

A. Background

2. From 27 October 2020 to 7 January 2024, the Appellant was employed by DHL HK as Vice President, Human Resources, Hong Kong and Macau. The Appellant was supervised by Mr Ng Chee-choong (“**Mr Ng**”).

3. At the material time:

3.1 Mr Edward Lim (“**Mr Lim**”), the then Vice President, AP (excluding China), Security was tasked with conducting an internal inquiry into the Human Resources Department headed by the Appellant (the “**Inquiry**”).

3.2 Mr Roland Thomas (“**Mr Thomas**”), the then Senior Vice President Global Controlling Express, Compliance, was the case manager of the Inquiry.

4. During the material time, the Appellant was on unpaid leave. The Appellant has explained to the Board that the unpaid leave had been requested by DHL HK, and that Mr Ng had both requested that the Appellant go on leave as well as approved the Appellant’s leave.

5. On 19 and 20 September 2023, while the Appellant was on unpaid leave, he sent a letter issued by SanoMed Medical Clinic with the specific medical condition he suffered from stipulated therein (the “**Medical Letter**”) to Mr Ng, aiming to “*share [his] personal struggles*” with him.

6. According to DHL HK, the context of the Appellant sending Mr Ng the Medical Letter was as follows.

6.1 During the course of the Inquiry conducted by Mr Lim, as the Appellant had not responded to Mr Lim's messages and meeting requests since mid-September 2023, Mr Lim informed Mr Ng of the situation.

6.2 Mr Ng then contacted the Appellant to enquire if he could speak with Mr Lim. In response, the Appellant informed Mr Ng that he was sick and sent him the Medical Letter out of his own volition.

7. The Appellant has emphasised that Mr Ng did not tell the Appellant that he intended to disclose to anyone the reason for not attending meetings with Mr Lim, and that the Appellant never had any intention for Mr Ng to share with Mr Lim that the Appellant was ill, or that there existed the Medical Letter, or the contents of the Medical Letter.

8. On 19 and 31 October 2023, Mr Lim reached out to the Appellant by email, requesting that the Appellant meet with him in connection with an internal investigation and to provide him with a copy of a "*medical letter*".

9. The Appellant replied to Mr Lim on 31 October 2023, and while the Appellant agreed to meet with Mr Lim, he asked how Mr Lim had become aware of the Medical Letter, and why he needed a copy of it. However, Mr Lim did not respond to the Appellant's questions.

10. On 6 November 2023, the Appellant met with Mr Lim (the "**Meeting**"). During the Meeting, Mr Lim mentioned that he understood the Appellant had "*a*

medical letter” of a certain condition and requested a copy of it. He also mentioned that he had informed Mr Thomas based in Germany of the Appellant’s medical condition. Notwithstanding Mr Lim’s request, the Appellant did not share the Medical Letter with Mr Lim.

11. On 30 November 2023 and 7 May 2024, the Appellant again asked Mr Lim to explain, among other matters, the purpose of collecting the Medical Letter. The Appellant has not received any response from Mr Lim since then.

12. On 4 July 2024, the Appellant lodged a complaint with the Respondent against DHL HK. The Appellant raised two grounds of complaints: first, that DHL HK had failed to inform the Appellant of the purpose of collecting his personal data when Mr Lim requested that he provide a copy of the Medical Letter (the “**Request**”) (thereby breaching DPP 1(3)); and secondly, that by disclosing the Medical Letter and/or the Appellant’s medical condition to Mr Lim and Mr Thomas, DHL HK used his personal data for a purpose unrelated to the original purpose of collection without obtaining his prescribed consent (thereby breaching DPP 3). As can be seen from the grounds of appeal in the present appeal, the Appellant has focused on the second of the aforementioned complaints, i.e. the purpose for which his personal data was disclosed.

13. After receiving the Appellant’s complaint, the Respondent carried out an investigation. In addition to the information provided by the Appellant, the Respondent also obtained information from DHL HK for consideration.

14. DHL HK’s contention is that Mr Ng did not disclose the content of the Medical Letter and/or details of the Appellant’s medical condition to Mr Lim, and that Mr Lim did not disclose details of the Appellant’s medical condition to Mr Thomas. In support of its propositions, upon the Respondent’s request, DHL HK

provided the written statements of Mr Ng, Mr Lim and Mr Thomas affirming the truthfulness of this account.

15. After its investigation, the Respondent issued its Decision. In summary:

15.1 In relation to the first complaint regarding Mr Lim's purported failure to inform the Appellant of the purpose of the Request, the Respondent found that the conduct of the Inquiry fell within the scope of "human resources management", which was one of the purposes of collection stipulated in the Personal Information Collection Statement pertaining to Employment (the "PICS") provided to and signed by the Appellant when he commenced employment with DHL HK. As such, DHL HK had discharged its duty under DPP 1(3) to inform the Appellant of the purpose of the Request by providing the PICS to him.

15.2 The Respondent considered there was insufficient basis to dispute DHL HK's representations or to conclude that the details contained in the Medical Letter (which included the Appellant's medical condition specifically) had been disclosed to Mr Lim by Mr Ng or to Mr Thomas by Mr Lim. Instead, what had been disclosed was the fact that the Appellant had a medical condition (the "**Disclosure**").

15.3 When determining whether the said Disclosure contravened DPP 3, the Respondent found that the original purpose of collecting the Medical Letter by Mr Ng was to handle matters related to the Inquiry, since the Medical Letter was provided by the Appellant when Mr Ng contacted him regarding his failure to respond to Mr Lim's meeting requests related to the Inquiry. The Disclosure, similarly, was made

for the purpose of managing matters related to the Inquiry, as Mr Ng and Mr Lim sought to provide an explanation for the Appellant's failure to respond to Mr Lim and Mr Thomas respectively. Thus, the purpose of both instances of the Disclosure was consistent with, or at least directly related to, the original purpose of collection by Mr Ng. Accordingly, there was no contravention of DPP 3.

15.4 The Respondent concluded that DHL HK did not contravene the relevant requirements of the PDPO. As such, the Respondent did not issue any enforcement notice against DHL HK in respect of the result of the investigation.

16. The Appellant is dissatisfied with the Decision, and has lodged the present appeal.

B. The Appellant's grounds of appeal

17. The Appellant has raised two grounds of appeal in his Notice of Appeal:

17.1 First, the Appellant argues that the Respondent, in reaching the Decision, wrongly ruled that the disclosure of the Appellant's personal data (i.e. his medical record) to other employees was consistent with or at least directly related to the original purpose of collecting the information in the first place, in accordance with sections 3.2.4, 3.11.5 and 3.11.6 of the Code of Practice on Human Resource Management (First Revision) published by the Respondent in April 2016 (the "Code").

17.2 Secondly, the Appellant argues that in reaching the Decision, the Respondent relied on inaccurate information provided by DHL HK.

C. Ground 1: Incorrect purpose of disclosure?

18. Ground 1 concerns the purpose for which DHL HK collected the Appellant's personal data in the form of the Medical Letter and the disclosure of the fact that the Appellant had a medical condition.

19. In the present appeal, it is undisputed that "*information about an employee being sick*", "*possessing a medical letter*", or "*having specific medical conditions*" mentioned in the Appellant's Statement and the Appellant's Skeleton may constitute "personal data" under section 2(1) of the PDPO.

20. Section 65(1) of the PDPO states:

"Any act done or practice engaged in by a person in the course of his employment shall be treated for the purposes of this Ordinance as done or engaged in by his employer as well as by him, whether or not it was done or engaged in with the employer's knowledge or approval."

21. DPP 3 under Schedule 1 of the PDPO provides, *inter alia*, that:

"(1) Personal data shall not, without the prescribed consent of the data subject, be used for a new purpose.

...

(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).”*

22. The first point of disagreement between the parties concerns whether the Appellant can in this appeal allege that DHL HK had breached sections 3.2.4, 3.11.5 and 3.11.6 of the Code. The Respondent emphasises that the Appellant had not raised these provisions prior to the Notice of Appeal, and the Respondent submits that while the provisions of the Code are relevant in determining whether there has been a contravention of the PDPO, since the Respondent did not have the opportunity to consider and address the Appellant’s allegations in relation to this ground of appeal during the complaint handling stage, the Respondent did not and could not make any findings in this respect. On that basis, the Respondent submits that this ground of appeal falls outside the jurisdiction of the Board in the present proceedings.

23. In this regard, the Board notes Administrative Appeal No. 22 of 2016 (吳炳坤與個人資料私隱專員) handed down on 24 November 2016, which makes clear at paragraph 27 that an appellant is not permitted to raise new allegations before the Board as it would be unfair to deprive the respondent and other parties (in the present case, DHL HK) of the opportunity to respond. Thus, the Board considers that it ought not to consider the Appellant’s complaints relating to sections 3.2.4, 3.11.5 and 3.11.6 of the Code in this appeal. At the same time, the Board does not consider that it is precluded from considering the entire first ground of appeal raised by the Appellant in that the Board considers that it still can and should consider the Appellant’s submission (which the Appellant has all along made) that the Disclosure contravened DPP 3, without focusing on the three sections of the Code that are newly raised in this appeal.

24. The Appellant has emphasised his intention when sharing the Medical Letter with Mr Ng, and that he did not have any intention that Mr Ng should share the Medical Letter to anyone else, whether Mr Lim or Mr Thomas. However, as the Respondent has pointed out, the original purpose of collection is the data collector's perspective, not the purpose of the data subject. According to the decision of the Board in Administrative Appeal No. 36 of 2007 (董禮霖先生與個人資料私隱專員) issued on 5 March 2008:

「23. 要注意的是，第三原則所指的原來目的是指資料收集人在收集有關資料時的目的，而不是資料當事人本身的意願或目的。很多時候（尤其是當有關資料並不是從資料當事人直接收集，如本案的情況），當資料收集人收集資料的時候，他是根本不知道資料當事人的意願，甚至根本沒有見過資料當事人。第三原則的要求是，個人資料祇可使用於資料原先被收集時的目的，或者是與其直接相關的目的。而資料原先被收集時的目的是指資料收集人的目的，不是資料當事人的目的。」

“23. It should be noted that the original purpose in DPP 3 refers to the purpose of the data collector at the time of the collection of data, not the will or purpose of the data subject. In most cases (especially when the data is not directly collected from the data subject, just as the present case), when the data collector collects the data, he does not know the data subject's will at all, and has not even met the data subject. DPP 3 requires that personal data shall only be used for the original purpose at the time of collection or a directly related purpose. And the original purpose at the

time of collection refers to the purpose of the data collector, not the purpose of the data subject.”

(English translation with emphasis added)

25. In the present case therefore, it is Mr Ng’s purpose of data collection that is central when determining the purpose of the data collection, not what the Appellant intended when providing the data to Mr Ng.

26. Having considered the matter, the Board accepts the Respondent’s submission that the Disclosure¹ was made for a purpose consistent with or at least directly related to the original purpose of collection by Mr Ng (on behalf of DHL HK). The Medical Letter was provided by the Appellant when Mr Ng contacted him regarding his failure to respond to Mr Lim’s meeting requests related to the Inquiry, and Mr Ng’s original purpose when collecting the Medical Letter was to handle matters related to the Inquiry. The Disclosure was similarly made for the purpose of managing matters related to the Inquiry, with Mr Ng and Mr Lim seeking to provide an explanation for the Appellant’s failure to respond to Mr Lim and Mr Thomas respectively.

27. For completeness, the Board would add that even if it were to take into account sections 3.2.4, 3.11.5 and 3.11.6 of the Code in this appeal, it does not consider that those sections take the Appellant’s case any further.

28. Sections 3.2.4, 3.11.5 and 3.11.6 of the Code state the following:

¹ The Board’s findings regarding the Disclosure are further discussed with respect to the second ground of appeal in Section D below.

“3.2.4 *An employer may collect personal data relating to the health condition of an employee provided that the collection is for a purpose:*

3.2.4.1 *directly related to the assessment of the suitability of the employee’s continuance in employment; or*

3.2.4.2 *directly related to the employer’s administration of medical or other benefits or compensation provided to the employee.*

...

3.11.5 *Employment-related personal data may be transferred to a related office of the organisation outside Hong Kong provided that such a transfer is for a purpose directly related to the employment of employees and the data is adequate but not excessive in relation to that purpose.*

For example, transfer of employment-related personal data outside Hong Kong to an overseas head office may be done for a permitted purpose, such as for a purpose relating to an intended posting of staff to an overseas office. It should be noted that the Ordinance provides for specific controls on the transfer of personal data outside Hong Kong.

...

3.11.6 *Employment-related personal data may be transferred within the employing organisation for purposes directly related to the employment of employees provided that the data is adequate but not excessive in relation to the purpose of use by the party to whom it is transferred.”*

29. Although the Appellant contends that DHL HK failed to observe section 3.2.4 of the Code, the Board agrees with the Respondent's submission that section 3.2.4 concerns the collection of employees' personal data whereas the crux of the Appellant's complaint in this appeal concerns the use (including disclosure or transfer) of his personal data. In the present case, there is no dispute that the Appellant volunteered the Medical Letter to Mr Ng.

30. As for sections 3.11.5 and 3.11.6, the Board agrees with the Respondent that section 3.11.6 appears to be directed at transfers of an employee's personal data within Hong Kong whereas section 3.11.5 is directed at transfers to related offices outside Hong Kong. The Board also agrees with the Respondent that these provisions require that, first, the transfer of personal data serves purposes directly related to the employment of employees, and secondly, that the data transferred is adequate but not excessive in relation to the purpose of use by the party to whom it is transferred.

31. With respect to the first aforementioned limb, there can be no serious dispute that the Disclosure was made for a purpose directly related to the Appellant's employment, in particular with respect to the investigation and the unmet meeting requests. As to the second limb, in light of its findings regarding what the Disclosure entailed, the Board also considers that the Disclosure was not excessive.

D. Ground 2: Inaccurate information relied upon by the Respondent?

32. The Appellant contends that the Respondent relied on inaccurate information supplied by DHL HK in reaching the Decision. In particular, the Appellant argues that DHL HK's claim that Mr Lim and Mr Thomas did not know about the Medical

Letter and the Appellant's symptoms stipulated therein (並不知悉他持有醫生信及醫生信中他的病徵) as recorded in the telephone notes dated 7 and 11 November 2024 as well as Mr Lim's written statement that he "*knew nothing about the [Medical] Letter*" and that "*[h]e had not informed the [Appellant] that he knew about the [Medical] Letter*" are contradictory to Mr Lim's email of 19 October 2023 (the "**19 October Email**"), in which Mr Lim stated that "*... I understand you [(i.e. the Appellant)] have obtained a medical letter; would it [be] possible to provide me a copy of it?*" as this email indicates Mr Lim's awareness of the Appellant's medical letter. Thus, the Appellant contends that the Decision was made based on the Respondent's inaccurate understanding of what had been disclosed to Mr Lim and Mr Thomas.

33. In response, the Respondent's stance is that:

33.1 When the telephone notes are read as a whole, the reference to "medical letter" therein can only refer to the specific Medical Letter. This is because the conversations between the Respondent's officer and Ms Ip of DHL HK concerned paragraph 7.6 of DHL HK's letter dated 28 October 2024, which mentioned the specific Medical Letter (rather than a generic medical letter).

33.2 As to the 19 October Email, it merely indicates that Mr Lim was aware of the Appellant's possession of a certain medical letter, being a general description of the type of document being referred to, as opposed to being a reference to the specific Medical Letter provided by the Appellant to Mr Ng.

33.3 Thus, the Respondent submits that there are no inconsistencies.

34. In this regard, the Board notes the authorities relied upon by the Respondent. In particular, according to the Board in Administrative Appeal No. 30 of 2011 (無名氏與個人資料私隱專員):

“10.1. 至於遺失信件，上訴人所持證據是上文第 5.3 段提到的一封馬警司給她的信，「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。該會向「專員」解釋，如有信寄來轉交應會有便箋或信封上的檔案編號加以辨認，因此會出現在記錄上，但翻查記錄卻沒有該信的記錄。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待。」或類似的話。”

“10.1. As for the missing letters, the evidence adduced by the Appellant and mentioned in paragraph 5.3 above is a letter from Superintendent Ma to her. The ‘Commissioner’ has already made relevant enquiry with the ‘Independent Police Complaints Council’ and learned that their records showed that they had not received the letter in question. The Council explained to the ‘Commissioner’ that if they have received such letter in care of another party, there should be a note or file number marked on the envelope to identify it, and it would thus appear on the record. However, upon reviewing their records, there was no record of such letter. If there is no reasonable ground for the ‘Commissioner’ to question this explanation, the ‘Commissioner’ cannot rashly say to the Council that ‘I don’t believe your explanation because the complainant said you are lying. I want to inspect the records personally and ask all your members and staff to provide an explanation’ or something similar.”

(English translation with *emphasis added*)

35. In the present case, the Board considers that the Appellant has not been able to provide any concrete evidence to substantiate his claim that the Medical Letter and/or details of his medical condition had been disclosed by Mr Ng to Mr Lim or by Mr Lim to Mr Thomas. In other words, the Board sees no proper basis to find that the Respondent should not have considered that: (1) there was insufficient basis to conclude that the details contained in the Medical Letter (including reference to the Appellant's specific medical condition) had been disclosed by Mr Ng to either Mr Lim or Mr Thomas; (2) what had been disclosed was the fact that the Appellant had a medical condition.

36. Under the circumstances, the Board also dismisses the Appellant's second ground of appeal.

37. For completeness, the Board also notes that at p.3 of the Appellant's skeleton, the Appellant complains that the Respondent had never provided a response regarding the Appellant's inquiry regarding whether the Respondent had inspected Mr Ng's records regarding the Appellant's medical condition. As the Respondent has rightly pointed out however, the Respondent did address this in paragraph 19 of the Decision.

38. Finally, the Board also notes that at p.3 of the Appellant's skeleton, the Appellant alleges that DHL has engaged in "*potential illegal conduct*" contrary to section 50B of the PDPO as a result of its "*provision of nonfactual statements*" to the Respondent. The Board agrees with the Respondent that this is an allegation of a criminal offence by DHL HK, which is beyond the purview of this Board's jurisdiction.

E. Conclusion

39. For all the above reasons, the Appellant's appeal is dismissed.

40. Whilst the Respondent had at paragraph 49 of her Statement dated 20 October 2025 and paragraph 36 of her Skeleton dated 13 January 2026 reserved her position on costs, the Respondent ultimately did not press for costs. Thus, the Board makes no order as to costs. For the avoidance of doubt, whilst the Appellant has at p.1 of his skeleton said that he felt threatened and discouraged from exercising his legal rights after reading the Respondent's reference to costs, the Board does not consider that the Respondent can or should be criticised for reserving her position on costs. There is no reason why a party cannot be permitted to reserve its position on costs.

(signed)

(Miss Lau Queenie Fiona, SC)

Deputy Chairman

Administrative Appeals Board

Appellant: Acted in person

Respondent: Represented by Ms Tomomi Takahashi, Assistant Legal Counsel

Personal bound by the decision appealed against: DHL Express (Hong Kong) Limited (Absent)