

**Immigration Department’s handling of a request by newspaper journalists
for search of marriage record of two persons and to obtain
a certified copy of their marriage certificate
Investigation Report**

The Complaint

On 3 August 2020, Complainant A lodged a complaint with this Office against the Immigration Department (“ImmD”). On 1 September, we received the signed consent form from Complainant A and Complainant B (collectively referred to as “the Complainants” hereafter), who then became the co-complainants of this case.

2. The Complainants were newspaper journalists. On 2 July, Complainant B applied to ImmD in the capacity of a journalist for searching the marriage record of two persons (“the Persons”). Despite stating clearly in the application that the search was to verify the husband and wife relationship of the Persons and the search result would be used in news activities, ImmD still rejected the application on 10 July 2020 on the basis that it did not accept the request as being in line with the purpose of establishing the marriage records in Hong Kong (“marriage records”).

3. The Complainants asserted that ImmD had, in an earlier reply to this Office regarding another case, indicated that so long as the purpose of a search matches that of establishing the marriage records, an application for the search could still be submitted even without the consent of the data subject. In this case, however, ImmD’s handling was inconsistent with the aforesaid practice as the Department insisted on the applicant’s obtaining the consent of the data subject. The Complainants also pointed out that the Personal Data (Privacy) Ordinance (“PDPO”) already stipulates that under certain circumstances (e.g. in public interest), personal data may be exempted from the restrictions of the Data Protection Principle 3 (“DPP3”) under the Ordinance and such exemption is applicable to news activity. ImmD’s indiscriminate rejection of applications for search of records by journalists smacked of intentional obstruction to such applications by the media, harming press freedom and the public’s right to know.

4. The Complainants were also dissatisfied that in the assessment process, ImmD had neither asked them for supplementary information nor given them a chance to explain their case before rejecting the application outright. Furthermore, the Department had failed to provide any appeal channels to Complainant B, and had instead kept reiterating that consent of the data subject must be obtained. The Complainants accused ImmD of procedural injustice in that there were no appeal channels regarding applications for search of records.

Our Investigation

5. On 7 September 2020, we initiated an inquiry with ImmD concerning this case, and received its reply on 28 September.

6. Having examined the information received, we decided to initiate a full investigation against ImmD pursuant to The Ombudsman Ordinance on 2 November 2020. We sent our draft investigation report to ImmD for comments on 9 November and the Department replied on 7 December. On 18 December, we completed investigation on the case.

Our Findings

Personal Data (Privacy) Ordinance

7. The Government maintains a number of different public registers containing personal data that are available for public inspection. Such personal data is subject to protection under the PDPO (Cap. 486), particularly DPP3 of the PDPO. Personal data collected in establishing the public registers should only be used for the purposes specified at the time of establishing the public registers or directly related purpose(s), unless the explicit and voluntary consent of the data subject is obtained.

Purposes of Establishing Marriage Records

8. The marriage records are established by ImmD under the Marriage Ordinance (Cap 181) (the “MO”) with the following purposes:

- (1) to enable the Registrar of Marriages to keep all marriage records in Hong Kong in order to fulfill his/her statutory obligations under the MO and related subsidiary legislation; and
- (2) to verify the identity, age, family relationship, marital status, etc. of the person concerned in legitimate situations, or for other lawful purposes prescribed, authorised or permitted by law.

Applications for Search of Marriage Records

9. Section 26 (1) of the MO provides that the Registrar of Marriages may allow searches to be made amongst all certificates, licences, registers and indexes in his possession and give a certified copy of any entry therein.

10. The original intention of permitting searches of the marriage records and obtaining a relevant certified copy pursuant to the MO is to allow applicants to trace information about lost relatives or to research their genealogies, or to prevent bigamy. Therefore, the law permits searches of marriage records or obtaining a relevant certified copy by a person other than the data subject. Nevertheless, the MO is not enacted for disclosure of such personal data or unrestrained access to personal data of others by the applicants.

11. ImmD asserted that it has always attached great importance to protection of privacy and has been reviewing from time to time the application procedures for

searching the marriage records and obtaining a certified copy of such records. In recent years, it came to the attention of ImmD that some media organisations have searched the birth/marriage records of public figures/artists or their family members, and then publicised the particulars and personal data obtained. Such actions gravely intruded the privacy of the persons concerned and were extremely undesirable. Over the past year, the personal data of quite a lot of public officers and members of the public had been obtained through searches of various public registers by third parties and then made public. Data subjects concerned and their family members thus fell victim to malicious harassment and threats. In view of the growing abuse of public registers, ImmD considered it necessary to introduce immediate measures to step up protection of personal data, so as to prevent abusive or even malicious use of personal data in the marriage records.

12. ImmD then consulted the Department of Justice (“DoJ”), which opined that while the MO permits members of the public to apply to the Registrar of Marriages for search of the marriage records, the personal data contained therein is still subject to protection by the DPP3 under the PDPO. The DPP3 provides that personal data shall not, unless with the prescribed consent of the data subject, be used for any purpose other than the original purposes of collecting the data or a directly related purpose. Besides, public disclosure is not a purpose of establishing public registers. Information obtained from public registers shall only be used for lawful purposes. While the relevant form for marriage registration mentions that “the purpose of collection” of personal information includes (allowing) searches to be made by members of the public and the issue of a certified copy of the relevant record, this does not constitute consent by the data subject to indiscriminate use and public disclosure of the personal data contained in the marriage records. According to DoJ’s interpretation of the relevant provisions of the MO, if the release of personal data following searches of the marriage records or through obtaining a certified copy of the relevant record may violate the PDPO, or if ImmD has reasons to believe that such personal data may be improperly or unlawfully used, ImmD is empowered by relevant provisions to refuse at its discretion those search applications or disclosure of relevant record.

13. In this connection, ImmD implemented a new arrangement on 16 October 2019. For applicants who are not the registered subject, a relevant person (i.e. parent or legal guardian of the registered subject under 18 years old), or person with written consent from the registered subject/ relevant person, they must provide supplementary information together with the application. Such supplementary information includes the applicant’s relationship with the registered subject, purpose(s) and intended use of the search result and/or requested record(s) as well as documentary proof (if any) to support his/her request.

14. ImmD would consider each application on the merits of its specific circumstances, the reasons and the information provided by the applicant. If the Department is satisfied that the request is in line with the purposes of establishing the record, and that releasing the record is not in contravention of the provisions under the

PDPO, the applicant would receive a notification on collection of the search result and/or the certified copy.

15. In examining the reasons for application for a search of marriage records provided by an applicant who is not the registered subject, ImmD would take into account the following basic principles:

- the purpose for which the record is to be used;
- the reason(s) why the data requested is considered relevant or necessary or important for that purpose;
- the reason(s) why the data subject's consent is not obtained;
- whether the relevant data or record can be obtained from another source;
- whether obtaining consent from the data subject will likely prejudice the intended purpose; and
- how the failure to release such data would likely thwart/prejudice the intended purpose.

16. If ImmD considers the purpose(s) of application likely to contravene the PDPO, it will refuse disclosure of the record to the applicant on such ground.

17. Generally, applicants dissatisfied with ImmD's decision regarding their application may request in writing a review. An officer of a higher rank will handle the review and make a decision. With regard to such cases, the authority for rejecting applications is Senior Immigration Officer, while that for conducting reviews on applications is Chief Immigration Officer.

18. At present, ImmD would confirm with all applicants of record search whether they are the data subjects. If they are not, ImmD would explain to them the current arrangement in detail and ask them to obtain the written consent of the data subject or furnish ImmD with the purpose of their application and intended use of the record requested. The Department has already publicised these new arrangements on its website and the application form for public reference and information.

Course of Handling the Case

19. ImmD's records showed that Complainant B submitted an application in person at the Sha Tin Marriage Registry ("ST Registry") on 2 July 2020 for search of marriage record of the Persons, and for obtaining a certified copy of their marriage certificate. She declared herself a newspaper journalist when submitting the application. Since Complainant B was not the registered subject and had not obtained the consent/authorisation of the registered subject, an assistant clerical officer of ImmD

("Staff A") explained to her the application arrangement and procedures for cases without authorisation from the registered subject, and distributed to her a note on searches of the marriage records and a supplementary information ("SI") form. Staff A also enquired of the purpose of her search for ImmD's consideration. Complainant B wrote on the SI form that the purpose of her search and intended use of the information requested was to "verify the husband-and-wife relationship of Mr X and Ms Y, (the result) would be used in news activities."

20. The case was subsequently handed over to an Immigration Officer ("Staff B") for follow-up. Having consulted a Senior Immigration Officer ("Staff C"), Staff B explained in person to Complainant B the current arrangement and procedures for searching the marriage records, and asked if she had any supplementary information to provide. Complainant B confirmed that she had no additional information to provide other than those already written on the application form and the SI form. She did not divulge any details of the news activities either. Staff A then gave her a notification card with an application reference number and the contact number of the ST Registry, so that Complainant B could enquire of case progress and/or furnish ImmD with more supplementary information.

21. As ImmD did not receive further information from Complainant B a week after receipt of her application, Staff B called her on 9 July for updates but no one answered. On 10 July, Staff B contacted Complainant B over the telephone and told her that if she had no supplementary information, ImmD would assess her application based on the information in hand. During the conversation, Complainant B did not indicate that she would provide supplementary information.

22. Upon careful examination of all the information provided by Complainant B (*viz.* the information on the application form and the SI form), Staff C did not accept that the purpose of her request was in line with that of establishing the marriage records. As such, ImmD could not accede to Complainant B's request and search the marriage record in question or issue a certified copy of the record (if any). On 10 July, the ST Registry notified Complainant B in writing of the decision.

23. On 28 July, Complainant B called the ST Registry to enquire if she could appeal against the application result. Staff B called her back on 30 July, telling her that she could request for reconsideration of her application and provide further supporting information. At that time, Complainant B did not make any request for ImmD to reconsider her application. To date, ImmD had yet to receive any such requests from her.

ImmD's Response

24. ImmD maintained that it has been handling all applications for record search according to established procedures in a fair and just manner. If an applicant is not the data subject, the Department would assess the application on the merits of the reasons provided by the applicant and make sure that if ImmD decides to disclose the requested

record, the disclosure would comply with the relevant requirements of the PDPO. ImmD respects freedom of the press as much as it values proper management of personal data privacy. The Department considered that media organisations should not cite interference with freedom of the press as a reason and ask ImmD to disclose without verification the personal data of any individual to persons other than the data subjects. Should media organisations consider a request for searching or obtaining a third party's marriage record involves public interest, they can make an application for search and provide substantive justifications and details for the Department to assess and consider. ImmD would examine the justifications according to the principles aforementioned and decide if they are sufficient to warrant exemption from the restrictions of the DPPs under the PDPO before deciding on the disclosure or otherwise of the information.

25. As far as this case is concerned, at the time when Complainant B submitted her application, Staff A of the ST Registry had already explained to her clearly the current arrangement for handling applications for search of the marriage records, and given her the relevant circular as well as an SI form so that she could provide further information. Staff B had also immediately made it clear to her that she could provide supplementary information to support her application. Although Complainant B had confirmed that she had no other information to provide except those already written on the SI form, Staff B still called her a week later to clarify again whether she had further information for the Department to consider her application, and told her that if she had none, then ImmD would consider her application based on the information she had provided.

26. ImmD considered that before it made a decision on Complainant B's application, it had given her sufficient opportunities to provide information and considered carefully all the information she provided. Upon her subsequent enquiry, ImmD also clarified that she could provide further information and ask the Department to reconsider her application.

Our Comments

27. ImmD had explained that its staff (i.e. Staff A and Staff B) had already given Complainant B an SI form on the day of receiving her application so that she could provide further information. Staff B also called her again later, but she did not indicate intention to provide supplementary information (see **para. 21**). Later on, when Complainant B enquired about the appeal mechanism, Staff B also told her that she could request the Department to reconsider her application and furnish it with additional information. Nevertheless, ImmD had yet to receive her request in this regard. Therefore, it was not true that ImmD, as the Complainants alleged, had failed to ask Complainant B for additional information and give them a chance to state her case before rejecting the application outright. ImmD had also put in place a review mechanism.

28. This Office considered that ImmD had handled the application in question according to its current arrangement. For instance, upon learning that Complainant B was not the data subject, its staff had immediately explained to her the existing

arrangement for handling applications for search of the marriage records, given her the relevant circular and provided an SI form to her. They also asked her again later to provide further information for the Department to consider her application. ImmD rejected this application not only because Complainant B had failed to obtain the consent of the data subject, but also because the information she provided was not sufficient to convince the Department that the purpose of her request was in line with that of establishing the marriage records. The justifications she raised for the application were not sufficient for ImmD to invoke exemptions from the restrictions of the DPPs under the PDPO either. As mentioned in **paragraph 24** above, if media organisations considered the search for a third party's marriage record involved public interest, they can apply to ImmD and provide substantive justifications and specific information for the Department's assessment and consideration.

29. While the actual circumstances of each application differ, this Office opined that good public administration should conform to the principles of fairness, openness and transparency. We agreed that ImmD has to consider a host of factors in assessing applications for record search, including whether public interest is involved, and whether the search should be exempted from the restrictions of the DPPs under the PDPO. To facilitate applicants provide the information as required, ImmD should take reference from actual cases and use them as real examples to illustrate to non-data subject applicants what would constitute sufficient justifications and what documents are considered acceptable to support their applications. In the long run, ImmD should consider formulating relevant guidelines for applicants' reference. The guidelines would also serve as more lucid criteria for its staff to assess and determine whether individual applications should be approved.

30. If the Complainants wish to seek ImmD's reconsideration of their application, they could write to the Department to request a review, and provide further information for its assessment and consideration.

31. As regards the review mechanism mentioned in **paragraph 17**, we noticed that apparently it was not mentioned on ImmD's website. From the perspective of public administration, ImmD could enhance its transparency with a mention on its website or other platforms of the review mechanism.

Our Conclusion

32. In sum, we were of the view that ImmD had followed its current arrangement in handling the application in question. It rejected the application mainly because the information provided by Complainant B was not sufficient to persuade the Department into accepting that the purpose of her search was in line with that of establishing the marriage records, and that her justifications for the application was not sufficient either for ImmD to invoke exemptions from the DPP under the PDPO. At present, there was no evidence of ImmD having intentionally obstructed search of records by media organisations, or of its non-compliance with current arrangement in handling

applications for record search. The Ombudsman, therefore, considered the complaint **unsubstantiated**.

Recommendations

33. The Ombudsman recommends that ImmD:

- (1) take reference from actual cases and use them as real examples to illustrate to non-data subject applicants what would constitute sufficient justifications and what documents are considered acceptable to support their applications. In the long run, ImmD should consider formulating relevant guidelines for reference by applicants and its staff (see **para. 29**); and
- (2) provide information on its website or other platforms about its review mechanism to enhance transparency (see **para. 31**).

ImmD's Comments

34. On the recommendation in **paragraph 33 (1)**, ImmD considered that the actual circumstances of each application differ, so it may not be able to make generalisations about the information or documents required of applicants. At present, applicants can provide any information, documents or written statements deemed helpful to their applications for ImmD's consideration. ImmD would consider our recommendation and examine how to facilitate non-data subject applicants to provide the supplementary information or documents required.

35. On the recommendation in **paragraph 33(2)**, ImmD indicated that for enhancing transparency, it would specify in the written notification of application result to applicants that they can provide new information (if any) to the Department for it to reconsider their application.

Concluding Remarks

36. We were glad to note that ImmD would implement our recommendation in **paragraph 33(2)** and continue to study the recommendation in **paragraph 33(1)**. This Office would follow up on ImmD's progress in considering and implementing the recommendation.

**Office of The Ombudsman
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