

ADMINISTRATIVE APPEALS BOARD  
ADMINISTRATIVE APPEAL NO.19/2023

---

BETWEEN

X

Appellant

and

PRIVACY COMMISSIONER  
FOR PERSONAL DATA

---

Respondent

Coram: Administrative Appeals Board

Ms Jay Ma Suk-lin (Deputy Chairman)

Dr Stella Kwok Sin-tung (Member)

Mr Cheung Human (Member)

Date of Hearing: 5 April 2024

Date of Handing Down Written Decision with Reasons: 13 May 2024

---

DECISION

---

**INTRODUCTION**

1. This is an appeal of X (“the Appellant”) against the decision (“the Decision”) of the Privacy Commissioner For Personal Data (“the Respondent”), dated 21 February 2023, not to serve an Enforcement Notice on the University of Hong Kong (“HKU”). Section 50(1) of the Personal Data (Privacy) Ordinance

(“PDPO”) Cap. 486 provides that: “If, following the completion of an investigation, the Commissioner is of the opinion that the relevant data user is contravening or has contravened a requirement under this Ordinance, the Commissioner may serve on the data user a notice in writing, directing the data user to remedy and, if appropriate, prevent any recurrence of the contravention.”

## **BACKGROUND**

2. The Appellant was an Assistant Professor in HKU prior to her application in September 2018 (“Application 1”) for tenure and promotion to Associate Professor. In early 2019, the Appellant was informed by HKU that Application 1 for tenure and promotion was unsuccessful.

3. The Appellant submitted a Data Access Request (“DAR1”) to HKU on 11 March 2019.<sup>1</sup> Under Part IV of DAR1, the Appellant requested to “see ALL the documents in my tenure application package. That is, ALL the documents in my tenure review procedure.”<sup>2</sup>

4. By an email dated 26 March 2019, HKU informed the Appellant that 41 pages of documents were available for collection by the Appellant upon production of the original payment receipt. By email dated 3 April 2019, HKU informed the Appellant that a further 8 pages of documents were available for collection. Both the 41-page and 8-page documents were attached in the respective emails.<sup>3</sup>

5. In May 2019, the Appellant filed an appeal (“Appeal 1”) with HKU

---

<sup>1</sup> Appeal Bundle (AB) – p.409-412

<sup>2</sup> Supra, p.410

<sup>3</sup> AB – p.329-336

against the decision rejecting her Application 1. By a letter dated 10 June 2019, HKU informed the Appellant that Appeal 1 was dismissed:

“The President has duly considered the information you presented, the documentation submitted by the Faculty in respect of your tenure application, and the USPC<sup>[4]</sup> deliberation. It has been decided, in accordance with relevant procedures, that the appeal be dismissed for the reason that the appeal lacks sufficient grounds.”<sup>5</sup>

6. By email to HKU dated 13 June 2019, the Appellant questioned the non-disclosure of alleged meeting minutes stating:

“.....The minutes of the USPC deliberations and the minutes for the area consultation meeting have not been provided. And I have been told that these documents never existed.

However, in the Appeal decision letter, it is clearly stated that the president had considered the USPC deliberations. Therefore, it seems these documents do exist.”<sup>6</sup>

In reply of the even date, HKU informed the Appellant that “USPC does not have separate minutes other than its Report.”<sup>7</sup>

7. In July 2020, the Appellant applied to HKU again for tenure and promotion to Associate Professor (“Application 2”). The Appellant was later informed that Application 2 was unsuccessful.

---

<sup>4</sup> USPC stands for the University Selection and Promotion Committee

<sup>5</sup> AB- p.340

<sup>6</sup> AB – p.341

<sup>7</sup> AB – p.342

8. On 1 February 2021, the Appellant further submitted a Data Access Request (“DAR2”) to HKU. Part IV of DAR2 requested disclosure of

“(1) All documents in the tenure review process for my tenure application submitted on July 15 2020; area consultation meeting deliberation minutes and report, PTP [Promotion and Tenure Panel] meeting deliberation minutes and report, USPC meeting deliberation minutes and report, recommendation letters from area head and Faculty Dean, all external review letters.

(2) Area consultation meeting minutes and USPC meeting minutes in the tenure review process for my tenure application submitted on Sep.1, 2018.”<sup>8</sup>[Added for clarity]

9. The Appellant was provided with 39 pages of documents by HKU<sup>9</sup> pursuant to her DAR2.

10. In April 2021, the Appellant lodged an appeal with HKU against the latter’s decision of Application 2.

11. On 14 July 2021, the Appellant submitted a Data Access Request (“DAR3”) to HKU. In DAR3, the Appellant made the following request under Part IV:

“1. All documents in the Appeal process for my appeal applications submitted to HR of HKU in May 6<sup>th</sup>, 2019 and April 21<sup>[st]</sup>, 2021: reports

---

<sup>8</sup> AB- p.348

<sup>9</sup> AB- p.465



submitted to the president in both Appeal Applications, Appeals Panel meeting deliberation minutes.

2. Invitation emails sent to the external reviewers and the acceptance emails from external reviewers in the review process for my tenure applications submitted in September 2018 and July 2020.”<sup>10</sup>

12. By email dated 12 August 2021, HKU informed the Appellant that 72 pages of documents were ready for collection in respect of DAR3.

### **COMPLAINT LODGED WITH THE RESPONDENT AND THE SUBSEQUENT DEVELOPMENT**

13. Subsequent to the above events, the Appellant lodged a complaint with the Respondent alleging that HKU failed to provide her with the documents requested under the three (3) DARs. The Appellant alleged that, despite her repeated requests, HKU failed to provide her with the following ten (10) items of documents:<sup>11</sup>

Item	Allegedly Outstanding Items
1	Department/Area meeting minutes for Application 1
2	Area consultation meeting minutes for Application 2
3	USPC meeting minutes for Application 1

---

<sup>10</sup> AB- p.355

<sup>11</sup> The Appellant, via an email dated 31 August 2022, confirmed with the Respondent the list of 10 outstanding items.

4	Minutes of USPC discussion for Application 2
5	PTP meeting minutes for Application 2
6	The Appeal Panel meeting deliberation minutes for Appeal 2
7	The report submitted to the President for Appeal 1
8	Paragraph 13(i) in the Appeal Panel Draft Report
9	The Appeal Panel's justification for removing paragraph 13(i) of the Appeal Panel Draft Report
10	The Appeal Panel Draft Report provided to Panel members on 30 June 2021

14. By a letter dated 9 September 2022, the Respondent initiated a preliminary inquiry with HKU.<sup>12</sup> In reply, HKU advised that the Appellant “has made assumptions about and misunderstood the internal operation of HKU in regard to record keeping of the tenure, promotion and appeal processes...(ii) [the Appellant] has been explained that minutes may not be the normal form of records for such processes,...(iii) [the Appellant] has also made assumptions about and misunderstood the working process of the Appeal Panel...She has assumed that specific investigations should have been conducted by the Appeal Panel and that there should be records of such investigations containing her personal data...(iv)...given the background of the 1<sup>st</sup> DAR, the 2<sup>nd</sup> DAR and the 3<sup>rd</sup> DAR

---

<sup>12</sup> AB- p.413 – 418

(“Three DARs”) (i.e. disagreement with HKU in respect of employment decisions about her), it should be noted that data access requests should not be used for fishing documents for legal proceedings or potential legal proceedings.”<sup>13</sup>

15. On 28 September 2022, the Appellant called the Respondent to make enquiries concerning the reply from HKU. Telephone Attendance Notes in respect of the conversation between the Appellant and the Respondent were recorded. According to the telephone notes<sup>14</sup>, the Appellant advised the Respondent, inter-alia, as follows:

“4. [the Appellant] stated that “*I have been contacting EOU [Equal Opportunities Unit]*” for possible actions and “*I can use it in a legal action*”, and claimed she has lots of evidence to “*initiate legal actions*”, including “*legal lawsuits to individual departments*””. [Added for clarity]

16. By an email dated 18 October 2022<sup>15</sup>, the Respondent informed the Appellant of the progress of the review conducted in respect of the materials provided by HKU’s reply. In this email, the Respondent stated, inter-alia, that “This office noted your concerns and views about the USPC deliberations as stated in the decision letter. However, whether HKU drafted minutes before finishing their report belongs to the administrative practice of HKU. This office would therefore need to consider whether such minutes existed and whether such minutes contained your personal data. As confirmed in HKU’s replies, on various occasions HKU explained to you their record keeping procedures of the tenure, promotion and appeal processes, including email correspondences

---

<sup>13</sup> AB- p.423 – p.424

<sup>14</sup> AB- p.427

<sup>15</sup> AB- p.437 – p.439

between you and HKU...In any event, HKU has confirmed with this office that no such minutes have been prepared...Regarding the requested data in the 3<sup>rd</sup> DAR, according to HKU's reply to you...dated 12 August 2021, personal data contained in documents subject to legal professional privilege are not provided."<sup>16</sup>

17. One of the requested documents in DAR3 was the Appeal Panel Draft Report provided to Panel members on 30 June 2021 (item 10 stated of the table under paragraph 13 above). HKU averred that Item 10 is subject to legal professional privilege and hence HKU is exempt from provision to the Appellant under s60 of PDPO.<sup>17</sup> Pursuant to s38 of PDPO<sup>18</sup>, on 21 October 2022, the Respondent informed both the Appellant<sup>19</sup> and HKU<sup>20</sup> that she intended to carry out an investigation.

18. Between 24 October 2022 and 29 December 2022, there were various email correspondences between the Appellant and the Respondent whereby the Appellant made enquiries concerning the progress of the investigation.

19. During this period, the Respondent received a reply letter dated 21 November 2022 from HKU<sup>21</sup>. In that letter, HKU stated, inter-alia, that item 5<sup>22</sup> had been furnished to the Appellant but if necessary, HKU was prepared to provide a copy to the Appellant again. On 28 November 2022, according to the

---

<sup>16</sup> Supra

<sup>17</sup> Section 60 of PDPO provides that: Personal data is exempt from the provisions of data protection principle 6 and section 18(1)(b) if the data consists of information in respect of which a claim to legal professional privilege could be maintained in law.

<sup>18</sup> Section 38 of PDPO provides that: "Where the Commissioner—(a) receives a complaint; or.....then—(i) where paragraph (a) is applicable, the Commissioner shall, subject to section 39, carry out an investigation in relation to the relevant data user to ascertain whether the act or practice specified in the complaint is a contravention of a requirement under this Ordinance...."

<sup>19</sup> AB- p.441

<sup>20</sup> AB- p.443

<sup>21</sup> AB- p.461

<sup>22</sup> Please refer to the table under paragraph 13 above.

Telephone Attendance Notes<sup>23</sup>, the Respondent received a phone call from a legal adviser working in HKU, who confirmed that in respect of item 10<sup>24</sup>, he kept “an edition of the draft report submitted to him for legal advice, therefore exempt from s60. Additionally, the draft report submitted did not even contain paragraph 13(i).”

20. By a letter dated 21 February 2023, the Respondent informed the Appellant that having considered all the documents and information received from both the Appellant and HKU, the investigation was concluded<sup>25</sup>. The Respondent advised: “...we do not find that HKU have breached the relevant requirements under the Ordinance by withholding from you copies of your personal data which you are entitled to access under the DARs. Hence, we decide not to serve an Enforcement Notice on HKU.”<sup>26</sup>

21. By emails to the Respondent on 10 and 13 June 2023, the Appellant expressed her disagreement with the Respondent’s Decision.

22. In reply, by an email dated 12 July 2023<sup>27</sup>, the Respondent confirmed “Having considered your further representations, we maintain our decision as stated in the Decision Letter.”<sup>28</sup>

23. On 20 June 2023, the Appellant lodged the appeal with the Administrative Appeals Board (“this Board”) enclosing her grounds of appeal.

---

<sup>23</sup> AB- p.487

<sup>24</sup> Please refer to the table under paragraph 13 above.

<sup>25</sup> AB- p.495 -p.503

<sup>26</sup> AB- p.502

<sup>27</sup> AB- p.541 -p.542

<sup>28</sup> Supra, p.542

## GROUNDS OF APPEAL

24. In the Notice of Appeal, the Appellant set out the following four (4) grounds of appeal:

- (1) That the requested USPC meeting notes or minutes did exist, as the wording “USPC deliberations” was used in the decision letter against her Appeal 1<sup>29</sup>. In addition, the Appellant was told, during a meeting held on 14 June 2019, by the Human Resource Managers that USPC secretary produced reports based on meeting notes. The Appellant therefore contends that these USPC notes or minutes must exist. HKU failed to provide her with the said notes or minutes pursuant to the DARs.
- (2) That she did not receive item 5<sup>30</sup>, as claimed by HKU. The Appellant further alleged that “If Faculty PTP meeting has meeting minutes, why can’t USPC (university level committee) have meeting minutes?”<sup>31</sup>
- (3) That legal professional privilege did not apply, stating that “I believe the Appeal panel draft report (items 8 – 10 in the decision letter) is not subject to legal professional privilege.”<sup>32</sup> It is, therefore, the obligation of HKU to provide it.
- (4) That the appeal was not based on assumptions or misunderstandings: “I have no misunderstanding and made no assumptions about the

---

<sup>29</sup> Please refer to paragraph 5 above.

<sup>30</sup> Please refer to the table under paragraph 13 above.

<sup>31</sup> AB- p.258

<sup>32</sup> Supra

tenure promotion processes.”<sup>33</sup>

## STATEMENT OF THE RESPONDENT

25. In reply to ground (1), the Respondent stated that it is the Appellant’s burden to prove that these USPC minutes did exist citing the opinion expressed by the Board in *AAB No. 26 of 2019*:

“17. 根據一般法律原則，若訴訟一方向另一方提出索取文件的要求，提出要求的一方需證明有關文件理應存在；若被要求提供文件的一方表明有關文件並不存在，其對有關文件是否存在的否定，在一般情況下不會受到質疑。見 *Lai Dominic Yuk Tsun v Hanwood Enterprises Ltd & Another HCA 2708/2016*, 第 36 至 37 段。

18. 雖則本上訴中的上訴人與健逸之家並不是一般民事訴訟的雙方，但有關原則亦應適用。換言之，上訴人有責任證明有關文件理應存在，而若健逸之家表示有關文件並不存在或不在其控制範圍以內，健逸之家不應被視作未能依法提供有關文件。” (emphasis added in bold) <sup>34</sup>

26. The Respondent, having reviewed all the documents and information provided by HKU, accepted HKU’s reply that the alleged USPC minutes never existed.

27. In reply to ground (2), the Respondent stated that in the course of investigation, she found that item 5 included in the index provided by HKU. HKU informed the Respondent that the documents listed in the said index had

---

<sup>33</sup> Supra

<sup>34</sup> AB- p.285

already been provided to the Appellant. The Respondent stated that she had no reason not to believe HKU's reply. Meanwhile, HKU was prepared to furnish the said item 5 to the Appellant again, if necessary.

28. In reply to ground (3), the Respondent accepted HKU's reply that HKU did not retain working documents and that a redacted copy of the Appeal Panel Report had already been provided to the Appellant in response to DAR3. HKU also informed the Respondent that the draft report did not contain paragraph 13(i).

29. In respect of item 10, the Respondent submitted that "in-house lawyers enjoy the same legal professional privilege ("LPP") as external lawyers. In arriving at the decision, the Respondent relies on the opinion expressed by the Board in *AAB No.19 of 2009* that

*"...it is well established that in-house lawyers enjoy the same LPP in English law as external lawyers. See for example Alfred Crompton Amusement Machines v Customs & Excise Commissioners (No2) [1972] 2 QB 102. See also paragraph 24/5/11 Hong Kong Civil Procedure, where it was stated that LPP extends to communications with a solicitor in the whole time service of a party such as commercial enterprise, provided that such communication relates to legal as distinct from administrative matters."*<sup>35</sup>

30. Having reviewed the information provided, which HKU claimed to be subject to LPP, the Respondent had come to the conclusion that they fell within the scope of LPP. The Respondent therefore submitted that HKU was not obliged to provide item 10 pursuant to s60 of PDPO.<sup>36</sup>

---

<sup>35</sup> AB- p.288 para.43

<sup>36</sup> Please refer to footnote 17



31. In reply to ground (4), the Respondent submitted that there was an on-going employment dispute between the Appellant and HKU, and judging from the telephone notes and the representations made by the Appellant, the ultimate purpose of the Appellant was to gather evidence for commencing possible legal proceedings against HKU. The Respondent therefore submitted that if the Appellant's DARs were lodged with "a proper purpose, inter-alia, to check on her personal data held by a data user, such purpose should have been fulfilled."<sup>37</sup>

### **APPELLANT'S APPLICATIONS PRIOR TO THE APPEAL HEARING**

32. Prior to the appeal hearing, the Appellant applied to this Board for:

- (i) the hearing to be conducted in private; and
- (ii) an anonymity order.

33. The Appellant submitted that the appeal could have significant damage to her future career and that potential employers would have concerns hiring her if they were aware of her appeal application.

34. It is trite law in our system that it is not only important for justice to be done, but also of paramount importance that justice is seen to be done. As rightly pointed out by the Respondent that "*It is not sufficient that a public hearing will create embarrassment for some or all of those concerned. It must be shown that a public hearing is likely to lead, directly or indirectly, to a denial of justice.*"<sup>38</sup> This Board finds that having taken into account the concerns raised

---

<sup>37</sup> AB- p.293

<sup>38</sup> *R v Chief Registrar of Friendly Societies, Ex parte New Cross Building Society* [1984] 1 QB 227 at 235 D-F

by the Appellant, open administration of justice in the present appeal will not in any way lead to a denial of justice to her. The Appellant's application for a private hearing was therefore dismissed.

35. As regards the Appellant's application for an anonymity order, this Board finds that the submissions made by the Appellant, which were the same as her application for the hearing to be held in private, were not demonstrably unreasonable. Granting the appellant an anonymity order does not exclude members of public from attending the hearing, and so open justice will not be affected. This Board, therefore, allowed the Appellant's application for an anonymity order.

## **THE APPEAL HEARING**

36. In the hearing, the Appellant, acting in person, reiterated the four (4) grounds of appeal as stated in her Notice of Appeal. The Appellant argued adamantly that the USPC minutes did and do exist (ground 1) because of the wording used in the decision letter dismissing her Appeal 1<sup>39</sup>. The Appellant further contended that if she could be provided with the PTP meeting minutes, there should also be USPC minutes recorded (ground 2). It is also the Appellant's belief that item 10 was not subject to LPP (ground 3). The Appellant also submitted that she has not misunderstood the record-keeping procedures of the related meetings (ground 4).

37. The Appellant, however, agreed that in gist, ground 2 and ground 4 were stated in support of ground 1. In other words, the Appellant's grounds of appeal are (I) the alleged failure of HKU to provide her with the USPC minutes, and (II)

---

<sup>39</sup> Please refer to paragraph 5 above.

that the LPP did not apply to item 10.

38. The Appellant also repeated several times that she already contacted the EOU of HKU and the EOC (Equal Opportunities Commission) raising her concerns over HKU's handling of her case. She also consulted her lawyers as to the possible actions she could take, including legal actions.

39. In reply, Ms Annabel Ng, Assistant Legal Counsel for the Respondent, adopted her written submissions. Ms Ng further submitted that the Respondent's Decision was made on the basis of the information and documents obtained during the investigation. In particular, Ms Ng pointed out the relevant pages of documents provided by HKU where it can be seen that item 5 (ground 2) had been provided to the Appellant.<sup>40</sup>

40. Ms Ng also referred this Board to the Telephone Attendance Notes dated 28 November 2022 where the reply from the legal adviser of HKU can be seen. Such submission was made in support of the Respondent's conclusion that item 10 was subject to LPP.

## **THE RELEVANT LAW AND POLICY**

### *Principles to be applied*

41. The appeal before this Board is a hearing *de novo*. This Board is entitled to determine the merits of the decision appealed against and exercise its discretion afresh if, upon consideration of the case under appeal, it is satisfied that the decision appealed against is "either wrong in principle or in any way excessive".

---

<sup>40</sup> AB- p.465, p.469-p.471

*(Jen Co Men v Commissioner of Police, AAB No. 28/2007)* “A decision that involves the exercise of a discretion may be found to be wrong or excessive if the discretion is found to have been exercised unreasonably or disproportionately.”  
*(Chan Wing Sang v Commissioner of Police, AAB No. 220/2013)*

42. Under the Administrative Appeals Board Ordinance, Cap.442 (“AAB Ordinance”), this Board is given wide powers in the determination and disposal of the appeals before it. In particular, section 21(1)(j) provides that this Board may “*subject to subsection (2), confirm, vary or reverse the decision...or make such other order as it may think fit.*”

43. Section 21(2) of the AAB Ordinance provides that “[t]he Board, in the exercise of its powers under subsection (1)(j), shall have regard to any statement of policy lodged by the respondent with the Secretary under section 11(2)(a)(ii), if it is satisfied that, at the time of the making of the decision being the subject of the appeal, the appellant was or could reasonably have been expected to be aware of the policy.”

44. Since the Respondent, upon receiving the complaint from the Appellant, provided the Appellant with the information concerning her “Complaint Handling Policy”, “Information required to establish a complaint under section 37 of the Ordinance” and “Notes to Complainant”,<sup>41</sup> the Appellant was or could reasonably have been expected to be aware of the policy. Section 21(2) of the AAB Ordinance was satisfied.

---

<sup>41</sup> AB- p.365

## DISCUSSION

- (I) The alleged failure of HKU to provide the Appellant with the USPC minutes

45. Section 19(1) of PDPO provides that "...a data user must comply with a data access request within 40 days after receiving the request by ----(a) if the data user holds any personal data which is the subject of the request ---(i) informing the requestor in writing that the data user holds the data; and (ii) supplying a copy of the data; or (b) if the data user does not hold any personal data which is the subject of the request, informing the requestor in writing that the data user does not hold the data..."

46. Pursuant to the above provision, the data user (HKU) is obliged to provide the requestor (the Appellant) the personal data requested within 40 days in the prescribed manner.

47. After having conducted a preliminary inquiry <sup>42</sup>, the Respondent proceeded to investigate the complaint lodged by the Appellant.

48. Information, including various documents (some redacted), and email correspondences received by the Respondent from HKU, showed that as early as the preliminary inquiry stage, HKU had advised the Respondent as follows:

"12.2: (i) No such minutes have been prepared by the Faculty Office, the Area administration office and the Human Resources Office; (ii) Save the PTP meeting minutes for "X"'s 2020 tenure application which were

---

<sup>42</sup> Please refer to para.14 above

provided to her pursuant to the 2<sup>nd</sup> DAR, no such minutes have been prepared by the Faculty Office, the Area administration office and the Human Resources Office, and (iii) Save the Appeal Panel Draft Report (please refer to information under 12.4 below), no such documents have been prepared/retained by the Human Resources Office....

12.4: (i) The documents are the communications (including the relevant attachments) between the In-House Legal Counsel, a solicitor of the HKSAR (who is also the University Data Protection Officer) and the relevant staff members of HKU for the sole purpose of seeking and providing legal advice....”<sup>43</sup>

49. In gist, HKU’s reply was that the documents requested in respect of items 1 to 7 (except item 5) did not and had never existed. Item 5 had already been provided to the Appellant in response to DAR2, HKU was prepared to provide it to the Appellant again, if necessary. In respect of items 8 to 10, HKU advised that they did not retain the working documents and hence were not available from HKU’s file records. The redacted version of the Appeal Panel Report had, however, already been provided to the Appellant in response to DAR3. Further, HKU advised that item 10 was subject to LPP as it included email communications with attachments between HKU’s in-house lawyer and her staff members seeking legal advice, and thus exempt from disclosure pursuant to s60 of PDPO.

50. By a letter dated 21 November 2022<sup>44</sup>, HKU replied to the Respondent’s investigation reiterating the same. In addition, in respect of items 6 and 7, HKU submitted the explanation given by the staff member, Ms Ho, who handled

---

<sup>43</sup> AB- p.424 para.3

<sup>44</sup> AB- p.461

DAR1, in that Ms Ho admitted that she confused the term of “minutes” with “reports”. Ms Ho further explained that she had already explained to the Appellant that reports of USPC meeting and area consultation, not minutes, had been prepared in response to DAR1.<sup>45</sup>

51. The Appellant argues that since PTP minutes were available, there must have been minutes prepared for the higher level of USPC. The USPC minutes, therefore, must have been prepared and available from HKU. This is a pure speculation on the part of the Appellant to which this Board is not required to comment. This Board agrees with the opinion expressed by the Board in *AAB No.26 of 2019*, which states “換言之，上訴人有責任證明有關文件理應存在，而若健逸之家表示有關文件並不存在或不在其控制範圍以內，健逸之家不應被視作未能依法提供有關文件。” [emphasis added]

52. In summary, having considered HKU’s reply to the Respondent, including the documents and records submitted, this Board finds that HKU has not breached the relevant requirements under PDPO. In particular, this Board shares the view expressed by the Board in *AAB No.30 of 2011* “10.1 ... 「專員」已向「獨立監警會」作出有關查詢，得知他們的記錄顯示並沒有收過所指的信件。...沒有任何合理原因可使「專員」質疑這個解釋。「專員」不可以貿貿然對該會說：「我不相信你的解釋，因為投訴者指你們說謊，我要親自檢視記錄，要你們所有成員和職員作出交[代]。」或類似的話。”

53. By the same rationale, in the absence of contrary evidence, this Board does not see any justifiable reasons for the Respondent not to accept the reply from HKU.

---

<sup>45</sup> AB- p.473

(II) Whether or not item 10 was subject to LPP, as claimed by HKU

54. LPP is a fundamental human right which is enshrined in Article 35 of the Basic Law of Hong Kong. Article 35 provides that:

“Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies.”<sup>46</sup>

55. As stated by Lord Taylor in *R v Derby Magistrates’ Court Ex parte B* [1996] AC 487, the rationale behind this rule is that:

*“a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests”* (at 507)

56. As cited by the Court of Final Appeal in the case of *HKSAR v Wong Chi Wai* (2013) 16 HKCFAR 539 at para.36, “*The modern case law on [LPP] has divided the privilege into two categories: legal advice privilege and litigation privilege. Litigation privilege covers all documents brought into being for the*

---

<sup>46</sup> The Court of Appeal in *Goldlion Properties Ltd and Others v Regent National Enterprises Ltd* [2006] 1 HKLRD 793 emphasised that LLP is constitutionally guaranteed by Article 35 of the Basic Law, see para.27



*purposes of litigation. Legal advice privilege covers communications between lawyers and their clients whereby legal advice is sought or given.”*

57. “The following materials are protected from disclosure by the privilege in the circumstances which apply:

- (1) Communications between a professional legal adviser and their client or any person representing their client made in connection with the giving of legal advice to the client.
- (2) Communications between a professional legal adviser and the client or any person representing the client or between such an adviser or the client or any such representative, and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- (3) Items enclosed with or referred to in such communications and made—
  - (a) in connection with the giving of legal advice; or
  - (b) in connection with or in contemplation of legal proceedings and for the purpose of such proceedings, when they are in the possession of a person who is entitled to possession of them.
- (4) But any such communications or items held with the intention of furthering criminal purpose are excluded from the privilege.”<sup>47</sup>

---

<sup>47</sup> Archbold Hong Kong 2023, Sweet & Maxwell Hong Kong, at p.1038

58. This Board has been provided with a copy of the documents (item 10) which HKU claimed to be subject to LPP. Having considered the contents of those documents, this Board has no difficulty in finding that item 10 fell under the prescribed materials mentioned under paragraph 57. It is evident that the documents contained various correspondences between HKU's in-house legal adviser and the staff members from HKU seeking legal advice. Such communications, as claimed by HKU, must be protected in confidence.

59. It is also noted that a legal adviser from HKU personally called<sup>48</sup> the Respondent confirming that he was provided with the documents for the purpose of seeking legal advice. As there is no express or implied waiver on the part of HKU, item 10 remains a privileged item that it was "*once privileged always privileged*" (*Calcraft v Guest* [1898] 1 QB 759). It is, therefore, not unreasonable for the Respondent to have come to the conclusion that item 10 is subject to LPP and hence, HKU is exempt from providing it to the Appellant pursuant to s60 of PDPO.

60. In respect of whether the claim to LPP under s60 of PDPO covers in-house lawyers, as in the present appeal, as advised by previous decisions and case law<sup>49</sup>, this Board shares the view that in-house lawyers enjoy the same "privilege and protection" as those in private practice.

61. Based on the information and representations<sup>50</sup> made by the Appellant, it appears that a motivation for seeking access to personal data is for the purpose of an intended litigation against HKU. As pointed out by Saunders J in paragraph 45 of *Wu Kit Ping v Administrative Appeals Board* [2007] 4 HKLRD 849, "...it

---

<sup>48</sup> Please refer to para.19 above

<sup>49</sup> See AAB No.5 of 2020, AAB No. 19 of 2009 and *Alfred Crompton Amusement Machines Ltd v Customs and Excise Commissioners* (No.2) [1972] 2 QB 102

<sup>50</sup> Please refer to paras.15 and 38

*must be remembered that the purpose of the Ordinance is to enable a data subject to examine his or her own data, it is not to enable a data subject to locate information for other purposes, such as litigation.”* This Board is of the view that if the Appellant’s DARs were made with a proper purpose as said in *Wu Kit Ping*, the obligation on the part of HKU pursuant to PDPO have been fulfilled.

## CONCLUSION

62. For the above reasons, we are not satisfied that the Respondent was either wrong or unreasonable in coming to her Decision not to serve an Enforcement Notice on HKU. Accordingly, the Appellant’s appeal is unanimously dismissed with no order as to costs.

(signed)

(Ms Jay Ma Suk-lin)

Deputy Chairman

Administrative Appeals Board

Appellant: Acted in person

Respondent: Represented by Ms Annabel Ng, Assistant Legal Counsel for the  
Respondent, Office of the Privacy Commissioner for Personal Data  
Person bound by the decision appealed against: The University of Hong Kong  
(Absent)