of Vehicles) Regulation Cap 374E (“Cap 374E”), which control
V access to information in the Register of Vehicles (“Register”). The
Applicant additionally challenges 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.

5. Those arguments are pursued in these proceedings by Form 86 originally dated 5 April 2024, now in the Amended Form 86 (“AF 86”) dated 9 August 2024. The Applicant’s judicial review challenge is to:

- (1) The policy (“Policy”) contained in the ‘Guidance Notes on the Applications for a Certificate of particulars of Vehicle’ (“Guidance Notes”) as announced by the Commissioner on 5 January 2024 and implemented on 8 January 2024;
- (2) The non-statutory Form TD318 for an application for a Certificate of Particulars of Vehicle (“Certificate”), as revised in January 2024 by the Commissioner for use under the Policy (“TD318”);
- (3) The Commissioner’s failure to make decisions promptly and within a reasonable time on the applications for Certificates made between 5 and 9 January 2024 by journalists of HK01, Ming Pao, Now TV and The Collective under the Policy (“Failure/Refusal”); and
- (4) The Commissioner’s decisions (collectively, “Rejections”):
 - (a) of 3 June 2024 rejecting the application made on 8 January 2024 by a journalist of The Collective;
 - (b) of 27 June 2024 rejecting the application made on 8 January 2024 by a journalist of Now TV; and
 - (c) of 7 June 2024 rejecting the application made on 8 January 2024 by a journalist of Ming Pao.

6. By way of relief, the Applicant seeks:

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- (1) An order of *certiorari* quashing the Policy and/or TD318 (each in whole, or as to such parts as is held to be unlawful, irrational, unreasonable or unconstitutional).
- (2) A declaration that the Policy and/or TD318 is ultra vires and/or is unconstitutional by reason of it being incompatible with the freedom of expression and the freedom of the press at common law and/or the right to seek, receive and impart information in Article 16 of the Hong Kong Bill of Rights (“BOR16”) and/or Article 27 of the Basic Law (“BL27”).
- (3) A declaration that the Failure/Refusal is unlawful, irrational, unreasonable and/or in violation of BOR16 and/or BL27.
- (4) A declaration that the Commissioner must promptly and within reasonable time make a decision on an application for an extract from the Register of particulars of vehicle registration, made pursuant to section 6(1)(e) of the RTO and Regulation 4(2) of Cap 374E for the purpose of lawful journalistic activities.
- (5) An order quashing the Rejections.

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7. The Applicant’s standing to represent the interests of journalists has been regularly recognised. This is not disputed by the Commissioner. Furthermore, the Policy directly affects the interests of the Applicant’s members as well as their journalistic activity. The Applicant therefore has sufficient representative standing to make this Judicial Review application.

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8. On 17 April 2024, I granted leave on the papers. The matter was brought to a substantive hearing on 24 September 2024. At the hearing, the Applicant was represented by Mr Nigel Kat SC,

A leading Mr Jeffrey Tam and Mr Geoffrey Yeung of Counsel.
B The Commissioner was represented by Mr Benjamin Yu SC,
C Mr Jenkin Suen SC, Mr Michael Lok of Counsel and Ms Leona Cheung,
D Principal Government Counsel of the Department of Justice.

E 9. At the end of the argument at the hearing, I reserved my
F decision to be handed down later, in light of and with the benefit of the
G materials previously filed by the parties and the oral submissions made by
H Mr Kat, Mr Yu and Mr Suen.

I 10. On 2 February 2026, the parties sought, and I granted, leave
J to file additional evidence relating to an application under exceptional
K circumstances. I also accepted further submissions on 2 February 2026.

L 11. With the benefit of those additional materials, this is my
M Judgment.

N ***B. Background***

O 12. Some of the following matters can be found in the discussion
P in the minutes of a meeting of the Legislative Council Panel on Transport
Q meeting on 11 July 2011, LC Paper No. CB(1) 2647/10-11(01). Other
R aspects can be found in later materials and the evidence filed for these
S proceedings.

T 13. All vehicles used on the roads of Hong Kong, except
U otherwise stated under the RTO, have to be registered and licensed.
V Regulation 4(1) of Cap 374E provides that the Commissioner shall
maintain a register of vehicles containing the 18 particulars of the

vehicles concerned as specified in Schedule 1 to Cap 374E.

The relevant particulars are:

- (i) Registration mark.
- (ii) Classification of vehicle.
- (iii) Date of first registration.
- (iv) Full name of registered owner.
- (v) Full residential address of the registered owner (or of the registered office of a corporate body).
- (vi) Identity document.
- (vii) Make.
- (viii) Year of manufacture.
- (ix) Engine number.
- (x) Chassis number.
- (xi) Cylinder capacity or rated power.
- (xii) Permitted gross vehicle weight (goods vehicles and special purpose vehicles only).
- (xiii) Type of body.
- (xiv) Colour.
- (xv) Seating capacity and standing passenger capacity.
- (xvi) Any other particulars required by the Commissioner.
- (xvii) Country of origin.
- (xviii) Licence fee.

14. Prior to January 2024, it was the policy of the Transport Department (“TD”) that the Commissioner shall, upon payment of a prescribed fee, supply to any person making application for any particulars in the register in respect of a vehicle a Certificate stating such particulars. The Commissioner had no discretion in withholding the release of such particulars, including the personal particulars of the relevant registered owner, provided that the prescribed fee was paid by the applicant. Furthermore, the Commissioner did not have power under the existing law to ask the applicant to provide reasons for obtaining the Certificate.

A 15. In 2003, the TD introduced new administrative measures
B (1) to include a note on the relevant application form to remind the
C applicant that the personal data of the registered owner should only be
D used for traffic and transport related matters; (2) to ask the applicant to
E state the purpose of applying for the Certificate, and to confirm his
F understanding that the making of a false statement constitutes an offence;
G and (3) to enable the TD to release the personal information of the
H applicant concerned to the registered owner if requested by the latter.

I 16. However, even with the promulgation of these measures,
J the Commissioner was still obliged to issue a Certificate to an applicant
K so long as the prescribed fee was received, even where an applicant failed
L to specify the purpose of his application.

M 17. It was long recognised by the TD that journalists and
N media/news agencies form a number of the applicants for Certificates of
O vehicle particulars. For example, in 2010 the TD issued approximately
P 50,400 Certificates. 44% of applicants (roughly 22,100) did not specify
Q a purpose for the application. Of those 22,100 applications, over 11,200
R applications were made in the names of companies, 25% of which were
S media or news agencies.

T 18. In 2011, the Government considered a proposal to improve
U the issuing mechanism of Certificate of Particulars of Motor Vehicles,
V and to “enhance privacy protection and ensure that the personal data of
registered owners contained in the register is properly used”.
The proposed amendments were:

- (1) to specify in Cap 374E that the purpose of the register is to allow any member of the public to ascertain the particulars

A of a registered vehicle in the manner provided in the
B Regulations as amended;

C (2) to restrict the conditions under which personal particulars
D may be released to only the registered owner of the relevant
E vehicle, persons holding written consent of the registered
F vehicle owner concerned, or to persons who declare to the
G Commissioner that such information would only be used for
H certifying the identity of the registered vehicle owner in
I specified scenarios; and

J (3) to introduce a sanction provision such that it shall be
K an offence for an applicant to use the personal particulars of
L the registered vehicle owner for purposes other than that
M declared.

N 19. Ultimately, the Government did not proceed with the
O proposed 2011 amendments, and the existing procedure remained in place
P until the new Policy was adopted.

Q 20. In *HKSAR v Choy Yuk Ling* [2023] 26 HKCFAR 185 (“*Choy*
R *Yuk Ling*”), the Court of Final Appeal (“CFA”) overturned the conviction
S of Choy Yuk Ling, who at the time was a contracted journalist for Radio
T Television Hong Kong (“RTHK”), for knowingly making a false
U statement in a material particular for the purpose of obtaining a certificate
V under the RTO contrary to section 111(3)(a) of the RTO. *Choy Yuk Ling*
dealt heavily with the procedure in place and with the statutory
construction of the RTO and Cap 374E. I shall return to it below.

21. Following the decision of the CFA in *Choy Yuk Ling*, the
Government announced that it would review and improve the procedures

A for the issuing of Certificates. On 2 January 2024, the Commissioner
B propounded a new and detailed Policy governing applications for
C particulars kept in the Register and prescribing the conditions on which
D she will issue extracts from the Register in Certificates.

E 22. After the implementation of the Policy and up to
F 30 June 2024, a total of 9,822 Certificates were issued. All of the
G approved applications were made by way of TD318 or online application
H through the Automatic Route (as defined below).

I 23. In contrast, as at 17 July 2024, a total of 16 applications
J made under the Public Interest Route (as defined by me below) had been
K received by the Commissioner. 13 of those applications were made for
L journalistic purposes, and 3 applications were made for “other purposes”.
M Of the 16 applications, 9 applications were withdrawn or deemed
N withdrawn applications, and 7 applications were rejected.

O 24. The individual applications concerned were the
P 6 applications under journalistic purposes which were rejected by the
Q Commissioner, as summarised below:

R (1) On 8 January 2024, an application was made by a senior
S reporter of HK01 for issuance of a Certificate on the basis
T that the subject vehicle was involved in a “traffic accident”,
U and that it was in the public interest to disclose the
V information on the Register. The application was rejected
on 18 April 2024.

(2) On 8 January 2024, an application was made by a senior
reporter of HK01 for issuance of a Certificate in respect of

A a personalised vehicle registration mark. The application
B was rejected on 18 April 2024.

C (3) On 8 January 2024, an application was made by a reporter of
D The Collective for issuance of Certificates for three vehicles
E in respect of the incident which took place in Yuen Long on
21 July 2019. The application was rejected on 3 June 2024.

F (4) On 8 January 2024, an application was made on behalf of
G Now TV for issuance of a Certificate in respect of the same
H subject vehicle as in *Choy Yuk Ling*. It is noted that the
I applicant provided two purposes for making the application,
J the first being that the applicant intended to follow up on the
K implementation of the Policy, and the second being the
L significant public interest involved in the incident which the
M applicant sought to follow up on. The application was
N rejected on 27 June 2024.

O (5) On 8 January 2024, an application was made by a reporter of
P Ming Pao for issuance of a Certificate in respect of a vehicle
Q with a registration mark related to the University of Hong
R Kong. The application was rejected on 7 June 2024.

S (6) On 15 February 2024, an application was made by a reporter
T of The Collective for issuance of Certificates in respect of
U nine vehicles related to an incident of illegal mud debris
V dumping. The application was rejected on 4 June 2024.

25. Later, on 10 September 2024, an application was made by
a senior reporter on behalf of HK01 under the Public Interest Route for
the first registration dates of 12 vehicles in relation to a journalistic
investigation regarding non-compliance by the Government's contractors
in providing overage vehicles under the Government's vehicle hiring
service contracts, which was approved on the basis that the public interest

A in the proposed disclosure of the first registration dates outweighed the
B vehicle owners' right to privacy. On 5 June 2025, the applicant further
C requested Certificates containing the full particulars of the 12 vehicles,
D which was processed as a new application.

E 26. On 10 December 2025, the new application was rejected on
F the basis that (1) there was factual uncertainty as to the relevance of the
G 12 vehicles to the claimed public interest, (2) the vehicle particulars
H requested may be unrelated to the contracts and totally irrelevant to the
I claimed public interest, (3) there was no indication that the previous
J published reports and available information were inadequate to serve the
K claimed public interest of raising public awareness and urging
L rectification by the Government, (4) disclosing the requested information
M could lead to undue and irreparable harm to the vehicle owners, including
but not limited to the infringement of their privacy, and (5) release of the
particulars might lead to the identification of the vehicle owners engaged
by the contractors, and might cause further harm or prejudice to the
lawful rights and interests of the contractors.

N ***C. Constitutional and Statutory Provisions***

O ***C.1 Basic Law and Bill of Rights***

P 27. It is helpful next to set out the articles of the Basic Law
Q ("BL") and the Hong Kong Bill of Rights ("BOR"), and the statutory
R provisions applicable to the present case.

S 28. The constitutional guarantee of freedom of speech is laid out
T in Article 27 of the Basic Law ("BL27") as follows:

U **Article 27**
V

Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.

29. The right to privacy is enshrined in Article 30 of the Basic Law (“BL30”) as follows:

Article 30

The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.

30. This right to privacy is also reflected in Article 14 of the Bill of Rights (“BOR14”):

Article 14

Protection of privacy, family, home, correspondence, honour and reputation

- (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- (2) Everyone has the right to the protection of the law against such interference or attacks.

31. Article 16 of the Bill of Rights (“BOR16”) provides for the freedom of opinion and expression in Hong Kong:

Article 16

Freedom of opinion and expression

- (1) Everyone shall have the right to hold opinions without interference.

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- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary-
- (a) For respect of the rights or reputations of others; or
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.
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I *C.2 RTO and Cap 374E* I

J 32. The RTO has a long title which specifies that its purpose is J
K “to provide for the regulation of road traffic and the use of vehicles and K
L roads (including private roads) and for other purposes connected L
therewith”.

M 33. Section 6(1)(e) of the RTO provides as follows: M

N **6. Regulation of registration and licensing of vehicles** N

O (1) The Secretary may make regulations to provide O
for –

P ... P

Q (e) the maintenance of a register of motor Q
vehicles and the issue of extracts
therefrom; ... R

S 34. Pursuant to that power, Regulation 4 of Cap 374E was S
enacted. It provides for both the maintenance of a register of motor T
vehicles and the issue of extracts from that register, as follows: T

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4. Register of vehicles

- (1) The Commissioner shall maintain a register of vehicles containing the particulars specified in Schedule 1.
- (2) The Commissioner shall, on payment of the fee prescribed in Schedule 2, supply to any person making application for any particulars in the register in respect of a vehicle a certificate stating such particulars.
- (3) The Commissioner may waive the fee payable in respect of any application under subregulation (2) where he is satisfied –
 - (a) that the applicant has good reason for requiring the particulars; and
 - (b) it is in the public interest that the particulars be disclosed.

35. On the face of it, it might be thought that the issue by the Commissioner of extracts from the Register, in the form of any particulars in the Register in respect of a vehicle, is a mandatory exercise (“shall ... supply”) on payment of the prescribed fee. At first blush, that may not seem to be a discretionary exercise. However, in the *Choy Luk Ling* case – as to which, see further below – the CFA held that, depending on its context and purpose the word “shall” in a statutory provision might not be absolute. Here, notwithstanding the use of that word, Regulation 4(2) did not impose an absolute duty on the Commissioner to supply vehicle particulars upon payment of the prescribed fee regardless of the reason for which the particulars were sought.

C.3 PDPO

36. Also relevant to the current consideration are certain provisions of the Personal Data (Privacy) Ordinance Cap 486 (“PDPO”).

37. Part 8 of the PDPO relates to ‘Exemptions’, which (materially for present purposes) contains sections 51 and 61.

38. Section 51 of the PDPO states as follows:

51. Interpretation

Where any personal data is exempt from any provision of this Ordinance by virtue of this Part, then, in respect to that data and to the extent of that exemption, that provision neither confers any right nor imposes any requirement on any person, and the other provisions of this Ordinance which relate (whether directly or indirectly) to that provision shall be construed accordingly.

39. Section 61 of the PDPO provides for the exemption of personal data for news activity, as follows:

61. News

(1) Personal data held by a data user—

(a) whose business, or part of whose business, consists of a news activity; and

(b) solely for the purpose of that activity (or any directly related activity),

is exempt from the provisions of—
(Amended 18 of 2012 s.2)

(i) data protection principle 6 and sections 18(1)(b) and 38(i) unless and until the data is published or broadcast (wherever and by whatever means);

(ii) sections 36 and 38(b).

(2) Personal data is exempt from the provisions of data protection principle 3 in any case in which —
(Amended 18 of 2012 s.2)

(a) the use of the data consists of disclosing the data to a data user referred to in subsection (1); and

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B		(b) such disclosure is made by a person who has reasonable grounds to believe (and reasonably believes) that the publishing or broadcasting (wherever and by whatever means) of the data (and whether or not it is published or broadcast) is in the public interest.	B
C			C
D			D
E		(3) In this section—	E
F		news activity (新聞活動) means any journalistic activity and includes—	F
G		(a) the—	G
H		(i) gathering of news;	H
I		(ii) preparation or compiling of articles or programmes concerning news; or	I
J		(iii) observations on news or current affairs, for the purpose of dissemination to the public; or	J
K		(b) the dissemination to the public of—	K
L		(i) any article or programme of or concerning news; or	L
M		(ii) observations on news or current affairs.	M
N	40.	Schedule 1 to the PDPO sets out the Data Protection Principle (“DPPs”), which include DPP1 and DPP3.	N
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P	41.	DPP1 provides as follows:	P
Q		1. Principle 1 – purpose and manner of collection of personal data	Q
R		(1) Personal data shall not be collected unless –	R
S		(a) the data is collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;	S
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B	(b)	subject to paragraph (c). the collection of the data is necessary for or directly related to that purpose; and	B
C	(c)	the data is adequate but not excessive in relation to that purpose.	C
D	(2)	Personal data shall be collected by means which are –	D
E	(a)	lawful; and	E
F	(b)	fair in the circumstances of the case.	F
G	(3)	Where the person from whom personal data is or is to be collected is the data subject, all practicable steps shall be taken to ensure that –	G
H	(a)	he is explicitly or implicitly informed, on or before collecting the data, of –	H
I	(i)	whether it is obligatory or voluntary for him to supply the data; and	I
J	(ii)	where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and	J
K	(b)	he is explicitly informed –	K
L	(i)	on or before collecting the data, of –	L
M	(A)	the purpose (in general or specific terms) for which the data is to be used; and	M
N	(B)	the classes of persons to whom the data may be transferred; and	N
O	(ii)	on or before first use of the data for the purpose for which it was collected, of –	O
P	(A)	his rights to request access to and to request the correction of the data; and	P
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(B) the name or job title, and address, of the individual who is to handle any such request made to the data user,

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data was collected and that purpose is specified in Part 8 of this Ordinance as a purpose in relation to which personal data is exempt from the provisions of data protection principle 6.

42. DPP3 provides as follows:

3. Principle 3 – use of personal data

- (1) Personal data shall not, without the prescribed consent of the data subject, be used for a new purpose.
- (2) A relevant person in relation to a data subject may, on his or her behalf, give the prescribed consent required for using his or her personal data for a new purpose if—
 - (a) the data subject is—
 - (i) a minor;
 - (ii) incapable of managing his or her own affairs; or
 - (iii) mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136);
 - (b) the data subject is incapable of understanding the new purpose and deciding whether to give the prescribed consent; and
 - (c) the relevant person has reasonable grounds for believing that the use of the data for the new purpose is clearly in the interest of the data subject.

(3) A data user must not use the personal data of a data subject for a new purpose even if the prescribed consent for so using that data has been given under subsection (2) by a relevant person, unless the data user has reasonable grounds for believing that the use of that data for the new purpose is clearly in the interest of the data subject.

(4) In this section—
new purpose (新目的), in relation to the use of personal data, means any purpose other than—

(a) the purpose for which the data was 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).

D. Choy Yuk Ling

43. Both parties relied heavily on the CFA's decision in *Choy Yuk Ling*. Indeed, that decision was at least part of the trigger for the implementation of the Policy in the Guidance Notes. Therefore, it may be necessary to go into some detail on the judgment to provide further context in this case.

44. To summarise the facts of the *Choy Yuk Ling* case, the appellant was a contracted journalist for RTHK who made an online application under the old Policy for, and obtained, a Certificate of Particulars of Vehicle of a private car. The appellant claimed she had done so for the purposes of a documentary written and directed by the appellant on the events which occurred in Yuen Long on 21 July 2019, where a number of people dressed in white assaulted with bamboo sticks or canes others dressed in black.

A 45. Under the old application system, an online application
B consisted of five steps. The focus of the CFA was at step 2, which
C required an applicant to select from a pulldown menu one of three
D purposes for which the application was made. One of the options was
E “other traffic and transport related matters”.

F 46. The appellant had been charged under section 111(3)(a) of
G the RTO, which provides that a person who, for the purpose of obtaining
H any certificate or other document under the RTO, knowingly makes any
I statement which is false in a material particular commits an offence.

J 47. The prosecution’s case was that the appellant committed the
K offence because, in applying for the Certificate of Particulars of Vehicle
L on two occasions, she had knowingly made a statement that was false in a
M material particular, being the selection of the purpose of her application
N as “other traffic and transport related matters” when her real reason for
O applying was for investigative journalism. The appellant was convicted
P on two counts contrary to section 111(3)(a) of the RTO, and was fined
Q HK\$3,000 on each count. Her appeal to the Court of First Instance was
R dismissed.

S 48. Subsequently, the appellant was granted leave to appeal to
T the CFA on two questions of law, being:

- U (1) Under Regulation 4(2), can the Commissioner refuse to
V supply a certificate to an applicant on the ground that the
applicant’s purpose of the application is not connected with
“traffic and transport related matters”?
- (2) If the answer is yes, then how should the phrase “traffic and
transport related matters” be construed? In particular, does it

include an applicant’s journalistic investigation into or involving the use of a vehicle on the road?

49. At §§25-37, the CFA dealt with the first question of materiality and the proper construction of Regulation 4(2). The appellant’s contention that Regulation 4(2) imposes an absolute duty on the Commissioner, upon payment of the prescribed fee, to supply the vehicle particulars regardless of the reason for which they are sought, was rejected on the basis that it was unacceptably wide and incorrect having regard to the context and purpose of Regulation 4(2).

50. At §§25-32, the Court began by bringing into play the fact of the privacy of the data recorded on the Register (footnotes omitted):

25. For the following reasons, I would reject the construction of reg.4(2) advanced by the appellant. That construction involves acceptance of the contention that reg.4(2) imposes an absolute duty on the Commissioner, upon payment of the prescribed fee, to supply the vehicle particulars regardless of the reason for which they are sought. In my judgment, notwithstanding the use of the word “shall”, that contention is unacceptably wide and incorrect on a proper construction of reg.4(2) having regard to its context and purpose.

26. The information required to be kept in the register of vehicles includes the registered owners’ name, residential or corporate address and identity document. The appellant’s construction of reg.4(2) would offer no protection for such information at all. It would instead require acceptance of the startling proposition that, for example, a person with an improper motive such as stalking an individual he had seen driving a car in order to harass them sexually could require the Commissioner to provide him with a certificate of the vehicle particulars so that he might discover the potential victim’s name, address and identity and thereby pursue her. This would follow even if the applicant told the Commissioner that this was his reason for seeking the particulars of the vehicle. Other similarly unattractive

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examples can be postulated, such as an application for vehicle particulars in order to engage in doxing or in an attempt to blackmail the vehicle owner.

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27. Depending on its context and purpose, the word “shall” in a statutory provision may not be absolute. As a matter of public policy, even where a statutory duty is framed in apparently absolute terms, it should be presumed not to be intended to be exercised so as to enable a person to benefit from serious past crime or to facilitate serious crime in the future and that policy supports some limit to the Commissioner’s duty under reg.4(2). In any event, in its context, “shall” may denote an action required to be performed only subject to satisfaction of some express or implied condition.

28. Here, it is apparent that some application process is necessarily contemplated by reg.4(2) itself since the obligation on the Commissioner arises upon payment of the prescribed fee and in respect of “any person *making application for* any particulars in the register in respect of a vehicle” (emphasis added). The Regulations prescribe the fee payable and, although they do not specify the form of the application, it is implicit in reg.4(2) that one must be made. The Commissioner must, therefore, devise some form of application process and this supports the conclusion that the particulars kept in the register of vehicles are not intended to be arbitrarily available.

29. This is also consistent with the offence provision itself. Whilst the focus of Question 1 is on the wording of reg.4(2), the offence is contained in s.111(3)(a) of the RTO. The offence creating provision is a relevant part of the context of the RTO in which the Regulations are to be construed. That section makes it an offence for a person knowingly to make a false statement in a material particular “*for the purpose of obtaining* any... certificate or other document under [the RTO]” (emphasis added). This necessarily implies there will be a relevant application process in order to obtain the document in question and that statements may have been made in support of that application and caused, or be intended to cause, the document to be issued to the applicant.

30. Since an application process is involved in obtaining the certificate of vehicle particulars, it follows that the information which the Commissioner requires in support of that application, providing the requirement is

not *ultra vires*, is material since it is information which would be capable of affecting the Commissioner's decision whether to issue the document applied for or not. If that information is false in a material particular (which is a matter to be addressed in this appeal under Question 2), the offence under s.111(3)(a) may have been committed.

31. The certificate of vehicle particulars may include personal data within the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") which is entitled to protection. The application form properly includes a statement of the legal liability arising under s.64 of the PDPO in respect of that data. As the guardian of personal data kept in the vehicle register, the Commissioner is a data user within the meaning of the PDPO and required to manage that data responsibly. That would include an interest and a duty to record the identity of any person to whom such personal data is released. It is no answer to this responsibility on the part of the Commissioner to point to the exemption under s.60B(a) of the PDPO from data protection principle 3 (restricting the use of personal data), as was argued on behalf of the appellant. Neither the existence of that exemption nor the fact vehicle owners might have been informed pursuant to data protection principle 1 (limiting the purpose and manner of the collection of personal data) that the purpose of the collection of their personal data included the keeping of a register of vehicles that might be open to public inspection compels the wide and extravagant construction of reg.4(2) contended for by the appellant. The mere fact vehicle owners provide their personal data for registration does not undermine the importance of the right to control the dissemination of that information, which is subject to the right of privacy.

32. Plainly, it is relevant for the Commissioner to know the identity details of the person applying for the supply of vehicle particulars. A false statement knowingly made in that regard, for example a false Hong Kong Identity Card number, would attract potential liability under s.111(3)(a) despite the apparently mandatory wording of reg.4(2). It therefore follows that reg.4(2) should not be construed literally as imposing an absolute duty on the Commissioner to supply vehicle particulars.

51. At §§33-37, the CFA looked to the context and purpose of the RTO as well to find that the RTO itself was necessarily broad:

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33. Since the focus of this appeal is on the conviction of the appellant under s.111(3)(a) of the RTO in respect of her statement as to the purpose of her application for the certificate of vehicle particulars, it is necessary to ask if the Commissioner's requirement that she select one of the reasons specified in the application process for the certificate of vehicle particulars is within the proper ambit of reg. 4(2). In my judgment, for the following reasons, it is.

34. The RTO is to be construed as a whole. As expressed in its Long Title, the RTO is '[t]o provide for the regulation of road traffic and the use of vehicles and roads (including private roads) and for other purposes connected therewith'. This is necessarily a broad statement of statutory purposes since the content of the RTO is itself broad. Its breadth is demonstrated in relation to the registration and licensing of vehicles as the Court noted in *HKSAR v Cheung Wai Kwong*. The Court has also noted the multiple legislative purposes served by the RTO and its various provisions in *HKSAR v Yuong Ho Cheung*, a case concerning the licensing of cars for the carriage of passengers for hire or reward in which a narrow description of the legislative purpose of s 52(3) of the RTO was rejected. These references demonstrate that the statutory purposes of the RTO and its regulations are wide and encompass purposes ancillary to the driving of vehicles on roads. They also include law enforcement of traffic regulations, taxation and revenue generation, maintenance of records and information relating to vehicles, the licensing of various forms of public and private transport, and evidential matters relating to legal proceedings.

35. As well as having these multiple and broad purposes, the RTO is also to be construed in the context of the state of the law in Hong Kong. Reference has already been made to the obligations upon a data user, and the rights of a data subject, in respect of personal data subject to the PDPO. The relevance of the purpose for which the vehicle particulars are sought is inherent in the duty of the Commissioner to manage the personal data kept in the register and to minimise the risk of potential abuse of such data. For this reason, to require an applicant to indicate the purpose of the request for particulars from the register of vehicles is consistent with the Commissioner's responsible management of the register of vehicles maintained under the Regulations.

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36. In my judgment, construing reg 4(2) purposively and in context, the Commissioner may limit the purposes for which vehicle particulars may be required to be supplied. While the precise extent of that limit is not the focus of this appeal (see Section B.4 below), it is, in my view, consistent with reg 4(2) to provide for the release of vehicle particulars for ‘activities relating to traffic and transport matters’ and to further expand that category to cover ‘traffic and transport related purpose(s)’ sub-divided as to ‘[l]egal proceedings’, ‘[s]ale and purchase of vehicle’ and ‘[o]ther traffic and transport related matters’.

37. The ambit of those various categories will be discussed in the context of addressing the issue of falsity in Question 2 below. However, for the purposes of answering Question 1, and subject to what is said below in Section B.4, it is sufficient to conclude that the Commissioner was entitled to require the appellant to state the reason for the supply of a certificate of vehicle particulars by selecting one of the purposes specified in the online application form. Therefore, that fact was material to the application and, if an applicant’s statement of purpose was relevantly false, potential liability for the offence under s.111(3)(a) might arise.

52. The proviso in Section B.4, headed ‘A difference of approach between reg.4(2) and s.111(3)(a)’, comprises §§43 and 44, is as follows:

43. This appeal does not involve examining whether, leaving aside the issue of falsity, the categories of purpose specified in the Commissioner’s reg.4(2) application process are sufficient to cover all proper purposes for which a certificate of vehicle particulars might be sought. That issue might arise on a judicial review if the Commissioner were to refuse to supply particulars to an applicant specifying what he considered to be a proper or legitimate purpose albeit one not within the categories specified in the online application form. Nor does the appeal involve a challenge to the Commissioner’s refusal to provide a certificate of vehicle particulars on the ground that the stated purpose for the application was for an improper or illegitimate purpose. Instead, this appeal concerns the conviction of the appellant on the basis that she made a statement false in a material particular, namely

as to her purpose being “[o]ther traffic and transport related matters”, the meaning of which is addressed in discussing Question 2 below.

44. In considering the proper construction of reg.4(2), the question arises as to whether the Commissioner is entitled to require an applicant for a certificate of particulars to indicate the purpose of the application and to refuse to supply a certificate if the purpose indicated is improper or illegitimate. In contrast, on a prosecution under s.111(3)(a), the question is whether, given the actual purpose of the application, the menu item selected as the purpose of the application amounts to a statement which is false in a material particular. As will be seen in the discussion of Question 2 below concerning falsity, different issues of construction and approach may apply to reg.4(2) and s.111(3)(a) respectively. It is important to emphasise, again, that the focus of this appeal is on the conviction of the appellant under s.111(3)(a). As stated in the preceding paragraph, this appeal does not arise on a judicial review brought to challenge a refusal to provide a certificate of vehicle particulars.

53. The second question raised the issue of what, objectively, the purposes specified in the online application process cover and whether the appellant made a false statement in selecting the option “other traffic and transport related matters” from the drop down menu when applying for the two certificates in question. It was said at §46 that the exercise of statutory construction that is engaged is a determination of whether the statement made by the appellant is “false”, i.e. was the appellant’s selection of “other traffic and transport related matters” when she was seeking the particulars in order to interview the registered owner of the vehicle as to its use in transporting weapons to the scene of fighting, factually untrue in the context of the RTO and its various regulations and the wider context of the state of the law?

A 54. The CFA found at §§57-65 that the appellant’s statement was
B not false, as “other traffic and transport related matters” could sufficiently
C cover journalistic purposes:

D 57. The width of the statutory purposes of the RTO has
E been referred to above (at [34]). As there noted, the
F Long Title of the RTO is ‘[t]o provide for the regulation
G of road traffic and the use of vehicles and roads
H (including private roads) and for other purposes
I connected therewith’. Given the breadth of activities
J that occur in relation to road traffic, that very broad
K statement of legislative purpose is understandable.
L The keeping of a register of vehicle particulars and its
M availability to applicants for details from that register
N are clearly within that broad description of purposes,
O being captured by the phrase ‘other purposes connected’
P with the regulation of road traffic and the use of
Q vehicles and roads. Similarly, the purposes of the RTO
R need not be tied to the use of a vehicle on the roads: the
S licensing of a vehicle is another category of activity
T regulated by the RTO that is anterior to and does not
U necessarily involve the driving of the vehicle.

K 58. The breadth of the Long Title is reflected in the overall
L statement of purposes as ‘activities *relating to* traffic
M and transport matters’ (emphasis added) in the online
N application process. As this Court has previously held,
O in *Moody’s Investors Service Hong Kong Ltd v*
P *Securities and Futures Commission*, the phrase ‘relating
Q to’ has ‘a wide and broad import’ and ‘could be said ...
R to have ‘the widest possible meaning of any expression
S intended to convey some connection ... between the
T two subject-matters to which the words refer’.

O 59. The overall statement of purposes thus being broad,
P the third category of ‘[o]ther traffic and transport
Q related matters’ must be understood to be a catchall for any
R other activities which relate to traffic or transport
S matters. As already noted, it is not to be understood
T *ejusdem generis* with the other two options of ‘[l]egal
U proceedings’ or ‘[s]ale and purchase of vehicle’ but is
V instead within other ‘activities relating to traffic and
transport matters. This is therefore a very broadly
phrased expression indeed and there is no obvious
reason to restrict the category to a traffic or transport
related use of the vehicle by the person applying for the
vehicle particulars himself.

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60. Was the appellant’s purpose of using the vehicle particulars in order to contact the registered owner to conduct an interview in the context of a journalistic investigation of the connection between the owner of the vehicle and its apparent use to supply weapons to the white-clad individuals involved in the fighting in Yuen Long on 21 July 2019 within the meaning of ‘[o]ther traffic and transport related matters’ as a catchall category of other ‘activities relating to traffic and transport matters’?

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61. Here, the Court is presented with what has been described as a ‘constructional choice’, by which is meant ‘that there is more than one way of reading’ the statutory text: *HKSAR v Chui Shu Shing* and *Secretary for Justice v Cheng Ka Yee*. One might read ‘[o]ther traffic and transport related matters’ (albeit not statutory text, as noted at [47] above) in the narrow way that the magistrate and judge did (see above) or in a broader way to include the serious investigative journalism undertaken here by the appellant concerning the use of the vehicle.

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62. In my view, objectively, the latter is to be preferred. It sits more naturally with the catchall nature of ‘[o]ther traffic and transport related matters’, whereas the magistrate and judge’s approach narrowly limits the category to the appellant’s own use of or involvement with the vehicle itself. It is also a construction which reflects the principle against doubtful penalisation applied by this Court in: *T v Commissioner of Police; Securities and Futures Commission v Pacific Sun Advisors Ltd*; and *HKSAR v Chui Shu Shing*. More importantly, it is a constructional choice which gives effect to the constitutionally protected freedom of speech and of the press contained in art 27 of the Basic Law and art 16 of the Hong Kong Bill of Rights. Whilst such rights are not absolute and may be restricted where necessary, there is no reason to proceed from a starting point that *bona fide* journalism should be excluded from the phrase ‘[o]ther traffic and transport related matters’.

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64. [see below]

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65. For these reasons, differing from the courts below, I would give a wider meaning to the category ‘[o]ther traffic and transport related matters’ that would include the obtaining of vehicle particulars for the purpose of genuine investigative journalism in relation to a possible connection between the registered owner of a

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vehicle and its use in connection with a crime. In this case, it has not been suggested that the appellant's investigative journalism was anything other than *bona fide* and serious. On this footing, the statement made by the appellant when applying for the certificate of vehicle particulars was not false. One may contrast the situation of a request for vehicle particulars by a journalist for the purposes of mere gossip or on a matter of merely salacious interest, which might be argued to be akin to unsolicited stalking or marketing. It has not been suggested that the present case is of that nature.

55. The CFA quashed the convictions on the basis that the phrase "other traffic and transport related matters" is not clear and unambiguous. Even if the phrase were objectively to be construed as excluding a journalistic purpose, a journalist in the appellant's position faced with the online application form and its drop down menu could well be honestly mistaken in thinking it included that activity as one "relating to traffic and transport matters": see §73.

56. Reference can also usefully be made to §§31 and 64 of *Choy Yuk Ling*, where the issue of the right to privacy and the corresponding data protection legislation was dealt with in the course of the CFA's reasoning at. In essence, the appellant as a journalist carrying out news activity was held to be exempted from DPP3, which restricts the use of personal data by others, and could therefore use the data held in the Register for journalistic purposes. But, DPP3 simultaneously imposed a duty on the Commissioner to protect such data, which limited the "wide and extravagant construction" of Regulation 4(2) contended for by the appellant. In §§31 and 64, it was stated:

31. The certificate of vehicle particulars may include personal data within the Personal Data (Privacy) Ordinance (Cap 486) ('PDPO') which is entitled to protection. The application form properly includes a statement of the legal liability arising under s 64 of the

PDPO in respect of that data. As the guardian of personal data kept in the vehicle register, the Commissioner is a data user within the meaning of the PDPO and required to manage that data responsibly. That would include an interest and a duty to record the identity of any person to whom such personal data is released. It is no answer to this responsibility on the part of the Commissioner to point to the exemption under s 60B(a) of the PDPO from data protection principle 3 (restricting the use of personal data), as was argued on behalf of the appellant. Neither the existence of that exemption nor the fact vehicle owners might have been informed pursuant to data protection principle 1 (limiting the purpose and manner of the collection of personal data) that the purpose of the collection of their personal data included the keeping of a register of vehicles that might be open to public inspection compels the wide and extravagant construction of reg. 4(2) contended for by the appellant. The mere fact vehicle owners provide their personal data for registration does not undermine the importance of the right to control the dissemination of that information, which is subject to the right of privacy.

64. In the context of journalism and privacy, it is also to be noted that the policy of data protection in Hong Kong privacy legislation is to exempt personal data from data protection principle 3 (restricting the use of personal data) where the personal data is held by a data user (a) whose business is a news activity and who holds the data for the purpose of that news activity, and (b) the disclosure is made by a person who has reasonable grounds to believe and does reasonably believe that the publishing or broadcasting of the data is in the public interest. Thus, given the nature of the appellant's television documentary broadcast by RTHK, it is reasonable to assume that this exemption would have applied to the appellant, so that her obtaining the certificate of vehicle particulars in respect of LV755 including any personal data relating to its registered owner would not be inconsistent with data protection law in Hong Kong.

57. I keep these holdings and contextual matters in mind in the following analysis.

E. The Policy

E.1 Introduction

58. As already mentioned above, the Policy contained in the Guidance Notes was first announced by the Commissioner on 5 January 2024 and implemented on 8 January 2024.

59. Under §4 of the Policy, the Register was established for the following purposes:

- (1) regulating the use of vehicles;
- (2) enabling the law enforcement agencies to discharge their responsibilities; and
- (3) providing relevant information to persons directly affected by the ownership or use of a vehicle who as a result need to ascertain the particulars of that vehicle.

60. It can usefully be noted here that the Applicant submitted that, on the basis of *Choy Yuk Ling*, there is no mandate for the three restrictions in the third purpose – namely (1) “persons *directly* affected”, (2) “who *as a result*”, and (3) “*need* to ascertain the particulars of that vehicle” (emphasis added). In fact, it was submitted that *Choy Yuk Ling* suggests the contrary.

61. This may be important because, under §5 of the Policy, it is said that it is in accordance with the purposes for which the Register is established as mentioned in §4 that the Certificate will only be issued under the conditions then set out, which conditions match those suggested purposes. Though I can come back to this below, I can flag here that I

A do not think the potential problem arising is enough to render the Policy
B unlawful.

C 62. In the AF 86, the Applicant described the Policy as
D a two-branched system of application. I will adopt this rather helpful
E explanation in my own analysis.

F 63. In a limited set of circumstances, a Certificate will
G automatically be issued immediately online or on the same day from a TD
H counter (“Automatic Route”). All other applications are classified as
I “exceptional circumstances” which require a written application setting
J out a number of details that must be addressed (“Public Interest Route”).
I will address the detail of each route below.

K 64. The Policy provides for a checking mechanism in §21 of the
L Guidance Notes, whereby the TD or other law enforcement agencies may
M conduct checks on applications as necessary. The TD is also
N empowered by this provision to conduct random checks on applications
O within 2 years from the dates of issuance of the Certificates. Applicants
P for Certificates are therefore required to retain the relevant supporting
Q documents and information for 2 years from the issue date of the
R Certificate, and must fully cooperate with the TD or the law enforcement
S agencies during their checks.

65. The Policy also includes a Personal Data Collection
Statement at section VII of the Guidance Notes, which provides as
follows:

VII. Personal Data Collection Statement

Purposes of collection

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22. The personal data of the applicant or relevant persons contained in an application form or a written submission for an application under exceptional circumstances and any change to such data from time to time will be used by TD for the following purposes:
- (a) activities relating to the processing of the application in an application form or a written submission for an application under exceptional circumstances;
 - (b) facilitating communication between TD and the applicant or relevant persons;
 - (c) administrative purposes such as compiling statistics and conducting research; and
 - (d) for the information of the registered vehicle owner to whom an application or a written submission for an application under exceptional circumstances relates.
23. It is obligatory for the applicants to supply the personal data as required by the application form or in paragraph 19. If the applicant fails to supply the required data, the application may be refused.

Classes of Transferees

24. The personal data contained in an application form or a written submission for an application under exceptional circumstances and any change to such data from time to time may be disclosed to other Government departments, bureaux and relevant organisations for the purposes mentioned in paragraphs 22(a) to 22(c) above.
25. The personal data contained in an application form or a written submission for an application under exceptional circumstances and any change to such data from time to time may be disclosed to the registered vehicle owner concerned if he requests so for the purpose mentioned in paragraph 22(d) above.

Access to Personal Data

26. The applicant or relevant persons have a right of access and correction with respect to personal data as provided for in sections 18 and 22 and data protection principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. Such right of access includes the right to obtain a copy

A of the personal data provided by the application form or
B the written submission for an application under
C exceptional circumstances.

D 66. As can be seen, this section of the Guidance Notes relates to
E the purposes of collection of the personal data of the applicant for a
F certificate, and includes the purpose of giving that data to the registered
G vehicle owner to whom an application or a written submission for an
H application under exceptional circumstances relates. This is emphasised
I in §25, though it also refers to the apparent need for the vehicle owner to
J request that data. Also permits the applicant's data to be transferred to
K other Government departments, bureaux and relevant organisations.

L *E.2 The Automatic Route*

M 67. As already noted, the Policy sets out at §5 a number of
N conditions that must be met for the issuance of the Certificate, which are
O as follows:

- P (1) The applicant is the registered owner of the vehicle; or
Q (2) The applicant declares to the Commissioner that he has
R obtained the written consent of the registered vehicle owner
S concerned (specimen at Annex A) to acquire the relevant
T Certificate, and that such information would only be used for
U purpose(s) as specified in the written consent of the
V registered vehicle owner concerned. The applicant must
also state to TD the identity document number (if the
registered vehicle owner is an individual), or Certificate of
Incorporation Number or Company Registration Number (if
the registered vehicle owner is a body corporate) of the
vehicle owner, and such information provided should
conform with the records maintained by TD; or

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(3) The applicant declares to the Commissioner that his (or his principal's) interests are directly affected by the ownership or use of the vehicle, and therefore needs to ascertain the particulars of that vehicle, and that such information would only be used for the following purpose(s) (may state more than one):

- (a) Sale and purchase of vehicle;
- (b) Insurance claims;
- (c) Compensation/claims;
- (d) Rectification of improper presence of the vehicle;
- (e) Recovery of fees/fines/charges and payment of loan involving a vehicle;
- (f) Legal proceedings involving the vehicle; and
- (g) Safety recalls.

68. I can refer to the conditions in §§5(1)-(2) as the “General Conditions”, and the purposes in §5(3)(a)-(g) as the “Specified Purposes”. Generally, the applicant does not need to obtain the consent of the vehicle owner for the purposes of making an application under the Specified Purposes.

69. It can be noted that the Specified Purposes do not expressly include journalistic activities, nor do journalistic activities fit within any of the Specified Purposes and the interpretation of those purposes as given.

70. Applications under the Automatic Route can be made online by completion of an online application form, or over the counter or via

A drop-in boxes or by post by completion of TD318 (Rev 01/2024). If an
B application is made online, then “upon the due completion of the online
C form and payment of the appropriate fee, an electronic form of the
D Certificate will be issued to the applicant”. If an application is made
E over the counter, and an application is approved, the TD will “issue the
F Certificate to the applicant on the same day on receipt of the application”.
G If an application is made via drop-in boxes or by post, and an application
H is approved, the TD will “send the Certificate to the applicant by
I registered post within 10 working days upon receipt of the application via
J drop-in boxes or by post”.

71. TD318 has three Parts – Part A ‘Particulars of Applicant’,
Part B ‘Details of Application’ and Part C ‘Declaration’. Under TD318,
an applicant who is not the registered owner of the vehicle or who does
not have the written consent of the registered owner of the vehicle is
required *inter alia* to:

- (1) submit particulars of the applicant;
- (2) declare to the Commissioner that his interests are directly affected by the ownership or use of the vehicle, and therefore the need to ascertain the particulars of that vehicle;
- (3) declare that such information would only be used for one or more of the Specified Purposes
- (4) provide further details relating to the selected Specified Purpose(s);
- (5) sign a declaration that the applicant understands that the TD or law enforcement agencies may conduct checks on the application if needed, and the TD may conduct random checks on applications for certificates of particulars of

vehicle within two years from the date the certificates are issued;

(6) sign a declaration that the applicant who knowingly makes any statement which is false in any material particulars for the purpose of obtaining a certificate of particulars of vehicle commits an offence under section 111(3) of the RTO and will be liable to a fine of HK\$5,000 and imprisonment for 6 months; and

(7) sign a declaration that the applicant understands that the provisions of the PDPO apply to the use of personal data obtained from the register of vehicles.

72. Again I note that “journalistic purposes” are not one of, and do not fall within one of, the Specified Purposes under which an application for a Certificate can be made through the Automatic Route. Hence, the need to consider the alternative route.

E.3 The Public Interest Route

73. Where the application sought by the applicant does not meet the conditions specified in §5 of the Policy, but the applicant nevertheless feels 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, the applicant may make an application under exceptional circumstances through a written submission to the Commissioner.

74. Under §15 of the Policy, the 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

A part of the particulars) to the applicant is lawful and legitimate;
B (2) the public interest in disclosing the vehicle particulars (or part thereof)
C to the applicant outweighs the registered owner's right to privacy, and the
D lawful rights and interests of other persons and society as a whole in the
E overall circumstances of the case; and (3) the concerned particulars will
F be used by the applicants solely for the stated purpose(s) without any
misuse or abuse.

G 75. In deciding whether to accept that the public interest in
H disclosure outweighs the registered owner's right to privacy and the
I lawful rights and interests of other persons and society as a whole, the
J Commissioner should take into account "all relevant factors with regard
to the specific circumstances of individual applications", some of which
are laid out in §16 of the Policy as follows:

- K (i) the applicant's purpose(s) in obtaining the information;
L (ii) how the information will be used by the applicant to achieve
M the claimed purpose of serving the public interest (including
N whether the information will be disclosed to other persons; if
so, the means and targets of disclosure);
O (iii) measures taken by the applicant or the institution/
P organisation he or she represents to protect the security of
the information obtained and prevent misuse or abuse of
such information;
Q (iv) whether the applicant can obtain the information or achieve
R the claimed purpose of serving public interest through other
reasonable and feasible ways;
S (v) whether refusal of disclosure to the applicant will prejudice
T the rights and interests of any persons or society; and
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(vi) the capacity in which the applicant obtains and uses the information; whether the use of the information for the claimed purpose of serving the public interest pertains to the trade or profession in which the applicant is engaging; and whether the applicant is subject to any code of conduct of the trade or profession and regulation by the relevant regulatory body (if applicable).

76. Neither the online application nor TD318 are applicable for the purposes of an application under the Public Interest Route. Under §§17-19 of the Guidance Notes, applicants are required to make an application in writing, providing *inter alia* the applicant’s particulars and a written submission with “adequate and detailed justifications and relevant supporting documents if available”.

77. The Commissioner wields a significantly broader power of discretion under the Public Interest Route; §§17 and 18 make provisions to the effect that the Commissioner reserves all rights in deciding whether to provide the vehicle particulars concerned to the applicant after taking into account all relevant factors. Further, if the Commissioner reasonably believes that approving a particular application would be contrary to the interests of national security, or is likely to threaten public safety or prejudice the maintenance of public order, the application shall be rejected.

78. The applicant must also make a duly signed declaration in the form at Annex C to the Guidance Notes. It is a bi-lingual form, but in only its English language content, the terms of the declaration are as follows (sic) (bold in original):

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1. I understand that the register of vehicles is established for the following purposes:
 - (i) regulating the use of vehicle;
 - (ii) enabling the law enforcement agencies to discharge their responsibilities; and
 - (iii) providing relevant information to persons directly affected by the ownership or use of a vehicle who as a result needs to ascertain the particulars of that vehicle.
2. **Unless with the consent of the registered vehicle owner, the information obtained from this application under exceptional circumstances will only be used for the purpose(s) and in the manner as specified in the application.**
3. I understand that the Commissioner for Transport has the right to request me to provide supplementary information and proof for the Transport Department's consideration.
4. I understand that the application under exceptional circumstances will only be approved if the Commissioner for Transport is satisfied that the applicant's obtaining and the disclosure by the Commissioner for Transport of the vehicle particulars (or part of the particulars) to the applicant is lawful and legitimate; the public interest in disclosing the vehicle particulars (or part thereof) outweighs the registered owner's right to privacy; and the lawful rights and interests of the other persons and society as a whole in the overall circumstances of the case. The Commissioner for Transport must also be satisfied that the concerned particulars will be used by the applicants solely for the stated purpose(s) and in the stated manner without any misuse or abuse.
5. The information provided in the application is complete and true.
6. I understand that the Transport Department or the law enforcement agencies may conduct checks on the application if needed, and the Transport Department may conduct random checks on applications for certificate of particulars of vehicle within two years from the date of the certificates are issued. I understand that I shall retain all the relevant supporting documents/information for two years from

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A the issue date of the certificate of particulars of vehicle
B and shall fully cooperate with the Transport Department
C or the law enforcement agencies in their enquiries, in
order to substantiate the information provided for this
application as true and correct.

D 7. I understand that if I knowingly make any statement
E which is false in any material particular for the purpose
of obtaining a certificate of particulars of vehicle,
F I commit an offence under section 111(3) of the Road
Traffic Ordinance (Cap. 374) and will be liable to a fine
of \$5000 and imprisonment for 6 months.

G 8. I understand the provisions of the Personal Data
H (Privacy) Ordinance (Cap. 486) (“PDPO”) apply to the
I use of personal data obtained from the register of
vehicles. Any person who uses personal data or in
J contravention of the requirements under the PDPO may
be subject to enforcement action under the relevant
Ordinance. The data subject to suffers damage by
reason of the contravention shall also be entitled to
compensation from the data user for that damage in
accordance with the PDPO.

K I hereby declare that I have read through and
L understand the content of the Guidance Notes on the
Applications for a Certificate of Particulars of
Vehicle, and I make the declarations in items 1 to 8
above.

M 79. Hence, amongst other things, the applicant for a Certificate
N must declare that:

O (1) he understands – in effect, he accepts – the Commissioner’s
P view of law as to the purposes for which the Register was
established (as set out in §4 of the Policy);

Q (2) (on the basis that there is a punctuation error in part of the
R declaration 4, as it does not match what is said in §15 of the
S Guidance Notes) he understands – in effect, he accepts – that
T approval to his application will be given only where the
U Commissioner is satisfied the public interest in disclosing
V the vehicle particulars outweighs the registered owner’s right

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to privacy – and not the other way round – and the lawful
rights and interests of other persons and society as a whole
in the overall circumstances of the case; and

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(3) he understands – in effect, he accepts – that his own personal
data may be shared by the Commissioner with other
Government departments, bureaux and unspecified “relevant
organisations” and with the registered vehicle owner of the
vehicle to which the application is relevant.

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F. Grounds of Review

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80. As set out in the AF 86 and the skeleton submissions, the
Applicant has raised 5 Grounds of review as follows:

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(1) The Policy is *ultra vires* in that it fails to give effect to the
statutory purpose of s.6(1)(e) of the RTO and Regulation 4
(which in turn taints the overall design of the Policy), and
frustrates the broad statutory purposes confirmed by the CFA
in *Choy Yuk Ling* (“Ultra Vires Ground”).
(2) 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 BL27 and
BOR16 (“Proportionality Ground”).
(3) The Policy is *Wednesbury* unreasonable (“*Wednesbury*
Ground”).
(4) The Policy unlawfully fetters the Commissioner’s discretion,
is irrational or unreasonable, and/or violates the
constitutionally protected rights under BL27 and/or BOR16
 (“Fettered Discretion Ground”).

(5) The Failure/Refusal and the Rejections are unlawful, irrational and/or inconsistent with BL27 and BOR16 (“Refusal/Rejection Ground”).

81. Grounds 1 to 4 make systemic challenges to the Policy on the basis that it is irrational, disproportionate (thus unconstitutional) and hence unlawful for the Commissioner to impose the restrictions described in the Policy as to be applied to applications “in other circumstances ... and significant public interest”.

82. Ground 5 appears to be a fact-specific challenge against the Commissioner’s delay in making her decisions on the applications submitted by various journalists as unlawful, irrational and unconstitutional. The Applicant also challenges the Rejections on the basis that they are irrational and unconstitutional.

G Fundamental Rights Engaged by the Policy

83. Before I look in detail at the grounds of review advanced by the Applicant, it may be clearer first to deal with the issue of whether the Policy engages fundamental rights under the BL and/or the BOR.

84. It was the Applicant’s case that the rights which are engaged by the Policy are the right to freedom of expression, and freedom of the press, as enshrined in BL27 and BOR16. It was common ground between the parties that freedom of expression and freedom of press are fundamental rights and core values in Hong Kong, and that the gathering of information is an essential step and protected part of press freedom.

A 85. There is also a right to protection of privacy, which is
B enshrined in BOR14 and BL30. This is to be read in conjunction with
C BOR16(3)(a), whereby the right to freedom of opinion and expression,
D including the right of freedom to seek, receive and impart information,
E may be subject to certain restrictions for respect of the rights of others.
F This is relevant to both the other fundamental rights raised by the parties,
G and to the Policy itself.

G 86. BOR14 essentially reflects ICCPR Article 17, which
H provides that “no one shall be subjected to arbitrary or unlawful
I interference with his privacy, family, home or correspondence, nor to
J unlawful attacks on his honour and reputation”.

J 87. ICCPR General Comment No. 16 on Article 17 states at §10
K that “the gathering and holding of personal information ... whether by
L public authorities or private individuals or bodies, must be regulated by
M law”. Furthermore, effective measures “have to be taken by States to
N ensure that information concerning a person’s private life does not reach
O the hands of persons who are not authorized by law to receive, process
P and use it, and is never used for purposes incompatible with the
Q Covenant”. As Mr Yu pointed out, and I agree, this seems to impose a
R positive duty on the Government to take reasonable and appropriate
S measures to protect the right to privacy under ICCPR Article 17 and
T BOR14.

R 88. Mr Kat submitted that the right to freedom of the press is
S restricted when the Commissioner insists on requiring the journalist to
T show how access to a particular piece of information is to be used to
U serve a claimed public interest and the necessity of access to achieve that
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A public interest before the journalist could make proper assessment of its
B value. Mr Kat argued that the Commissioner’s insistence misses the
C point, that the public interest lies in allowing journalists access to the
D information for the purpose of their investigation so that they can
E properly decide if and how to publish, not whether that piece of
F information will ultimately be necessary for publication. The Applicant
G claimed that, even where the details that are sought by a journalist
impinge on the rights of a third party, the law still respects and gives due
deference to journalists on such matters.

H 89. It was contended the right to “seek and receive information”,
I under BOR16(2), is not only a right of the individual to request
J information held by public bodies, but also places an “obligation” on the
K Government to provide such information, unless it can justify restricting
L access “in a specific case”. But, the Applicant went further to claim that
the right applies to information including the personal data of third parties
held by public bodies.

M 90. Mr Kat made reference to a number of cases relating to the
N European Convention on Human Rights (“ECHR”) in support of this
O claim, where Article 10 of the ECHR provides for freedom of expression
as follows:

Article 10

Freedom of expression

- R 1. Everyone has the right to freedom of expression. This
S right shall include freedom to hold opinions and to
T receive and impart information and ideas without
interference by public authority and regardless of
U frontiers. This Article shall not prevent States from
V requiring the licensing of broadcasting, television or
cinema enterprises.

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2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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91. On behalf of the Commissioner, however, it was submitted that it does not follow that journalists have a constitutional right to automatic, unrestricted and unqualified access to private information “so long as they are gathering information for journalism”, nor is there a duty for the Government to answer to any information requests by journalists. In the Commissioner’s words: “common sense dictates that it cannot be right that everyone including journalists would have the ‘right’ to compel the Government to disclose such private information without giving any justification or reasons”.

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92. Mr Yu directed me to ICCPR19, which is identical to BOR16, and the United Nations Human Rights Committee (“UNHRC”) decision in *Toktakunov v Kyrgyzstan* CCPR/C/101/D/1470/2006 in showing that the references to “right to access to information” refers to access to information on public affairs only.

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93. I agree with Mr Yu’s proposition that it cannot be right that everyone, including journalists, would have the “right” to compel the Government to disclose such private information without giving any justification or reasons. The Government must be under a duty to prevent the “arbitrary dissemination” of such information. To compel the Government to disclose private information without requiring

A justification for such disclosure would be tantamount to an automatic
B “right” of access on the press, which would be a very clear violation of
C the right to privacy insofar as private data of individuals is being freely
D distributed to others, or reverses the burden on the Government to provide
E justification to withhold such information (in circumstances where it is
ultimately a balancing exercise: see below).

F 94. Turning to the authorities cited by both parties: F

G (1) *Satakunnan Markkinaporssi Oy and Satamedia Oy v Finland* G
H (2018) 66 EHRR 8 concerned the collection of data from H
I Finnish tax authorities for the purpose of publishing I
J information about a natural persons’ taxable income and J
K assets in a newspaper. The ECtHR found at §§139-141 that K
L the Finnish Data Protection Board’s decision in prohibiting L
M the applicant companies from processing and publishing M
N such data entailed an interference with the right to impart N
O information as guaranteed by Article 10 of the ECHR. O
P However, the ECtHR held that the relevant data protection P
Q legislation did not violate Article 10 of the ECHR. I note Q
R that the relevant tax data sought by the applicant companies R
S was publicly accessible. S

O (2) *Magyar Helsinki Bizottsag v Hungary* (2020) 71 EHRR 2 O
P was a challenge against the decision of a Hungarian police P
Q department’s refusal to supply the names of defence counsel Q
R and the number of appointments those counsel were given. R
S The ECtHR concluded at §180 that there was an interference S
T with a right protected by Article 10. But, the Court found T
U at §196 that Article 10 of the ECHR does not guarantee an U
V unlimited freedom of expression. Again, it was noted by V
the Court that the relevant information could be found

A through other means available to the public, such as
B information contained in lists of legal-aid providers, court
C hearing schedules and public court hearings. At §156,
D it was said that Article 10 does not confer on the individual a
E right of access to information held by a public authority nor
oblige the Government to impart such disclosure to the
individual.

F (3) In *Ng Shek Wai v Medical Council of Hong Kong* [2015] 2
G HKLRD 121, a request was sought by a member of the
H public to the Medical Council of Hong Kong for information
I concerning a disciplinary inquiry held by the Council.
J Again, the subject of this case was not the private
K information of individuals, but rather merely “information
L held by a public body”. Furthermore, the request was not
made by a member of the press. As Mr Yu rightly noted,
Ng Shek Wai dealt with the request on the principle of open
justice rather than constitutional rights under BL27 and/or
BOR16: see §76.

M (4) In *Junior Police Officers’ Association of the Hong Kong*
N *Police Force v Electoral Affairs Commission (No 2)* [2020] 2
O HKLRD 631 (“*Junior Police Officers’ Association (CFI)*”),
P Chow J (as he then was) held that journalists and the public
Q “have no inherent, or basic, right of access to the Linked
R Information (i.e. the names and principal residential
addresses of electors)”. This would support an inference
that BL27 and BOR16 do not impart a right of access to
private information of individuals.

S 95. In this case, the purpose of the Guidance Notes is to
T “provide guidance for the public on the application for a Certificate of
U Particulars of Vehicle”. As is stated in §3 of the Guidance Notes, the
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particulars in the Register are protected by the BL and the BOR. If framed in a way whereby the person seeking such particulars is not the Applicant, but perhaps more generally “the public”, it becomes clear that the Policy engages the right of freedom of expression, insofar as a right to “seek, receive and impart information”.

96. Two principles can be distilled from the above. First, simply by nature of the Policy being one which deals with publication and access of information, the right to freedom of expression under BOR16 and BL27 is engaged. Second, although there is a “right of access to information held by public bodies”, it does not follow that this right of access should necessarily extend to information concerning private individuals, i.e. “private data held by a public body”. Therefore, the right to privacy under BOR14 and BL30 must also be engaged.

97. The authorities understandably seem to recognise that the right to privacy conflicts with the right to freedom of expression and freedom of the press. The potentially conflicting fundamental rights are therefore not absolute, and can be lawfully restricted. I note in passing that the authorities seem to tend to place preference on protecting the right to privacy, but I will come to my own analysis on this issue below.

H. Ground 1: Ultra Vires Ground

H.1 Whether ultra vires

98. The Applicant’s complaint under Ground 1 concerns the illegality of the Policy under Regulation 4 of Cap 374E. In particular, the Applicant argued that the Policy misinterprets and misstates the statutory purposes of section 6(1)(e) of the RTO and the Register and the

A provisions for the supply of particulars from the Register created by
B Regulations 4(1) and 4(2) respectively, thus frustrating the purpose of the
C RTO and Cap 374E.

D 99. By itself, section 6(1)(e) does not provide for the
E circumstances under which access can be made to the Register or the
F circumstances under which extracts are to be issued, so the focus is on
G Regulation 4.

H 100. The Applicant contended that the Commissioner’s view of
I the purposes of the Register is formulated in narrow terms which *prima*
J *facie* exclude access to the Register for lawful journalistic purposes.
K In particular, the Applicant claims that the third purpose, i.e. “providing
L relevant information to persons directly affected by the ownership or use
M of a vehicle who as a result need to ascertain the particulars of that
N vehicle”, misinterprets the broad statutory purpose of Regulation 4.

O 101. Mr Kat referred me to the CFA’s judgment at §§33-36 of
P *Choy Yuk Ling* – quoted above – which illustrates the broad purpose of
Q the RTO and Regulation 4. He emphasised that a narrow description of
R the legislative purpose was rejected. Rather, it was held that the
S statutory purposes of the RTO and its regulations are wide and encompass
T purposes ancillary to the driving of vehicles on roads. Further, whilst
U the precise extent of the limit on the purposes for which vehicle
V particulars may be required to be supplied was not the focus of that case,
it was held to be at least consistent with Regulation 4(2) to provide for the
release of vehicle particulars for “activities relating to traffic and
transport matters”, and to further expand that category to cover “traffic
and transport related purpose(s)” sub-divided as to “legal proceedings”,

A “sale and purchase of vehicle” and “other traffic and transport related
B matters”.

C 102. Mr Kat also drew to my attention §§57-59 of *Choy Yuk Ling*
D – also quoted above – to demonstrate the wide meaning of the phrase
E “other traffic and transport related matters”, which itself reflects the
F breadth of the statutory purposes of the RTO and Regulation 4. Insofar
G as the broad interpretation covers other activities which relate to traffic or
H transport matters, “genuine investigative journalism” relating to a
I connection between the registered owner of a vehicle and its use in
J connection with a crime can be covered by the RTO and Regulation 4,
and Mr Kat said that the Commissioner does not have an unqualified
discretion to pick and choose.

K 103. In his submissions, Mr Kat also raised the common-law
L principle of legality. Most recently, in *HKSAR v Tam Tak Chi (No 4)*
M [2025] 28 HKCFAR 122 at §76 the CFA formulated the principle of
N legality as one which “operates to preserve fundamental rights from
O possibly unintended abrogation by general or ambiguous words ‘[in] the
P absence of express language or necessary implication to the contrary”.
Therefore, Mr Kat argued, the Commissioner cannot arrogate to himself
Q the power to impose a restriction, overt or covert, on such rights where
R the statute has not done so, and as such the Policy is *ultra vires* by
excluding journalistic purposes from the broad purposes of the Register
provisions and is unlawful.

S 104. Mr Kat further submitted that the Commissioner has no
T power to limit the purposes of the Register or the Register provisions on
U the Register itself further than the CFA’s description of the wide statutory
V

A purposes. Adopting a Policy which allegedly undercuts the broad
B statutory scope of “proper purposes” is therefore *ultra vires*.

C 105. On the other hand, Mr Yu submitted that it is not the
D statutory purpose of the RTO and Regulation 4 to enable the press access
E to private information on the Register for journalistic purposes, and the
F adoption of the Policy for the management of private information in the
G Register is entirely lawful.

H 106. He referred to §25 of *Choy Yuk Ling*, stating that
I Regulation 4(2) does not impose an absolute duty on the Commissioner
J to supply the vehicle particulars regardless of the reason for which they
K are sought. This was unacceptably wide and incorrect on a proper
L construction of Regulation 4(2), having regard to its context and purpose.
M Further, at §28, it was held that the particulars kept in the Register of
N vehicles are not intended to be arbitrarily available.

O 107. However, it is also clear from *Choy Yuk Ling* that a broad
P interpretation of “other traffic and transport related matters” is preferred.
Q The Long Title of the RTO envisions in its application “other purposes”
R connected with the use of vehicles and roads. Furthermore, it was held
S at §65 of *Choy Yuk Ling* that the category of “other traffic and transport
T related matters” would include the obtaining of vehicle particulars for the
U purpose of “genuine investigative journalism in relation to a possible
V connection between the registered owner of a vehicle and its use in
connection with a crime”. Thus, a balance is drawn.

108. At §62, the CFA held that a broader interpretation of “other
traffic and transport related matters” gives effect to the constitutionally

A protected freedom of speech and of the press contained in BL27 and
B BOR16, and that although such rights are not absolute and may be
C restricted where necessary, there is no reason to proceed from a starting
D point that *bona fide* journalism should be excluded from the phrase “other
E traffic and transport related matters”.

F 109. I agree with Mr Kat’s submission that the addition of the
G word “directly” in the Policy is a misinterpretation of the broad statutory
H purposes of Regulation 4. It would certainly be conceivable that
I applicants seeking information from the Register would not be limited
J only to persons “directly affected by the ownership or use of a vehicle”.
K Indeed, the CFA in *Choy Yuk Ling* concluded that *bona fide* journalism
L should not be excluded from the broad ambit of “other traffic and
M transport related matters”. Read together with the “other purposes
N connected therewith” in the Long Title of the RTO, I think it would
O certainly be the case that journalistic purposes relating to the use of
P vehicles should suffice for the purpose of an application under the Policy.

Q 110. Further, though it is correct that Regulation 4(2) does not
R impose an absolute duty on the Commissioner to supply the vehicle
S particulars regardless of the reason for which they are sought, that does
T not mean that the Commissioner cannot properly supply vehicle
U particulars to an applicant who applies for journalistic purposes.
V Though in a somewhat internally inconsistent way – to which I can return
– the Policy itself recognises that fact, by having the Public Interest Route
of application for vehicle particulars.

111. But, in the Commissioner’s submissions, Mr Yu proposed
that the Long Title of the RTO at best identifies the general objectives of

A the statute, and the 18 items of particulars required to register a vehicle
B under Regulation 4(1) and Schedule 1 of Cap 374E are more instructive
C as to the purpose of maintaining the Register. Mr Yu suggested that the
D provision of these particulars is necessary for and incidental to the
E acquisition, ownership and subsequently usage of the vehicle.
F Specifically, particulars about the owner also “enable and facilitate the
G proper and accurate identification of the owner, and provide an effective
H means of communicating with him or her”. Mr Yu submitted that
I journalistic activities cannot be described as something necessary for or
J incidental to the lawful acquisition, ownership or subsequent usage of the
K vehicle.

I 112. I respectfully disagree with this proposition. It is true that
J these particulars are “necessary for and incidental to the acquisition,
K ownership and subsequently usage” of a vehicle. However, it does not
L follow that journalistic activities are not, at the very least, “incidental” to
M such acquisition, ownership or usage. An obvious example would be
N a car accident, where subsequent journalistic investigation of the accident
O is a foreseeable (even if exceptional) consequence, and therefore
P incidental to the acquisition and/or ownership and/or usage of the
Q vehicles involved.

P 113. However, I have also already noted the discretionary nature
Q of the Policy itself. The very existence of a procedure for “applications
R under exceptional circumstances” would demonstrate that the
S Commissioner is aware of certain situations where the Policy must be
T flexible in allowing (on a case-by-case basis) applications that do not
U satisfy the Automatic Route, but ultimately demonstrate public interest
V merits that would justify access to the registered particulars of a vehicle.

A 114. I would however comment that this seems to me to be
B inconsistent with the Commissioner's view of the purposes of the
C Register, as set out in §4 of the Guidance Notes, which include (and are
D apparently limited to) providing relevant information only to (1) persons
E *directly* affected by the ownership or use of a vehicle (2) who *as a result*
F (3) *need* to ascertain the particulars of that vehicle. This is also what the
G applicant under the Public Interest Route must declare that he understands
H (i.e. that he accepts), at precisely the same time as he makes an
application which demonstrates that he is not a person directly affected
by the use of a vehicle who as a result needs to ascertain those particulars.

I 115. Put another way, unless the requisite declaration is read as
J simply being "I declare that I understand that that is what you say are the
K purposes of the Register", it is difficult to see how most applicants under
L the Public Interest Route could make the required declaration, when most
M such applications are necessitated because the applicant is not a person
directly affected by the use of a vehicle who for that reason needs the
particulars of that vehicle.

N 116. On the assumption that the Commissioner does not intend
O the Public Interest Route to allow applicants to obtain the particulars of
P vehicles which the Commissioner has no power to permit, because it falls
Q outside what the Commissioner says is the purpose of the Register, there
R is a clear mismatch. As indicated above, that mismatch in fact arises out
S of the Commissioner's misconception as to at least part of the purposes of
T the Register provided for in the legislation. I acknowledge that a policy
U may be found to be unlawful by reason of what it says or omits to say
V about the law when giving guidance for others: see, for example, *R(A) v*
Home Secretary [2021] 1 WLR 3931 at §46. However, in this case, the

A extent of the apparently incorrect statement about the law does not affect
B the overall approach in the Guidance Notes, because of the two types or
C routes of application envisaged.

D 117. It seems to me that the exercise of the Policy by the
E Commissioner is consistent with the CFA's decision in *Choy Yuk Ling*.
F The Commissioner must "devise some form of application process", but
G could limit the purposes for which vehicle particulars may be required to
H be supplied. Moreover, there is an avenue for journalists to gain access
I to the Register, which is compliant with the alleged duty to provide for
the regulation of the facilitation of "freedom of information" and
"freedom of journalism".

J 118. The Policy explicitly sets out cases for which applications
K are summarily processed/pass through the Automatic Route, being the
L Specified Purposes in §5. For other cases which do not align with the
M Specified Purposes, the Commissioner recognizes that access may
N nonetheless still be warranted and so assessment by a specific process is
required, i.e. the Public Interest Route.

O 119. It may also be important to keep in mind that the Public
P Interest Route is not intended as an exception to the Policy, but is
Q intended as one of the possible approaches envisaged by the Policy. It is
part of the Policy itself.

R 120. Although issuing particulars for journalistic purposes may
S fall within the purposes for which the Register was established, it does
T not follow that an application for a Certificate for journalistic purposes
U should be automatically approved. But, the Policy foresees the
V

A possibility of journalistic applications, and allows for them under the
B Public Interest Route. It is not difficult to see why a person whose
C interests are not directly affected may need to give a reason to obtain
D particulars, and that that may attract a higher level of scrutiny than
insurance claims for example.

E
F *H.2 Application of PDPO and/or Right to Privacy*

G 121. Mr Kat submitted that the PDPO and the right to privacy
H under BOR14 does not save the Policy, on the basis that section 61(2) of
I the PDPO expressly exempts the restriction of personal data usage
J without consent for news activity, which includes “journalistic activity”:
K see section 61(3). Mr Kat also submitted that the Policy, which requires
L the applicant to “explain both how the public interest in question could
not be achieved without the personal data in question and that the
personal data could not be obtained by alternative means” is more
restrictive than the requirements in section 61 of the PDPO.

M 122. Mr Yu also submitted that section 61(2) merely provides for
N an exemption in the event of disclosure contrary to DPP3 (i.e. as a shield
O or a defence that may be utilised by the data user), rather than imposing a
P duty to disclose such personal data. Mr Yu pointed out that
Q section 61 does not provide an exemption from other DPPs or legal
R restrictions, and as such provides no assistance to alleviate the
S Commissioner’s constitutional or common law duty to protect the right to
T privacy of individuals. On the restrictiveness of the Policy in
U comparison to the requirements of section 61 of the PDPO, Mr Yu
V submitted that the requirements under §16(iv) of the Policy merely sets
out the relevant considerations in detail.

A 123. I have already mentioned that, in *Choy Yuk Ling*, the issue of
B the right to privacy and the corresponding data protection legislation was
C dealt with in the course of the CFA's reasoning at §§31 and 64.
D In essence, the appellant as a journalist carrying out news activity was
E exempted from DPP3, which restricts the use of personal data by others,
F and could therefore use the data held in the Register for journalistic
G purposes. But, DPP3 simultaneously imposed a duty on the
H Commissioner to protect such data, which limited the "wide and
extravagant construction" of Regulation 4(2) contended for by the
appellant.

I 124. I agree with Mr Yu's proposition that neither DPP3 nor
J section 61(2) apply as blanket exemptions for news activity and
K journalists. It is true that personal data is exempt from the provisions of
L DPP3 under section 61(2). However, section 61(2)(b) requires that such
M disclosure of personal data is made by a person who has reasonable
N grounds to believe (and reasonably believes) that the publishing or
O broadcasting is in the public interest. "Reasonable grounds to believe"
P requires the examination of the grounds in an objective manner whether
Q they are reasonably capable of grounding the belief: see *Yu Yau Tak v*
R *Commissioner of Police & Anor* [2001] HKCA 343, 4 April 2001.
S The Policy at §16 lays out the relevant factors to assist the Commissioner
T when deciding if the public interest in disclosure outweighs the registered
U owner's right to privacy and lawful rights and interests of other persons
V and society as a whole. I do not find that it is "markedly more
restrictive" than section 61 of the PDPO; it is merely a step in the
balancing exercise conducted by the Commissioner. I also agree with
Mr Yu that section 61(2) 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 as set out in §16 of the Policy, which effectively encompasses the “public interest” considerations of DPP3 and section 61(2) respectively.

H.3 Conclusion on Ground 1

125. Therefore, as to the two-branched approach to applications under the Policy, I think it can be said that:

- (1) There is no application for particulars which requires mandatory disclosure of those particulars – except perhaps to the person who provided them in the first place.
- (2) Both application routes may infringe privacy rights if the application is granted, unless the application is made by the person who provided the particulars.
- (3) Therefore, any application for particulars will require the Commissioner to engage in some consideration of the balance of rights.
- (4) In so far as an applicant is the registered owner or representative of the registered owner or can show a direct interest in the particulars, resulting in a need for those particulars, he can make an application under the Automatic Route.
- (5) The Automatic Route can be taken to have accepted in general terms that applicants who can bring themselves within that route because the application is made for a Specified Purpose have demonstrated the balance of rights should lead to the disclosure of the particulars.
- (6) In other words, for Automatic route applications, the balancing exercise has already occurred.

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- (7) That is so, even if those applying under the Automatic Route self-declare their Specified Purpose (subject to later checks or random checks).
- (8) But 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.
- (9) Because such applications may be made for myriad reasons, those reasons can and should be identified to permit some form of balancing exercise.
- (10) Obviously, journalistic activities are capable of being one type of application which can lead to the disclosure of vehicle particulars.
- (11) It may also be that an applicant who applies for journalistic purposes can more readily satisfy the Commissioner that it is appropriate to disclose the vehicle particulars to him, than some other type of applicant (such as a general busybody).
- (12) That is particularly the case where the applicant is a member of an organisation which imposes rules or standards as to the handling and dissemination or publication of personal data.

126. In the circumstances, I do not think that the Policy is *ultra vires* the RTO and/or Cap 374E. 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.

I. Ground 2: Proportionality Ground

I.1 Introduction

127. It is trite that a constitutional challenge first requires the identification of the constitutionally guaranteed rights or freedoms that are being restricted. What follows is a proportionality test to determine whether the restrictions of such rights are proportionate to the legitimate aim(s) sought to be achieved.

128. As concluded above, the constitutional right to freedom of expression and, by extension, freedom of press under BL27 and BOR16 are engaged by the Policy. I will therefore proceed on this basis to decide the Applicant’s challenge of constitutionality. In essence, the parties dispute whether there is a restriction of these rights by the Policy, and as such whether these restrictions are unconstitutional.

I.2 Restrictions imposed on relevant rights under the Policy

129. The Applicant argued that the Policy requiring applications for journalistic purposes to be made via the Public Interest Route instead of the Automatic Route constitutes a disproportionate and unjustified restriction of such rights. It is alleged that this makes applications for journalistic purposes “significantly more difficult, including matters significantly slower to be processed and less likely to succeed”.

130. In his submissions, Mr Kat identified three categories of restrictions arising as a result of the requirement of the Public Interest Route for journalistic applications:

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(1) "Prior Scrutiny Restriction": The Policy imposes prior scrutiny on journalistic applications, not only by the Commissioner herself but also by other departments, bureaux and unidentified "relevant persons and organisations" who the Commissioner may consult, which is not imposed on applications for specified purposes under the Automatic Route.

(2) "Additional Criteria Restriction": The Policy imposes additional criteria on journalistic applications which are not sought, considered or applied to the Automatic Route applications.

(3) "Complexity and Delay Restriction": The requirements for detailed written submissions, documents in support and the open-ended power to require further information in the Policy make journalistic applications more complex and time-consuming for both applicants to make and for the Commissioner to decide.

131. In summary, these all relate to the operation of the Policy in relation to journalistic applications, namely the requirement that such applications go through the more stringent, scrupulous and detailed application process under the Public Interest Route. Thus, these can be grouped together as the "Public Interest Route Restrictions".

1.3 Proportionality

132. The proportionality concept is well established by the CFA in *Hysan Development v Town Planning Board* [2016] 19 HKCFAR 372 at §§133-136. The proportionality analysis involves a four-step process of asking (1) whether the intrusive measure pursues a legitimate aim,

A (2) if so, whether it is rationally connected with advancing that aim,
B (3) whether the measure is no more than necessary for that purpose, and
C (4) whether a reasonable balance has been struck between the societal
D benefits of the encroachment and the inroads made into the
E constitutionally protected rights of the individual, asking in particular
F whether pursuit of the societal interest results in an unacceptably harsh
burden on the individual.

G 133. The last step was aptly described at §73 as a “reasonable
H balance between the public interest pursued by such laws and the rights of
I individuals or groups negatively affected by those laws”.

J 134. The parties did not dispute that preventing misuse or abuse
K of personal data or protecting vehicle owners’ right to privacy can be
L a legitimate aim to restrict rights under the BOR. However, the
M Applicant challenged the restriction by the Policy at the remaining stages
N of the proportionality test.

O 135. In short, the Applicant contended that the Commissioner
P fails to show how, taken individually and as a whole, the suggested
Q restrictions placed on journalistic applications by the Policy and in its
R operation are rationally connected to or are no more than is necessary for
S the purpose of such aims, under the second and third steps of
T the proportionality test.

U 136. The Commissioner submitted that, as a starting point,
V “freedom of expression” and “freedom of the press” are not absolute
rights, and there can be legitimate restrictions especially in light of the
countervailing right to privacy, which the Applicant claims is engaged on

A the present facts. The BL27 and BOR16 rights do not necessarily
B outweigh the right to privacy (i.e. private information of a member of the
C public supplied to, and held by, the Government in the Register).

D 137. However, I am not convinced a simple *Hysan* approach
E would be appropriate in this case. Both parties seemingly agreed the
F rights enshrined in BL27/BOR16 and BL30/BOR14 are engaged by the
G Policy. Where their opinions appear to diverge is on which right takes
precedence.

H 138. If dealing with this issue by a single proportionality test, a
I single-sided outcome might be reached on the premise that the starting
J point inevitably favours the journalists and the right to freedom of
K expression and freedom of press by virtue of the Applicant being an
L association that represents journalists in Hong Kong. It may neglect to
M consider the right to privacy of the vehicle owners, being the individuals
N who are most obviously affected by the Policy.

O 139. The approach which would be most appropriate in the
P circumstances of this case, and indeed one which was raised by both
parties in their respective submissions, is therefore the double
proportionality test.

Q *1.4 Double Proportionality Test*

R 140. Speaking extra-judicially in the speech ‘Conflict of
S fundamental rights and the double proportionality test’ given in 2019,
T Cheung CJ (then Cheung PJ), helpfully summarized the double
proportionality test as applied in Hong Kong:

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42. Assuming that there is no ranking issue so that the competing rights are all of the same status and none of them “trumps” the others, for the reasons given above, the right approach to resolve a situation of competing rights would appear to be the ultimate balancing test, that is, the application of the proportionality test to each of the competing rights involved in turn.
44. It must be accepted that at least in practice, with some modification, the single proportionality test may well be capable of resolving a conflict between competing fundamental rights, just as the ultimate balancing test does. This can be achieved...by giving sufficient weight to the competing rights of others under the third and fourth stages of the proportionality test. After all, the concept of “no more than is necessary” is a rather elastic concept. In applying the single proportionality test, the court may, if the facts so warrant, conclude that it is necessary to restrict the fundamental right engaged in order to afford to others the full measure of their competing rights.
45. In my view, however, at least in a complicated case, an express recognition that the court, in the situation just described, is actually conducting a balancing exercise of the competing fundamental rights involved is the preferable approach. First, it acknowledges that the competing rights involved are all fundamental rights, equally deserving of full protection and minimum intervention. Applying the single proportionality test which by nature seeks only to give maximum protection to the fundamental right asserted by the individual suing would obscure the fact that other competing fundamental rights are also engaged which equally deserve maximum protection. This is all the more unsatisfactory when the application of the single proportionality test to one right but not others is entirely contingent upon the happenstance of the identity of the right-holder bringing the challenge. The effects of “preferential framing” – as the use of the single proportionality test to resolve a conflict of rights has been called may, at worst, lead to an unjustified skewing of judicial reasoning in favour of one of the competing rights involved and result in an incorrect outcome. At the very least, the impression that the court unfairly favours one right or one right-holder over others may be conveyed to the public at large, including those whose rights are or would be affected.

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46. Secondly, applying the proportionality test to each of the competing rights in turn would ensure a principled and structured approach to conducting the balancing exercise. It would help ensure that in weighing the competing rights, no considerations that are relevant are omitted from the equation, and no questions that should be asked are not asked.

47. This latter reason is also a reason why the ultimate balancing test, involving the repeated application of the proportionality test to each of the rights concerned, is preferable to simply adopting a general balancing approach, including in particular a general balancing approach which essentially asks the question of whether a decision one way or the other would deprive the rightholder of the “essence” of his fundamental right. The former would provide the court with the necessary structure and discipline when conducting the balancing exercise, eliminating or reducing the risk of omitting from the balancing equation some relevant considerations, or of failing to ask the right questions in terms of the four stages involved in a proportionality test. It would also avoid the subjectiveness and intuitiveness that are necessarily involved in adopting a general balancing approach.

141. In *Campbell v MGN Ltd* [2004] 2 AC 457, the respondent newspaper published articles disclosing various private details of the appellant, who was an internationally famous fashion model. At the heart of the dispute was a perceived contest between the applicant’s right to privacy protected under Article 8 of the ECHR and the freedom of expression enjoyed by the press guaranteed under Article 10 of the ECHR. Both are non-absolute rights that can be restricted for the purpose of necessary protection of the rights of others. At §55, Lord Hoffman held there was no presumption in favour of one right over the other:

55. I shall first consider the relationship between the freedom of the press and the common law right of the individual to protect personal information. Both reflect important civilised values, but, as often happens, neither can be given effect in full measure without restricting the other. How are they to be reconciled in a particular case? There is in my view no question of

automatic priority. Nor is there a presumption in favour of one rather than the other. The question is rather the extent to which it is necessary to qualify the one right in order to protect the underlying value which is protected by the other. And the extent of the qualification must be proportionate to the need: see Sedley LJ in *Douglas v Hello! Ltd* [2001] QB 967, 1005, para 137.

142. At §56, he also pointed out that the civil and political values which underlie press freedom do not make it necessary to deny the citizen the right to protect personal information.

143. At §105, Lord Hope recognized the need for a balance to be maintained between the operation and subsequent protection of the two conflicting rights:

105. The context for this exercise is provided by articles 8 and 10 of the Convention. The rights guaranteed by these articles are qualified rights. Article 8(1) protects the right to respect for private life, but recognition is given in article 8(2) to the protection of the rights and freedoms of others. Article 10(1) protects the right to freedom of expression, but article 10(2) recognises the need to protect the rights and freedoms of others. The effect of these provisions is that the right to privacy which lies at the heart of an action for breach of confidence has to be balanced against the right of the media to impart information to the public. And the right of the media to impart information to the public has to be balanced in its turn against the respect that must be given to private life.

144. The House of Lords found in favor of the appellant in a 3-2 majority. Upon the application of the double proportionality test, it was held by the majority that there was an infringement of the individual's right to privacy that could not be justified by the right to freedom of expression.

145. The double proportionality test was further elaborated on in *Re W* [2005] EWHC 1564 (Fam) at §53:

53. ...There is express approval of the methodology in *Campbell* in which it was made clear that each Article propounds a fundamental right which there is a pressing social need to protect. Equally, each Article qualifies the right it propounds so far as it may be lawful, necessary and proportionate to do so in order to accommodate the other. The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither Article has precedence over or “trumps” the other. The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary before the ultimate balancing test in terms of proportionality is carried out.

146. In Hong Kong, the double proportionality test was broached in *Junior Police Officers Association (CFI)* but ultimately was not applied on the basis that journalists and the public have no inherent, or basic, right of access to the Linked Information, i.e. the residential addresses of registered voters.

147. Thus, there are two sets of rights engaged by the Policy, which affect two different groups of “individuals”:

- (1) The right to freedom of expression and freedom of press, enjoyed by all individuals (but perhaps more specifically journalists in this case) which are restricted or interfered with by the operation of the Policy’s Public Interest Route; and

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- (2) The right to privacy, enjoyed by the vehicle owners whose particulars are held in the Register, which is also interfered with by the operation of the Policy through the disclosure of private information to third parties.
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148. To adopt the starting point in *Campbell* and *Re W*, these rights are fundamental rights of which there is a pressing social need to protect. The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither Article has precedence over or “trumps” the other. Applying the proportionality test to each of the competing rights in turn would ensure a principled and structured approach to conducting the balancing exercise, and in weighing the competing rights.

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1.5 Right to Freedom of Expression and Freedom of Press

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149. Mr Kat submitted that, insofar as the Policy requires applications on the “journalistic activities” ground to be made through the “exceptional” Public Interest Route, a direct restriction on journalists’ right to access State-held information is imposed. Mr Kat highlighted the stronger limitations and scrutiny attracted by the Public Interest Route Restrictions when compared to the Automatic Route, namely:

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- (1) the need to make “detailed” written submissions to justify the purpose of his application, which is subject to scrutiny or vetting before the Commissioner decides on the application;
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- (2) the need to provide “supporting documents” for additional considerations;
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- (3) no immediate availability of the Certificate upon completion of the application;
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A (4) the possibility of further follow-up questions after
B submission of the application.

C 150. As stated above, the parties largely agree the Public Interest
D Route Restrictions pursue the legitimate aim of protecting the right to
E privacy afforded to vehicle owners and to prevent abuse of the personal
F data contained in the Register. What follows then are steps (2) to (4) of
G the conventional proportionality test: whether the Public Interest Route
H Restrictions are rationally connected to the legitimate aim; whether the
I restriction is no more than was necessary to accomplish the aim; and
J whether a reasonable balance has been struck between the public interest
pursued by the Public Interest Route Restrictions and the rights of
journalists.

K 151. Mr Kat submitted that, at the second stage, there is no
L logical or rational basis to allow applications falling within the Specified
M Purposes to obtain the particulars automatically under the Automatic
N Route, but to impose additional vetting and considerations and a “much
O more onerous and much slower application process” on journalists’
P applications under the Public Interest Route.

Q 152. At the third stage, Mr Kat argued the restrictions are not
R necessary for the supply of particulars on applications made through the
S Automatic Route.

T 153. Lastly, the Applicant claimed that the Policy does not strike a
U reasonable balance between “the societal benefits achieved and the
V inroads made into the constitutionally-protected rights of journalists”.
Mr Kat pointed to the undoubted societal benefit of investigative

A journalism and the importance to society as a whole of a free press on one
B hand, and the entry of vehicle owners' personal data being a matter of
C personal choice on the other hand.

D 154. Mr Kat submitted that considerable damage had already
E been done by the implementation of the Policy to the operations of the
F free press and hence to the ability of the members of the Applicant to
G pursue their profession. In particular, Mr Kat raised the complexity and
H delay faced by journalists when applying through the Public Interest
I Route, citing one example in which the application was processed for
J 9 months. Mr Kat also noted the "chilling effect" of the Public Interest
K Route Restrictions due to fears that the journalist's own private
L information would be disclosed to the vehicle owners from whom the
M particulars are sought, or to Government officials who may be both
N consulted for the purpose of the application whilst being subject to a
O journalistic investigation. As such, Mr Kat submitted that the Public
P Interest Route Restrictions go beyond the "no more than necessary"
Q threshold.

N 155. Mr Yu contended that this is a misreading of the Policy
O based entirely on unjustified speculation, as there is no basis to suggest
P that the TD may approach or consult the particular individuals being
Q investigated by the journalist. Furthermore, such consultations are
R normal and legitimate inter-departmental communications, and are
S subject to the Government's established conflict of interest mechanisms.

S 156. Mr Yu contended that the requirement for written
T submissions to demonstrate public interest for Public Interest Route
U applications not only acts as a filter against any potential abuse of the
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A system, but is also necessary to enable the Commissioner to come to an informed and proper decision on whether to allow the disclosure and use of private information on the Register.

157. Mr Yu also noted the existence of unique risks associated with premature disclosure of private information to journalists, such as the prejudice of investigations by law enforcement agencies or the danger of using the information for “doxing” or “naming-and-shaming” persons under investigation. These risks become heightened when the Register becomes a channel for fishing expeditions by journalists for possible leads in the course of investigative journalism, thus leading to the necessity of the Public Interest Route Restrictions.

158. Hence, it is the Commissioner’s case that the Public Interest Route Restrictions are necessary for the protection of vehicle owners’ privacy and minimisation of risk of abuse. The Policy is not a blanket denial of access by journalists, as it sets out the procedure and the factors which will be considered by the Commissioner on a case-by-case basis through the Public Interest Route. Some delay is also inevitable due to circumstances beyond the Commissioner’s control in each application.

159. Mr Yu also brought to my attention some examples of similar policies in other jurisdictions:

- (1) In the United Kingdom, particulars contained in the vehicle register may be made available for use “by any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him”, per Regulation 27(1)(da) of the Road Vehicles (Registration and Licensing) Regulations 2002.

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(2) In Singapore, the Registrar may, in his discretion, refuse to provide any particulars in relation to an entry in the register of vehicles to any person making an application, per Rule 13(6) of the Road Traffic (Motor Vehicles, Registration and Licensing) Rules.

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(3) In New Zealand, the Registrar “may not disclose personal information about an individual unless [he] is satisfied that (a) the person applying for the information is that individual; or (b) the information is required for a purpose specified in section 235 [i.e. that the purposes are to facilitate the enforcement of law, maintenance of the security of New Zealand, collection of charges imposed or authorised by an enactment, or administration and development of transport law and policy]; or (c) the information is within the exception specified in section 241 [which requires the consultation of the Privacy Commissioner, the Chief Ombudsman, and the Commissioner of Police, and have to be done by notice in the Gazette]; or (d) the information may be disclosed under an enactment”, per section 237(2) of the Land Transport Act 1998. The Registrar may also decline to supply information by granting confidential status in respect of a specified motor vehicle on the basis that the supply of personal information would be likely to prejudice the privacy or personal safety of any person, pursuant to section 239(2)(e) of the Land Transport Act.

160. These rules demonstrate the principle common in other jurisdictions that the authority in charge of the vehicle register maintains some level of discretion in deciding whether to provide particulars contained in the respective register of vehicles.

A 161. It seems to me that the Public Interest Route Restrictions are
B rationally connected to the legitimate aim of protecting the privacy of
C vehicle owners. It is not in real issue that such a right to privacy is
D a fundamental right enshrined in the laws of Hong Kong, that should be
E safeguarded to a high level. Indeed, that is the implicit goal of this
F double proportionality test and the undertaking of a balancing exercise
G of the press.

H 162. As to whether the Public Interest Route Restrictions are no
I more than necessary to achieve the legitimate aim, I would find in the
J affirmative. I note the concerns raised by Mr Kat, which have some
K force. But the Policy itself does not suggest a blanket refusal of all
L journalistic applications. It is simply the case that journalistic
M applications do not fall under one of the prescribed purposes that would
N justify an application through the Automatic Route, and hence require
O more detail and justification before such an application is granted.
P Where the consequences of granting a journalistic application include not
Q only the disclosure, but possible widespread dissemination of
R an individual's private information, it can be envisioned that these
S applications need to be carefully scrutinized.

T 163. That delay would arise as a result of this stricter
U investigation into an application is a natural, foreseeable result which is
V no more than necessary for the achievement of the legitimate aim. The
degree of delay may be a different matter, depending on the case, of
course. But it is not the case that the Commissioner is deliberately
increasing the processing time of a journalistic application, or imposing
the delay on the mere premise of the application being a journalistic one.

A It must be at least possible that all applications through the Public Interest
B Route would face some delay because a number of factors might have to
C be considered by the Commissioner before granting or refusing those
D applications. On the face of the Policy, this is not a delay designed to
E oppress journalistic applications, but one that arises as a necessary side
effect of achieving the legitimate aim.

F 164. I do find there is some force in Mr Kat's submissions as to
G journalists' fears that their personal information would potentially be
H disclosed to the vehicle owners from whom the particulars relate to, and
I potentially disrupt the investigative process. But, I would suggest that
J this goes both ways: it must be envisaged that individuals who seek
K access to private, personal information of others run the risk of an
L encroachment upon their own personal information and right to privacy.
M I do not think it right that the mere title of "investigative journalism"
N should offer blanket immunity from such consequences. It might also
O be thought, in general, that a person whose private data has been
P disclosed should be given the choice or opportunity to know to whom it
Q has been disclosed. Further, with regard to the TD consulting other
R Government departments on the applications, I will repeat the points I
made above that inter-departmental communications are part of the
Government's regular operations, and do not give rise to a conflict of
interest. I also acknowledge Mr Yu's point that it is departments as a
whole, rather than individual officers in those departments, who may or
may not have an interest in the application, which are consulted.

S *1.6 Right to Privacy*

T 165. The second proportionality test concerns the right to privacy.
U This requires an assessment of proportionality from a lens which is
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A different from that of the Applicant. The individuals who are affected
B by the encroachment upon this right are identified as the vehicle owners
C whose information would potentially be disclosed by the operation of
D the Policy. The concern is no longer the Public Interest Route
E Restrictions which affect the right to freedom of expression and freedom

F 166. The right being engaged from this perspective is the right of
G privacy. The corresponding restriction being imposed on this right is
H therefore the disclosure of the particulars contained in the Register,
I including the personal data of vehicle owners.

J 167. It is necessary to determine a legitimate aim for
K consideration on this proportionality analysis. One aim may be found in
L §4(3) of the Guidance Notes, namely “providing relevant information to
M persons directly affected by the ownership or use of a vehicle who as a
N result needs to ascertain the particulars of that vehicle”. But I have
O already held that this is too narrow a view of the purposes of the Register.
P To fit the circumstances of this case, I would specify the legitimate aim to
be “disclosing the relevant information for *bona fide* journalistic
purposes”. This seems to be the legitimate aim that was suggested in the
Applicant’s submissions.

Q 168. Mr Kat submitted that that restriction on the right to privacy
R by the operation of the Policy is rationally connected to that legitimate
aim.

S 169. In determining whether the restriction is rationally connected
T to the legitimate aim, I would return to my above analysis. It was
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A clearly envisioned, as was stated in *Choy Yuk Ling*, that journalistic
B purposes fell into the broadly phrased expression of “other traffic and
C transport related matters” in relation to the purposes for application of
D a Certificate under the old application process. Indeed, the
E Commissioner does not contend here that journalistic purposes are not
F one of the reasons for which applicants may seek disclosure of particulars
G under the Policy. Hence, the restriction imposed upon the right to
H privacy is rationally connected to the legitimate aim of disclosing the
I particulars for *bona fide* journalistic purposes.

H 170. Mr Kat also submitted that it was no more than necessary to
I the legitimate aim of providing relevant information to affected persons.
J Insofar as disclosure is concerned, he submitted, one relevant factor was
K the registered owner’s informed and signed consent to his personal data
L in the particulars being held on a public register.

L 171. Mr Yu submitted that this is not the case; rather, the
M provision of information and agreement to their information being placed
N on the Register is compulsory or mandatory in the sense that the
O registration of their vehicle would be rejected if owners refused to
P comply with such provision of information. In the present case where
Q any “right” of the press in accessing private information on the Register is
R to be set against the right of vehicle owners who are entitled to protection
S of their private information, the Commissioner cannot be said to be
T striking a fair balance “unless she is satisfied that there is a sufficient
U public interest in the disclosure of private information to justify the
V curtailment of the conflicting right”.

172. In *Junior Police Officers' Association (CFI)* at §§71-72, Chow J held that although an individual's residential address is an aspect of his private and family life, the level of privacy that may be attached to the address is not high:

71. The extent of interference with an elector's privacy relates, in essence, only to his principal residential address. Although an individual's residential address is an aspect of his private and family life, the level of privacy that may be attached to the address is not high. In *Corporate Officer of the House of Commons v The Information Commissioner* [2008] EWHC 1084 (Admin), the English Divisional Court stated at §41 as follows:

41. No one would disagree that the address of each individual's private residence is personal data, and represents an aspect of private and family life, but a residential address is an aspect of private life which may not be very private at all... Other professions and occupations may require notification of and public access to a residential address. Thus, company directors are required to provide a residential address available to those who search the register of companies. Everyone eligible to vote must have his or her address recorded in the register of electors, full versions of which are available for public scrutiny in local libraries and local government offices. The reality is that an individual who is determined to discover a residential address of an adult law-abiding citizen is likely to be able to do so by one legal means or another, and where the person concerned is the holder of a public office and in the public eye, such inquiry is likely to be easier.

72. In this regard, it needs to be borne in mind that while what goes on inside a person's residence is plainly a matter of significant privacy, a person's residential address is one of the means of communication with the outside world, and is often readily provided to third parties in many different aspects of daily life.

173. But the Court of Appeal in *Junior Police Officers' Association of the Hong Kong Police Force v Electoral Affairs Commission* (No 3) [2020] 3 HKLRD 39 (“*Junior Police Officers' Association (CA)*”) nonetheless held at §42 that the fact people disclose residential addresses from time to time does not undermine the importance of the right to control the dissemination of that piece of information; that right is the subject of protection of the right to privacy. Furthermore, it was held that the “incursion of the right (for the purposes of electoral registration) is nonetheless a substantial one since a registered elector is deprived of any choice to retain effective control over the extent of dissemination of information on his residential address to the outside world if he wishes to exercise the right to vote”.

174. *Junior Police Officers' Association (CA)* was a case dealing with the disclosure of residential addresses in the context of registering for elections, but I think its rationale may nonetheless be applied to the circumstances of this case. The right that is engaged is not the right to vote, but rather the right to private ownership of property. Though perhaps not quite as forcefully as with an electoral right, if a person chooses to exercise such a right to private ownership of vehicles, the incursion of the right is nonetheless substantial because a vehicle owner by law is essentially deprived of his choice to “retain effective control over the extent of dissemination” of his personal data when he exercises such a right.

175. It was recognized at §35 of *Choy Yuk Ling* that “the relevance of the purpose for which the vehicle particulars are sought is inherent in the duty of the Commissioner to manage the personal data

A kept in the register and to minimise the risk of potential abuse of such
B data.”

C 176. Therefore, I find some difficulty at the third stage in
D deciding whether the restriction was no more than necessary for the
E achievement of the legitimate aim. I disagree with Mr Kat’s submission
F that the encroachment of the Policy upon the right to privacy is no more
G than necessary because the registered owners have been informed and
H gave their consent to their personal data being held on the Register. This
I must go both ways; I do not find it satisfactory to conclude that vehicle
J owners have consented, and therefore are obliged to agree to the release
K of their personal information, whereas potential applicants, including
those who apply for journalistic purposes, are allowed to evade reciprocal
disclosure of their own information to vehicle owners from whom they
seek particulars.

L 177. Equally, applicants under both the Automatic Route and the
M Public Interest Route are informed that their personal data will be used by
N the TD “for the information of the registered vehicle owner to whom an
O application or a written submission for an application under exceptional
P circumstances relates”. Furthermore, under “Purposes of Collection” §2,
Q it is stated that it is obligatory for the applicant to supply the personal data
R as required by this form, and the application may be refused if the
applicant fails to supply the required data. Indeed, this is part of not
only the Guidance Notes, but also TD318 itself.

S 178. Mr Kat also raised the point that, at least in the context of
T journalistic applications, members of the 4 Journalistic Organisations are
U subject to industry and professional standards including confidentiality,
V

A and hence there is a lesser risk of abusing or misusing personal data when
B compared to other applicants who might make applications for the
C Specified Purposes. I see some force in this point. However, although
D it is fair to say that freedom of expression and freedom of the press are
E fundamental tenets in this society, the title of “journalist” should not of
F itself grant privilege over others. As Mr Yu noted in his submissions,
G journalism is not a licensed profession in Hong Kong and there is no
H educational, accreditation or registration requirements for people who
I wish to practise journalism. The fact remains that any person can claim
J to be a journalist embarking on an investigation for journalistic purposes.
K On the other hand, a person making an application on the stated basis of
L journalistic activity who can identify that he or she is a member of, say,
M the Applicant should be given some credit in the Commissioner’s
N consideration, because the Commissioner should know that the applicant
O is bound by certain rules relating to collection and dissemination or
P publication of data.
Q

M *1.7 Ultimate Balancing Test*

N 179. As a reminder, the balancing exercise to be carried out in a
O double proportionality test is essentially a weighing of the two
P fundamental rights against each other. The Court is being asked to look
Q at the competing rights of freedom of expression on one hand, and
R privacy on the other, and determine whether the protection offered to one
S right justifies the infringement of the other.

R 180. The Commissioner submitted that, in the present case where
S any alleged right of the press in accessing private information on the
T Register is to be set against the right of vehicle owners who are entitled to
U protection of their private information, the Commissioner would not be
V

A striking a fair balance unless she is satisfied that there is a sufficient
B public interest in the disclosure of private information to justify the
C curtailment of the conflicting right.

D 181. I am not convinced that the Applicant has suffered an
E unacceptably harsh burden because of the restrictions imposed by
F the Policy and the Public Interest Route. Again, I stress that the Policy
G does not result in a blanket refusal of all journalistic applications. The
H journalists wishing to obtain vehicle particulars are still able to do so
I through the very same Policy, albeit with a slightly higher threshold than
J is perhaps required for other purposes. Nonetheless, once an applicant
K has met this threshold, they too are entitled to a full disclosure of the
L particulars sought.

M 182. On the other hand, if one were to consider the possibility of
N allowing journalists access to the particulars contained in the Register
O through the Automatic Route, I would say this may pose an unacceptably
P harsh burden on vehicle owners, whose rights to privacy are severely
Q affected. I accept that there was a right of access to information held by
R public bodies, but this right does not extend to private information. As
S noted in *Junior Police Officers' Association (CA)* and *Choy Yuk Ling*, the
T disclosure of a person's personal data is a "substantial incursion" into the
U right to privacy, and the Commissioner is inherently under a duty to
V protect such personal data. There may well be reasons to allow access
by the Automatic Route for expediency and efficiency, but it seems to me
that the people seeking disclosure under the Automatic Route do so
because they are the owners, or are directly affected by the ownership of
the vehicle. To allow disclosure of particulars to third parties that the
vehicle owner may not necessarily know or have a personal relationship

A with, and for the admittedly vague umbrella of “journalistic purposes”,
B would be both an “incursion” into the right to privacy, and a breach of the
C Commissioner’s duty to protect that right without any proper
D consideration.

E 183. To adopt the conclusion of Lord Hope in *Campbell*, despite
F the weight that must be given to the right to freedom of expression that
G the press needs if it is to play its role effectively, I would find that
H the possible infringement to the vehicle owners’ right to privacy cannot
I be justified.

I *1.8 Conclusion on Ground 2*

J 184. The restrictions imposed on journalistic applications by the
K operation of the Public Interest Route of the Policy are rationally
L connected and no more than necessary for the achievement of the
M legitimate aim of protecting the right to privacy of vehicle owners and
N society at large, and they do not result in an unacceptably harsh burden on
O the Applicant or its members or other parties seeking disclosure of
P particulars for journalistic purposes.

Q 185. The restrictions on the right to privacy, though rationally
R connected to the legitimate aim, are however less obviously no more than
S necessary for the achievement of that legitimate aim.

T 186. On the application of the double proportionality test, as
U conducted above, and on the ultimate balancing exercise, it seems to me
V that the Proportionality Ground fails. I do not find that the Policy
constitutes a disproportionate and unjustified restriction on the right to
freedom of expression and freedom of the press under BL27 and BOR16.

J. Ground 3: Wednesbury Ground

J.1 Introduction

187. The Applicant relies on roughly the same reasoning in Ground 2 to demonstrate the Policy is unreasonable in the public law sense under Ground 3.

188. However, the Applicant submitted that Ground 3 is not a re-run of Ground 2, because the focus of the Court shifts from the proportionality of the Policy’s interference in the rights named above to the overall reasonableness or rationality of the Policy.

189. In short, the Applicant contends that the exclusion of journalistic applications from the Automatic Route is irrational and constitutes unjustifiable inconsistent treatment. Mr Kat relied primarily on the fact that journalistic applications were excluded from the Automatic Route and instead are subject to the “more onerous and complex vetting process” of the Public Interest Route, on the basis that there is no evidence that those who intend to “misuse or abuse” the personal data of the registered vehicle owners are more keen to do so under the cloak of journalistic investigation.

190. The Applicant identified a number of factors that were exceptional to the Public Interest Route, such as the complexity required of such applications, the time taken for the Commissioner to decide on such applications, the requirement for applicants to disclose details of journalistic investigations, and the disclosure of applicants’ personal data to vehicle owners and others.

A 191. It is trite that a decision is *Wednesbury* unreasonable or
B irrational in circumstances where the decision is such that no reasonable
C authority could ever have come to it. It is also trite that establishing
D irrationality is a high hurdle for a judicial review applicant to overcome.
E Thus, as Mr Yu phrased it in his submissions, is the Policy “so outrageous
F in its defiance of logic or of accepted moral standards that no sensible
G person who had applied his mind to the question to be decided could have
H arrived at it”?

I 192. Mr Kat submitted that consistency, i.e. treating like cases
J alike, is a “general axiom of rational behaviour”, and drew the analogy
K between an application for an alleged claim for compensation arising
L from a traffic accident, and an application by a journalist for the purpose
M of “genuine investigative journalism in relation to a possible connection
N between the registered owner of a vehicle and its use in connection with a
O crime”. Mr Kat submitted that, in the first scenario, the applicant would
P be able to easily and quickly obtain an electronic form of the Certificate
Q without the Commissioner first vetting his claim or having to demonstrate
R he had no other feasible ways to obtain the information and that he had
S taken measures to safeguard the security of the personal data to be
T disclosed, whereas in the second scenario the applicant must make
U “detailed” submissions for the Commissioner regarding a “raft of
V additional considerations”. Thus, Mr Kat contended, there is no rational
reason why the first case is treated differently (and more favourably) than
the second.

193. But, Mr Yu argued that it was factually incorrect to say
the applicant must demonstrate to the Commissioner that he had no other
means to obtain the information, as this was simply one of the factors the

A Commissioner will take into account in assessing the public interest in
B favour of granting the Certificate. Furthermore, the requirement for the
C applicant to demonstrate to the Commissioner that he had taken measures
D to safeguard the security of the personal data to be disclosed is rationally
E connected to the purpose of private protection. I respectfully agree with
F Mr Yu. Insofar as this is the legitimate aim of requiring applicants to
G demonstrate that they have indeed safeguarded the security of the
personal data to be disclosed, I find that in these circumstances it would
be a rational decision for a “reasonable” Commissioner to make.

H 194. I adopt my reasoning above, and find that the Policy is not
I *Wednesbury* unreasonable. Again, the Policy does not aim to
J specifically exclude journalistic applications. The Public Interest Route
K is available to those who wish to apply for the disclosure of particulars
L for journalistic purposes. It is true that there are some limitations in the
M Public Interest Route such that it is not as expedient as the Automatic
N Route, but this is for good reason. The Commissioner exercises a duty
O to protect the right to privacy of vehicle owners. When deciding
P whether to grant an application for reasons other than those specified in
the Automatic Route, it is predictable that those applications need to be
more closely considered. This does not point to an inference that any
reasonable person would invariably find this to be “so outrageous” that
no “sensible person” could arrive at it.

Q 195. Indeed, a journalistic application made through the Public
R Interest Route for the registration dates of a number of vehicles was
S approved after the Commissioner conducted the balancing exercise and
T came to the view that the public interest served in the disclosure of the
U
V

A requested information outweighed the right to privacy afforded to vehicle
B owners.

C *J.2 Conclusion on Ground 3*

D 196. I note the case of *Society for Protection of the Harbour Ltd v*
E *Chief Executive in Council and others* [2004] 2 HKLRD 902, where it
F was stated at §77 that the greater the degree of interference with a
G fundamental right, the more the court will require by way of justification
H before it is satisfied that the decision is reasonable in the public law sense.
I This may be of some relevance as the fundamental right to freedom of
J expression as well as the right to privacy are engaged by the Policy.
K However, even applying this standard of scrutiny, I am not convinced the
L Policy is irrational in the *Wednesbury* sense.

K ***K. Ground 4: Fettered Discretion Ground***

L *K.1 Introduction*

M 197. This ground focuses on the collection of data from the
N applicant for the vehicle particulars, whose data may then be disclosed to
O the registered owner of the vehicle, which the Applicant describes as the
P “compulsory tip-off”.

Q 198. The principle against a public authority unlawfully fettering
R its discretion is well-settled. A decision-maker must not allow his policy
S to fetter his decision. In other words, he must not apply his policy
T blindly and rigidly. The policy must not preclude the decision-maker
U from departing from it, or from taking into account circumstances and
V merits of the particular case in question. As it is sometimes put, the
decision-maker must always be willing to listen to anyone with

A something new to say, and the policy must have an exceptions procedure
B worthy of the name.

C 199. The Guidance Notes at §22(d) provides as follows:
D

E “VII. Personal Data Collection Statement

F Purposes of collection

G 22. The personal data of the applicant or relevant
H persons contained in an application form or a
I written submission for an application under
J exceptional circumstances and any change to
K such data from time to time will be used by TD
L for the following purposes:

- (d) for the information of the registered
I vehicle owner to whom an application or
J a written submission for an application
K under exceptional circumstances relates.”

K 200. Essentially, under §22(d) of the Policy, the personal data of
L the applicant may be disclosed to the vehicle owner to whom the
M particulars relate. Furthermore, as stated on the TD website, all
N registered vehicle owners can subscribe to a free-of-charge email
O notification service for “the issue of the Certificate of Particulars of
P Vehicle” through the GovHK website, whereby in the case of a Certificate
Q being issued for a vehicle owned by a subscribed vehicle owner, a
R notification email containing the information of the applicant concerned
S will be sent to the subscribed vehicle owner. This information includes
T the name of the applicant, the condition(s) or purpose(s) of application,
U the date and time of the particulars on the Certificate, and the issue date
V and time of the Certificate. I will refer to this as the “Notification
Service”.

A 201. The Applicant seeks to challenge the Policy and the
B Notification Service on two limbs:

C (1) That the Policy is unlawful because the Commissioner
D fettered her discretion by committing herself to the
E compulsory disclosure of all applicants' personal data to the
F vehicle owners concerned through the Notification Service,
G hence utilising a "blanket policy".

H (2) That such compulsory disclosure is inconsistent with the
I journalist applicants' constitutional rights to freedom of
J expression and the freedom of the press.

K 202. Mr Kat argued that, without a carve-out for the purpose of
L investigative journalism (where confidentiality is crucial), the Policy is in
M violation of the fundamental rights under BOR16(2) and BL27 and/or
N irrational, and that §22 of the Guidance Notes together with the TD's
O statement that it "will" notify vehicle owners that a Certificate had been
P issued and set out the details of the application concerned, constitute an
Q unlawful fetter on the Commissioner's discretion.

R 203. Mr Yu suggested that the notification service is an opt-in
S system to "put individuals with heightened privacy concerns at ease".
T Further, if an application is withdrawn, or no Certificate is issued, then no
U notification is given to the registered owner. The information, including
V residential address and telephone number, was not primarily obtained for
the purpose of disclosure to the vehicle owner under the Notification
Service.

K.2 Limb 1: Blanket policy of disclosure of applicants' personal data

204. Mr Kat submitted that the Commissioner has bound herself to a blanket policy to disclose all applicants' personal data to a wide and uncertain range of recipients, including the owner of the vehicle which is the subject of the application. There is no exception for journalists or any other class of applicants, and as such the Commissioner has failed to take into account the individual circumstances of each application or class of applicants, fettering her discretion.

205. I note that the Notification Service is not particular to applications under the Public Interest Route, but rather a general policy for all successful applications where there is a Certificate issued, including applications under the Automatic Route.

206. But, I would not go as far as to say the Commissioner fettered her discretion. There certainly exists a policy to disclose the applicant's personal data, but two requirements must be satisfied beforehand: first, the application is successful, and second, the vehicle owner in question is 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". For the purposes of the present consideration, the only recipient under the Notification Service is the vehicle owner to whom the particulars relate, and who is at the time of the application a subscriber to the Notification Service.

207. Furthermore, the limit of disclosure under the Notification Service is really quite narrow, as demonstrated in the Commissioner's evidence. To illustrate this point with the statistics provided by the TD as at 30 April 2024, there were approximately 923,109 registered vehicles

A in comparison to 574,909 registered vehicle owners (at a ratio of roughly
B 2 registered vehicles per registered vehicle owner). Since the launch of
C the Notification Service on 2 January 2021, there had been 95,767
D Certificates issued. There were 12,150 subscribers to the Notification
E Service, and yet only 951 notification emails were issued. Essentially,
F for every 100 successful applications for Certificates, only one of those
G applications warranted the issue of a notification to the vehicle owner.
H The very fact that there exists a stringent filtering system suggests that the
Commissioner exercised her discretion in designing the Notification
Service.

I 208. I recognise there is some force in Mr Kat’s submission that
J the TD “may consider not sending an alert to the vehicle owner where
K there are special circumstances” does not actually form part of
L the published Policy, nor was it ever implemented in the operation of the
M Policy. But, I would find that the Commissioner fettered her discretion
N only to the extent that there is no explicit discretionary basis upon which
O the Commissioner may perhaps choose not to notify vehicle owners of
P the disclosure. This feeds into the fundamental rights argument, which I
Q will deal with in further detail below.

K.3 Limb 2: Compulsory tip-off is irrational and unconstitutional

Q 209. Mr Kat also submitted that the compulsory disclosure of the
R applicant journalists’ personal data is irrational in the public law sense
S and breaches the applicant journalists’ fundamental rights under
T BOR16(2) and BL27. Moreover, it is a disproportionate restriction on
U journalistic access to the Register.
V

A 210. In the Applicant’s skeleton submissions, Mr Kat focused on
B steps 3 and 4 of the proportionality test to argue that the Policy’s default
C mode of disclosure to vehicle owners is not rationally connected to the
D purpose of the Policy, and is disproportionate because such “tipping-off”
E frustrates the Policy itself insofar as it intends to accommodate
journalistic applications.

F 211. Mr Yu submitted that BOR16 and BL27 do not provide for
G free and unrestricted access to the information on the Register, let alone
H guaranteeing confidentiality on the applications for Certificates.
I Furthermore, the Notification Service serves a legitimate aim of
J providing a safeguard to protect the rights of vehicle owners, which
K inevitably includes a right to privacy. It is said that the Notification
L Service was recommended by the Ombudsman, who noted that there
were similar mechanisms in place for other Registers, such as the Land
Registry’s Property Alert.

M 212. There is some overlap with the proportionality ground here.
N However, instead of the focus being on whether journalistic applications
O being considered under the Public Interest Route was disproportionate,
P the heart of the issue is the Notification Service. The legitimate aim
Q remains the same, being the protection of personal data and privacy of
R vehicle owners. The restriction may instead be said to be “the
S compulsory disclosure of the applicant journalists’ personal data”. But I
T think my reasoning above continues to apply.

U 213. In the evidence filed on behalf of the Commissioner, it is
V explained that the Notification Service seeks to provide an additional
safeguard against possible abuse of the information contained in the

A Register. It is contended that, having regard to the fact that the TD has
B no control on how the information will be subsequently used or stored
C once it is disclosed, the system enables vehicle owners to be notified of
D the disclosure of his data to a third party, so as to be alerted to any
E potential privacy risks and take appropriate action in the event of
F suspected possible instances of misuse or abuse or leakage of his personal
G data. I find that this is rationally connected to the legitimate aim, and is
H no more than necessary to achieve that legitimate aim.

I 214. Of course, I accept that “the press should be able to speak
J out on matters of public interest without fear of reprisal, and journalists
K need to protect the confidentiality of the sources of the information they
L receive”: see *Lai Chee-Ying v Commissioner of Police* [2022] HKCA
M 1574 at §30. Despite the different context of that case, the point is still
N applicable in the current situation. But, I think it is a jump to move from
O the Notification Service to fear of reprisal – at least any more than the
P risks inherent in any journalistic enquiries. Further protecting
Q confidentiality of sources does not so readily extend to the situation
R where the source is ultimately the person who provided the particular
S sought.

T 215. I have already mentioned that it must be envisaged that
U individuals who seek access to private, personal information of others run
V the risk of an encroachment upon their own personal information and
right to privacy. It must be foreseeable that the person whose data is
disclosed may legitimately have an expectation or right similar to the
person who sought the disclosure. I find that a reasonable balance has
been struck between the restrictions imposed by the Notification Service

A and the right to expression and freedom of press exercised by applicant
B journalists.

C *K.4 Conclusion on Ground 4*

D 216. In any case, the Court exercises a supervisory jurisdiction on
E review only, and the issue at question is whether the Commissioner
F exercised his discretion in a manner that accords with his duty to promote
G the statutory purpose for which the discretion is given. It is not for the
H Court to substitute its own views in place of that of the Commissioner on
the facts.

I 217. I do not find that the compulsory disclosure of applicants'
J personal data through the Notification Service constitutes an unlawful
K fetter of the Commissioner's discretion.

L *L. Ground 5: Refusal/Rejection Ground*

M *L.1 Introduction*

N 218. The Applicant makes fact-specific decision challenges in
O relation to various individual applications made under the Policy, namely:

- P (1) The alleged delay in the decision of two applications made
Q on 8 January 2024 by reporters of HK01 ("Case 1 and
R Case 2");
S (2) The alleged delay in the decision of an application made on
T 8 January 2024 by a reporter of Ming Pao, and subsequent
U rejection of the application on 7 June 2024 ("Case 3");
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- (3) The alleged delay in the decision of an application made on 8 January 2024 by a reporter of Now TV, and subsequent rejection of the application on 27 June 2024 (“Case 4”);
- (4) The alleged delay in the decision of an application made on 8 January 2024 by a reporter of The Collective Hong Kong, and subsequent rejection of the application on 3 June 2024 (“Case 5”); and
- (5) The alleged delay in the decision of an application made on 15 February 2024 by a reporter of The Collective Hong Kong (“Case 6”).

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219. The Applicant’s challenge was originally premised solely upon the alleged delay in the decision process of these Cases. Subsequent to the decisions of the Cases being rendered between 3 June 2024 and 27 June 2024, the Applicant sought to amend the Form 86 to introduce challenges to the substance of the Commissioner’s decision in rejecting Cases 3, 4, and 5.

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220. The Commissioner contended that the applications made under journalistic purposes were rejected on the assessment that, having regard to all relevant factors, the claimed public interest (if any, and the nature/extent thereof) in disclosing the information on the Register to the applicant could not outweigh the registered owner’s right to privacy as well as the lawful rights and interests of other persons and society as a whole in the overall circumstances.

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L.2 Delay

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221. It is trite that a decision-maker must not unreasonably delay the making of a decision.

222. Generally, by virtue of section 70 of the Interpretation and General Clauses Ordinance Cap 1, where no time is prescribed or allowed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises. What constitutes unreasonable delay is to be determined by the relevant circumstances seen in the light of what is to be taken as the intent of the relevant statutory or regulatory scheme: see *Kam Wai Hung v Secretary for Justice* [2002] HKCFI 492, 23 April 2002 at §42. The delay must be of such a nature as to amount to a breach of natural justice. In the absence of some improper, and it may be *mala fide*, use of its procedures, the occasions on which a tribunal or public authority would be prohibited from proceeding would be rare: *Wong Wai Tak v The Secretary for the Civil Service* [2001] HKCFI 1132, 23 February 2001 at §73. But, unless it constitutes an abuse of power, such delay should not constitute a ground for judicial review: see *Kam Wai Hung* at §46.

223. On the other hand, I accept that undue delay in decision-making may amount to a constructive refusal, and excessive and unreasonable delay by a public body in discharging its statutory functions may amount to procedural unfairness or irrationality. In short, the time required in order to arrive at a decision must be reasonably necessary for that purpose, and what is reasonable will depend upon all the circumstances.

L.3 Whether Allegations of Delay Academic

224. Before dealing with this challenge, I was asked to decide whether the allegations of delay are academic. It was alleged by the Commissioner that, in light of the fact that the decisions regarding the Cases had already been made, the complaint of undue delay was rendered

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obsolete, and that the focus of any judicial review, once a decision had been made, must move away from the delay and instead be directed towards the actual decisions.

225. I bear in mind the approach that was established in *Chit Fai Motors Co Ltd v Commissioner for Transport* [2004] HKCA 89. The question before the Court is said to be hypothetical or academic only because the real dispute that drove the parties to litigation happens no longer to be in existence at the time of the hearing, even though the relevant facts giving rise to the dispute were real and had actually taken place. In this type of situation, the Court does have jurisdiction to hear and determine the question in issue. However, in deciding whether or not to do so (and this can be said to be a matter of discretion), the Court will closely examine the relevance or utility of any decision. This is sometimes easier to demonstrate in the public law sphere, rather than in relation to private rights, because very often in public or administrative law cases, the duties of public bodies fall to be exercised on a continuing basis not only in relation to the parties before the Court, but other parties in a similar position. The exercise of those duties under relevant powers may already have occurred, as well as may occur in the future.

226. The present challenge seems to me to raise issues of real public importance, with potential application to any applicant seeking disclosure of vehicle particulars for the purposes of *bona fide* investigative journalism. Its significance is all the more so in light of *Choy Yuk Ling*, as these Cases were the first decisions following the implementation of the Policy and may very well set the tone for future applications. Furthermore, Ground 5 is different from a challenge to the

A constitutional challenge to the constitutionality of a rule or policy itself, and is instead a challenge to an impugned act or decision taken pursuant to the relevant rule or policy.

227. In any event, the parties came fully prepared to argue the merits of this challenge before me. Indeed, such was the case that both parties presented additional written submissions specifically for Ground 5. Therefore, I will deal with this ground below.

L.4 Analysis

228. The Applicant alleged that unreasonable delay has been made out on the facts of this case. Mr Kat stressed that news is a “perishable commodity”, and that to delay its publication, even for a short period, may well deprive it of all its value and interest, and any prior restraints call for the most careful scrutiny. As such, journalist applicants had requested urgent and same-day responses.

229. However, Mr Kat submitted that the Commissioner cannot realistically claim that the delay in the above cases was reasonable or less than “inordinate” for the following reasons:

- (1) The proper question for the Commissioner is simply whether the application is made *bona fide* for a legitimate purpose where, taking into account that these are journalistic applications as well as the rights and duties attached to said applications, the risks of misuse and abuse of personal data are minimised.
- (2) Between the date of implementation of the Policy and the initial filing of evidence on 16 July 2024, only 16 applications were made via the Public Interest Route, and only 13 of those applications were for journalistic purposes.

Yet, a number of these applications, and their subsequent rejections, faced varying degrees of delay ranging from 3 months to 6 months after the applications were initially made.

230. On the other hand, the Commissioner argued that there was no genuine urgency in the applications. On behalf of the Commissioner, Mr Suen submitted that the applications were advanced to test the new Policy following the CFA's decision in *Choy Yuk Ling*. Of note is the fact that 5 of the 6 applications were made on the same day, i.e. 8 January 2024, 3 days after the Policy was announced. Mr Suen further submitted that there was no excessive and unreasonable delay, on the basis that the Cases involved an ongoing correspondence between the Commissioner and the applicants. Mr Suen raised the point that the clock should only start ticking on the date when all necessary information as set out in the Guidance Notes is provided to the TD.

231. Given Ground 5's nature as a fact-specific challenge, it would be appropriate to look to the facts as they existed and the circumstances of the case.

(1) Case 1: Between 13 January 2024 and 16 February 2024, there were 4 rounds of queries between the TD and the applicant. The application was rejected on 17 April 2024. There was a lapse of 34 days between the first request for further information and last receipt of information, and a lapse of 100 days between the making of the application and the decision of the Commissioner.

(2) Case 2: Between 13 January 2024 and 19 February 2024, there were again 4 rounds of queries. The application was

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rejected on 17 April 2024. There was a lapse of 37 days
between the first request for further information and last
receipt of information, and a lapse of 100 days between the
making of the application and the decision of the
Commissioner.

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(3) Case 3: Between 13 January 2024 and 14 May 2024, there
were 5 rounds of queries between the TD and the applicant.
There was a lapse of 122 days between the first request for
further information and last receipt of information, and
a lapse of 151 days between the making of the application
and the decision of the Commissioner.

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(4) Case 4: Between 25 January 2024 and 13 May 2024, there
were 2 rounds of queries between the TD and the applicant.
There was a lapse of 109 days between the first request for
further information and last receipt for information, and a
lapse of 171 days between the making of the application and
the decision of the Commissioner. As between the two
requests and subsequent receipt of further information, there
was a lapse of 75 days and 21 days respectively.

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(5) Case 5: There was only 1 request for further information by
the TD. Between the date of request on 18 January 2024
and receipt of further information on 15 February 2024,
there was a lapse of 28 days. There was a lapse of 144 days
between the making of the application and the decision of
the Commissioner.

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(6) Case 6: Again, there was only 1 request for further
information by the TD. Between the date of request on
14 March 2024 and receipt of further information on
2 April 2024, there was a lapse of 19 days. There was a

lapse of 110 days between the making of the application and the decision of the Commissioner.

232. Looking at the circumstances of each case – though not without some hesitation – I respectfully agree with Mr Suen. The time between the making of the applications and the decisions of the Commissioner on the applications must be considered within context. There was not an inexplicable or deliberate delay by the Commissioner. Naturally, more complex applications will be manually reviewed, with extra time required for carefully scrutinising the underlying reasons of the application. It is also possible that the TD would consult other departments or relevant persons, which may also take some time. Moreover, there was active communication between the TD and the applicants for the further supply of particulars – even if no great urgency was demonstrated in seeking more information, and sometimes in supplying it.

233. Indeed, insofar as the urgency of these applications (with the caveat I return to in my Postscript), I am of the view that a number of them were not overly urgent, as the Applicant claimed. Case 2 concerned a personalised vehicle registration mark which had been sold in March 2021, over 3 years prior to the making of the application. Case 4 and Case 5 concerned the incident in Yuen Long on 21 July 2019, which was over 5 years prior to the making of the applications. In particular, the applicant in Case 4 took well over 2 months to furnish further information to the TD when requested.

234. Lastly, I take into account the relatively recent introduction of the Policy at the time of these applications. I accept there may be an

A innocent explanation, or as Mr Suen put it, the “teething problems in
B implementing a refined policy”.

C 235. It seems to me that, on balance and in those circumstances,
D these were not clearly unreasonable delays. To an extent they arose out
E of the ordinary operation of the Policy and the Public Interest Route at the
F early stages of its operation. I do not suggest that the timing was
G particularly commendable. But I would not find that these delays
H crossed the threshold so as to amount to a breach of natural justice or
other public law failure.

I 236. On the other hand, I expressly draw attention to the
J Postscript below.

K *L.5 The Rejections*

L 237. Lastly, the Applicant challenges the Rejections of Case 3,
M Case 4 and Case 5 on the basis that the Rejections are irrational and
unconstitutional.

N 238. By way of a speaking note on Ground 5, Mr Suen submitted
O that leave should not be granted to raise this fact-specific challenge for
P four main reasons, namely that (1) the Applicant lacks standing to
Q challenge the rejection of Cases 3 to 5, (2) the Rejections were never the
R focus of the Form 86, and it is procedurally unfair to require the
S Commissioner to meet a new challenge without being afforded the chance
T to file specific evidence in response, (3) the applications were made with
U the intention of “testing” the system, and the decisions arising from these
V applications were not intended to be challenged; and (4) the challenge to

A the Rejections became academic and otiose where the media companies
B were not interested in pursuing the matter further themselves.

C 239. With respect, I disagree with these submissions. Firstly,
D it is trite that there are two types of standing with regard to judicial
E review: personal standing and representative standing. If the applicant
F was effectively pursuing the application as a representative of the public
G interest, the Court can adopt a holistic approach by taking into account a
H host of relevant considerations including the merits of the application, the
I importance of vindicating the rule of law, the importance of the issue
J raised, the existence and absence of any other challengers who have a
K greater interest in the matter, and the nature of the breach of duty against
which relief is sought. The applicants in the respective Cases were
reporters who are members of the Applicant, and the outcomes of these
Cases might well affect other members of the Applicant in the future.

L 240. Further, I accept the Applicant's submission that its members
M are financially and otherwise unable and/or unwilling to bring judicial
N review proceedings themselves. I think it is quite clear the Applicant
O has representative standing, and in any case it is not a strong bar to the
P Applicant's challenge. Secondly, the rejections may not have been the
Q focus of Ground 5 in the Form 86, but the concern is undoubtedly there.
R Thirdly, I do not see any strength in the argument that the applications
S being made with the intention to "test the system" should defeat the
T challenge. Again, it appears to me to be in the public interest to decide
U this matter. Lastly, the fact that the media companies and/or the
V applicants in the Cases are not interested in pursuing the matter
themselves only affects the grant of the relief sought by the Applicant,

A i.e. the quashing of the Rejections. In any case, both parties came
B prepared to argue the merits of this challenge.

C 241. The Applicant appears to challenge the Rejections first on
D the general basis of a failure to give reasons and/or a failure to give
E adequate reasons. Mr Kat submitted that in each case, the
F Commissioner stated without further explanation that the applicant
G (1) had other reasonable and feasible means to achieve the claimed public
H interest, (2) could not justify how the particulars sought could achieve the
I claimed public interest, and/or (3) could report on the basis of publicly
J available information, thus plainly misunderstanding the role and rights
K of journalists and the protection given by the law to them. It was said no
L explanation was given as to how the Commissioner reached those views
M on the facts of each application. Mr Kat submitted the Commissioner
N also failed to take into account the relevant constitutional rights.

L 242. On the other hand, Mr Suen submitted that there were no
M merits in the Applicant's challenge on Ground 5 for the following main
N reasons:

- O (1) The Applicant challenges only three of six named cases.
P (2) Insofar as the Applicant criticises any factor considered or
Q test applied in all six cases, it would be self-contradictory for
R the Applicant to cherry-pick and challenge some, but not all,
S of the decisions.
T (3) The Commissioner "could not be faulted for seeking
U information and taking into account relevant factors".
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(4) The Applicant adopted a “scattergun” approach and made groundless complaints without considering the Commissioner’s evidence in her exercise of the Policy.

243. I think it prudent to repeat the extent of the Court’s authority in judicial review proceedings. The Court exercises a supervisory jurisdiction only, and is not entitled to substitute its own views in place of that of the Commissioner on the facts. Thus, the duty of the Court is merely to determine whether the decision of the Commissioner, taking into account the circumstances of the individual case, was reached in accordance with the process afforded to her.

244. On the evidence, I am satisfied that the Commissioner’s decisions were reached in accordance with the guidance and discretion afforded to her by the Policy. The Commissioner duly took into account several relevant factors such as the purpose of the application, how the information sought would be used to achieve the intended public interest purpose, measures on data protection, whether there were other reasonable and feasible ways to obtain the information, and the potential prejudice to the rights and interests of other persons or society.

245. I once again refer to my analysis and application of the double proportionality test above. The operation of the Public Interest Route at its root is essentially a balancing exercise, where the Commissioner is asked to decide whether the claimed public interest in disclosure would on balance outweigh the vehicle owner’s right to privacy as well as the interests of other persons and society as a whole. There are of course unique and exceptional circumstances in each case which may affect the overall outcome of the Commissioner’s decision,

A but the Commissioner is wholly entitled to find those circumstances
B ultimately did not justify the encroachment upon the right to privacy of
C vehicle owners because, for example, “there are alternative means for the
D applicant to obtain information as to the identity of the Vehicle owner”.

E *L.6 Conclusion on Ground 5*

F 246. Taking into account the circumstances of each application,
G I am unable to say that the delay or Rejections were irrational or
H unconstitutional.

I 247. But, it is also appropriate to record that there is no basis for
J finding or even suggesting that there either had been or would be any
K misuse of the information sought by the various members of the press
L involved.

M *M. Result*

N 248. On substantive review, none of the Grounds of review is
O made out. I dismiss the application for judicial review.

P 249. I have, however, pointed out where I consider there to be an
Q error in the description of the legislative purposes of the Register, as
R stated in §4 of the Guidance Notes and in the declaration forms required
S from applicants. I think those matters should be corrected, though they
T do not of themselves change the overall conclusion on the judicial review.

U 250. As to costs, I will deal with those matters on paper
V submissions. I leave it to the parties to agree an appropriate timetable
for such submissions.

N. *Postscript*

251. It is trite that context is everything. As canvassed above, 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. In this case, as is set out above, I have been persuaded that the Policy is not unlawful, and that the individual applications under it were dealt with in a way which (in the particular circumstances) did not cross the relatively high threshold of public law unreasonableness or other error.

252. However, since those early applications under the Policy, time has moved on. Hence, now that the period for any “teething problems” must have ended, it might reasonably be expected that the application process time would have become much faster. Indeed, the balancing exercise involved usually ought not to require the most detailed of investigations.

253. Rather, it might be thought that an application made by a journalist with proper credentials, with a cogently explained journalistic reason given for the application, is one which can be assessed with some alacrity in most cases. That is not to say that it would necessarily be within a day or two, but it should not be a process involving many weeks. I also do not think the time taken in responding to an application should vary depending on the Commissioner’s view as to whether it is “urgent” or not.

254. Further, 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”.

A That seems to me to be precisely where the fundamental rights of
B freedom of expression incorporating the freedom of the press come firmly
C into play. The freedom of the press is a freedom which is exercised
D primarily for the benefit of other persons and society as a whole (rather
E than for an individual journalist or group of journalists). This can and
F should be properly recognised in the assessment, with the appropriate
G degree of trust reflecting those rights to be given in the decision-making
H process on an application made under the Public Interest Route.

I (Russell Coleman)
J Judge of the Court of First Instance
K High Court

L Mr Nigel Kat SC, Mr Jeffrey Tam and Mr Geoffrey Yeung, instructed by
M Ho Tse Wai & Partners, for the applicant

N Mr Benjamin Yu SC, Mr Jenkin Suen SC and Mr Michael Lok,
O instructed by, and Ms Leona Cheung, Principal Government Counsel of,
P the Department of Justice, for the respondent
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