

Transport Department’s handling of a media organisation’s application for a Certificate of Particulars of Vehicle Investigation Report

On 10 December 2020, a complainant complained to this Office against the Transport Department (“TD”).

The Complaint

2. According to the complainant (a media organisation), its journalists applied for a Certificate of Particulars of Vehicle (“Certificate”) at TD’s Kwun Tong Licensing Office (“KTLO”) on 1 December 2020. When completing the application form for a Certificate (“Form TD318”), the two journalists found that news reporting purpose was not among the three options of application purpose listed in Part B of the form. They then asked KTLO staff how to complete the form if an application was made for news reporting purpose, and to clarify whether news reporting purpose was covered by the option of “Other traffic and transport related matters” listed in the form. The staff replied that applicants must choose one of the three purposes listed in Part B of Form TD318; TD would not explain the coverage of those three options (including whether news reporting purpose was covered), nor would it advise applicants how to complete the form.

3. The journalists told KTLO staff that they understood that information on Certificates was protected by privacy legislation, with which they were willing to comply. Nevertheless, under the existing Road Traffic (Registration and Licensing of Vehicles) Regulations (“the Regulations”), the Commissioner for Transport (“C for T”) was not empowered to require applicants to declare the purpose for obtaining Certificates. Nor were applicants restricted to apply for Certificates only for the purposes prescribed by TD or to use information on Certificates only for the prescribed purposes. Consequently, they disagreed with the relevant terms of the application form, and crossed out certain words in the declaration. KTLO staff told the two journalists that Form TD318 was the only administrative procedures accepted by TD for Certificate applications. Applicants must choose one of the three options of application purpose listed in the form and were not allowed to delete any parts of the form, otherwise their application would not be accepted. Since the two journalists had not chosen any of the application purposes listed in Form TD318 and had deleted some of its content, KTLO staff refused to accept the application form.

4. Subsequently, the journalists completed another copy of Form TD318. In Part B, they added a fourth option “news reporting” themselves and ticked this box. KTLO staff told them that even though they added an extra option themselves, they were still required to choose one of the three available application purposes. KTLO staff eventually refused to accept the second application form submitted by them.

5. On 3 December 2020, a journalist sent an email to TD’s Information and Public Relations Unit (“IPRU”), requesting TD to explain the grounds for KTLO staff’s rejection of the application form on the day concerned, and to elaborate on the proper method and procedures for the media to apply for Certificates for news reporting purpose. On 7 December, IPRU issued a reply by email, which only stated that TD could not accept the application because the journalists had not properly completed Part B of the form, but failed to answer substantively the other questions raised by the journalist. On the same day, the journalist made follow-up enquiries, saying that public interest was at stake in the media’s Certificate applications, and urging TD to elaborate on the legitimate and proper method for the media to apply for Certificates. On 9 December, IPRU issued a reply but still failed to provide a clear answer to the journalist’s questions.

6. The complainant pointed out that as per this Office’s investigation report “Inadequacy in Transport Department’s Procedures for Vehicle Particulars Certificate Applications”⁽¹⁾ published in May 2020 (“2020 IR”), C for T was not empowered under the Regulations to refuse to issue Certificates to applicants on any grounds (including applicants’ failure to provide proof of the purpose of using personal particulars on Certificates), nor was TD empowered to require applicants to provide proof to substantiate such purpose. The complainant also cited section 61 of the Personal Data (Privacy) Ordinance (“PDPO”), which stipulates that personal data is exempt from certain provisions in specific circumstances, including news activity. However, TD’s current practice of arbitrarily rejecting the media’s applications made on the grounds of news activity not only reeked of being *ultra vires*, but also infringed on press freedom and public interest.

7. Moreover, the complainant was dissatisfied that TD, on the one hand, required the journalists to complete its prescribed Form TD318 and choose one of the three options listed in Part B as application purpose, and not to delete any content of the form; but on the other hand, it refused to explain the coverage of the option “Other traffic and transport related matters” and whether this option covered news reporting purpose, and

⁽¹⁾ The 2020 IR is available at https://ofomb.ombudsman.hk/abc/files/TD_IR_EN202005.docx

refused to elaborate on the proper method for the media to apply for Certificates. Furthermore, TD specified that applicants would be in breach of the law if they failed to make a truthful declaration, thereby imposing undue legal risks on the media.

8. The complainant was also dissatisfied with the unclear reply from the IPRU and its failure to facilitate the media's Certificate applications.

Our Findings

Relevant Legislation and Procedures for Handling Certificate Applications

9. Section 4(1) of the Regulations stipulates that C for T shall maintain a register of vehicles containing the particulars of vehicles and their owners. Section 4(2) stipulates that C for T shall, on payment of the prescribed fee, supply to any person making application for any particulars in the register in respect of a vehicle a certificate stating such particulars.

10. Any person intending to apply for a Certificate shall complete Form TD318, providing such information as the name of the applicant/company, identity document number/Certificate of Incorporation Number/Business Registration Number, address, purpose for obtaining the Certificate, and making a declaration for the application. The completed form shall be submitted in person, by post or drop box, together with the identity document and application fee to a Licensing Office under TD. Applicants submitting applications in person shall produce the original of their identity document.

11. When processing Certificate applications, TD will verify whether applicants have completed all parts of Form TD318, including ticking one of the three boxes in Part B indicating the purpose of application, namely: (1) Legal proceedings; (2) Sale and purchase of vehicle; and (3) Other traffic and transport related matters. Applicants are also required to tick a box to declare that: "I understand that if I knowingly make any statement which is false in any material particular, I shall render myself liable under section 111(3) of the Road Traffic Ordinance to a fine of \$5,000 and imprisonment for 6 months"; and their understanding of the offence against section 64 of the PDPO (disclosure of personal data without consent).

12. TD said that applicants must properly complete all items in Form TD318. After confirming that an applicant has completed the form and paid the prescribed fee, TD will issue a valid Certificate showing the current vehicle particulars or that of a

specified date and time.

Consideration Factors for Issuing Certificates and Purview to Handle Vehicle Particulars

13. C for T maintains a register and supplies vehicle particulars in the register pursuant to sections 4(1) and 4(2) of the Regulations respectively. TD stressed that although section 4(2) of the Regulations appears to be compulsory, C for T's duty to supply vehicle particulars under the provision is obviously subject to limitations, taking into account the legislative intent and objectives. Since maintenance of the register is empowered by the Regulations, a subsidiary legislation under the Road Traffic Ordinance ("RTO"), and the RTO is intended to provide for the regulation of road traffic and the use of vehicles and roads and for other purposes connected therewith, the use of particulars in the register under the Regulations should be related to traffic and transport matters. C for T has the power to limit the applications for vehicle particulars to purposes related to traffic and transport, and to require applicants to state their purposes for obtaining the vehicle particulars for TD's confirmation/acceptance and consideration of whether to issue Certificates.

14. TD said that it accepts Certificate applications made by any person, with no restrictions on Certificate applications by persons of any particular occupation (including the media). To comply with the Regulations and the purposes of maintaining the register, anyone using the particulars for news reporting purpose should also ensure that it is related to traffic and transport matters.

Amendments to Form TD318

Part B of the Form (Application Purpose)

15. In October 2019, TD amended Form TD318, including changing one of the options of application purpose listed in Part B from "Others, please specify" to "Other traffic and transport related matters". It was intended to let applicants understand more clearly that information on Certificates should only be used for traffic and transport related matters, and to align the paper form with the existing online version. TD stressed that it had been clearly stated in Part B of the old version: "I note that the personal data provided by a certificate of particulars of vehicle should only be used for activities relating to traffic and transport matters." No substantive change to the requirements of Certificate applications was introduced by the amended form. TD,

therefore, had not sought legal advice specifically for the amendments at that time.

Part C of the Form (Declaration)

16. TD said that between August and October 2019, it received a total of 70 complaints about infringement of personal data or privacy caused by Certificates (including complaints from the Office of the Privacy Commissioner for Personal Data (“PCPD”)), far exceeding the number of two received in 2018. Besides, the Hong Kong Police Force issued a letter to PCPD in August 2019, raising concerns about the alleged use of Certificates for doxxing and online dissemination of personal data. It called on PCPD to urge TD to adopt administrative measures and made a number of recommendations for plugging the loophole.

17. Subsequently, TD proceeded with the review of Certificate application procedures, including incorporation of section 64 of the PDPO in the declaration under Part C of Form TD318 to remind applicants of the possible legal consequences of unlawfully disclosing the personal data on Certificates. TD indicated that even though section 64 of the PDPO had not been incorporated in Form TD318 previously, Certificate applicants were bound by the PDPO anyway. Since TD had never intended to impose restrictions on Certificate applications by persons of any particular occupation, it decided that it did not need to consider granting exemption catering for particular occupation when amending the application form.

18. TD considered the amendments to Part B and Part C of the form not different from the amendments made by the Licensing Office to its forms from time to time. No substantive change or extra control was introduced to application requirements. As such, TD had not conducted public consultation on the aforesaid amendments. TD had liaised with PCPD and the Department of Justice (“DoJ”) about the amendments, to which neither had raised objections. Moreover, PCPD considered the amendments conducive to applicants’ awareness and understanding of their legal liabilities regarding collection and use of the personal data of other vehicle owners, and creating a deterrent effect.

19. As to why TD did not incorporate section 61 of the PDPO which exempts persons engaging in news activity from the provisions of data protection principles 3 (use of personal data) and 6 (access to personal data) in Form TD318, TD explained that news activity is still subject to other provisions, especially data protection principle 1 (purpose and manner of collection of personal data). TD stated that as regards the

collection of personal data, it is essential to strike a balance between freedom of information and personal privacy. Both the media and the public can obtain and collect information lawfully, and no groups (including the media) are granted unlimited power to access personal data under the PDPO.

20. TD reiterated that as far as the news reporting purpose is related to traffic and transport matters, the media can obtain the particulars by applying for Certificates. The coverage of “Other traffic and transport related matters” should be considered according to actual circumstances. When applying for Certificates, applicants should carefully consider how to use information on Certificates, and whether their actual purpose is related to traffic and transport matters. In sum, TD has clearly provided a legitimate method for accessing vehicle particulars for news reporting purpose.

Handling of Certificate Applications or Information Requests from Different Professions

21. There are comments that people in certain professions (such as accountants, auditors and solicitors) have all along applied for Certificates for such purposes as verifying personal or corporate assets, and those applications were usually approved by TD in the past. In response, TD stated that it would not provide information indiscriminately just because the information was requested by people in certain professions (such as accountants, auditors and solicitors). TD would consider whether the information was originally provided to TD by the registered vehicle owner. It would only consider releasing particulars of registered owners upon request for information made by the registered owners or their authorised representatives. This situation is different from the supply of Certificates containing vehicle particulars to the public pursuant to section 4(2) of the Regulations.

Handling of This Case

22. TD indicated that after reviewing the events on 1 December 2020 as handled by KTLO staff, it considered the staff to have handled the application concerned according to internal guidelines, including reminding the applicants that TD would not process Form TD318 unless it was properly completed, nor would TD advise whether a specific matter fell within the scope of traffic and transport related matters. Instead, TD would remind applicants of the legal liabilities for making a false declaration. Furthermore, TD considered IPRU staff to have handled the enquiry emails dated 3 and 7 December 2020 from the journalist concerned according to TD’s internal guidelines

on handling media enquiries.

Subsequent Development

23. On 7 July 2021, the complainant issued an email to this Office, alleging that TD replied on 28 April 2021 that it would handle public enquiries/applications for access to the particulars of vehicles or their owners made by other means according to the Code on Access to Information (“the Code”) and relevant legislation/guidelines. On 29 April, the complainant made a request under the Code to TD for access to the particulars of six vehicles for news reporting purpose. In its reply to the complainant on 15 June, TD stated that since the information requested by the complainant was kept in TD’s register of vehicles and obtainable under the Regulations, TD was obliged to handle the complainant’s application according to the Regulations. The complainant considered this reply of TD inconsistent with the one on 28 April. It further demonstrated that despite TD’s claim that the media could still access vehicle particulars for news reporting purpose, in reality the complainant, after attempts by different means, was not provided clearly by TD with a legitimate method for access to vehicle particulars for news reporting purpose.

24. In its reply to this Office, TD asserted that it has followed departmental guidelines and handled all enquiries/applications for access to information according to the Code, including enquiries/applications not made under the Code. After considering relevant legislation/guidelines and referring to the Code’s provisions, TD replied to the complainant’s application on 15 June 2021: “According to paragraph 1.7 of the Code, the Code does not affect existing legal rights of and restrictions on access to information. Moreover, paragraph 1.14 of the Code also stipulates that departments are not obliged to provide information available through an existing charged service.” Where information requested by an applicant is kept in TD’s register of vehicles and obtainable under the Regulations, the application should be handled according to the Regulations. TD reiterated that no restrictions are imposed on Certificate applications by persons engaged in any particular occupation (including the media). As far as applicants obtain vehicle particulars for traffic and transport related matters, they can access the information through TD’s existing charged service (i.e. application for Certificates). TD therefore considered the complainant to have been provided clearly with a legitimate method for access to vehicle particulars for news reporting purpose.

TD's Overall Response and Comments to the Complainant's Allegation

25. TD said that it had received from time to time demands from registered vehicle owners for greater protection of their personal data. During a public consultation conducted in 2011, PCPD and some stakeholders raised concerns about the personal particulars on Certificates. TD pointed out that this Office also recommended in the 2020 IR that TD, in the long run, conduct a comprehensive review to examine the purpose of the Regulations, scope of information to be provided and the application procedures for Certificates in order to better protect the personal particulars while serving the purpose of the Regulations. TD remarked that the Government is aware of public views for protection of personal data kept in public registers, hence it has started exploring the relevant arrangement. TD has also taken proper measures within existing legal framework to protect the privacy of registered vehicle owners, including an email notification service for the issue of Certificates introduced on 2 January 2021, available to individual registered vehicle owners for subscription free of charge through the GovHK website. Once subscribed, in case a Certificate is issued to a person or organisation concerning a vehicle owned by the subscribed owner, a notification email with details of the application will be sent by TD to the subscribed owner, who will be aware of a third party's access to his or her personal particulars on Certificate and can take precautionary action. Moreover, TD would introduce legislative amendments when needed to provide proper legal backing.

26. TD reiterated that all amendments made to Form TD318 and administrative measures adopted for the application procedures aim at striking a balance between the public's need to access particulars kept in the register of vehicles and the protection of registered vehicle owners' personal data and privacy. TD's current administrative measure of requiring applicants to declare the purpose for obtaining Certificates in the application form is to ensure that they will only use the personal particulars of registered vehicle owners provided in Certificates for traffic and transport related matters, and to remind them of the possible legal consequences of disclosure without the data user's consent. TD also stressed that it maintains the register and issues Certificates pursuant to legislation, hence all relevant administrative measures and application requirements should be based on and in compliance with existing legislation.

Our Comments

27. A Certificate contains important personal data such as the full name, address and identity card number of the registered vehicle owner. We understand that TD

should review the Certificate application form and procedures for stepping up protection of registered vehicle owners' personal data, and require Certificate applicants to use the new version of Form TD318 since 30 October 2019. In response to this Office on this case, TD said that C for T has the duty to ensure that particulars kept in the register are not misused. Given the legislative objectives of the Regulations, it is necessary to limit the applications for vehicle particulars to purposes related to traffic and transport, and to require applicants to state their purposes for obtaining the vehicle particulars (see **paragraph 13**). Such a stance is obviously different from that held by TD in the 2020 IR. As cited in paragraph 12 of the 2020 IR, at that time TD held that under section 4(2) of the Regulations, "C for T is not empowered to refuse to issue Certificates to applicants on any grounds (including applicants' failure to provide proof of the purpose of using personal particulars on Certificates). Nor is TD empowered to require applicants to provide proof to substantiate such purpose."

28. About the change of stance mentioned in **paragraph 27**, TD explained that as TD and PCPD received a number of complaints regarding disclosure of personal data or intrusion into privacy caused by Certificates in 2019, TD scrutinised jointly with DoJ, PCPD, etc. the Certificate application procedures and protection of privacy for the register of vehicles to plug the loopholes. A new version of Form TD318 has been used since 30 October 2019. Subsequently, TD reviewed the interpretation of section 4(2) of the Regulations in light of a court judgment, and made proper interpretation based on the legislative intent and objectives of the Regulations for handling Certificate applications. Legal interpretation is not an administrative issue subject to this Office's purview. Our focus is whether TD has effectively communicated with the public in this regard. TD's current interpretation of section 4(2) of the Regulations is different from its public stance in the past (as cited in **paragraphs 6 and 27**). We are also aware of comments that people in certain professions (such as accountants, auditors and journalists) had applied for Certificates for verifying personal/corporate assets and news reporting over the years. Those applications, although not made by the registered vehicle owners or attached with their written authorisation (see **paragraph 21**), were usually approved by TD. TD's amendments to Form TD318 would inevitably cause concerns of the related sectors whether the practice deemed legal in the past has become illegal or infeasible. TD should have known well the views of the public and related sectors in this regard.

29. From an administrative perspective, we considered that even though TD introduced the new version of Form TD318 on 30 October 2019 with the intention of better protecting personal privacy, and insisted that no substantive change was made to

the requirements of Certificate applications by the amendments, it has deviated from its public stance in the past and the community's perception of Certificate applications (including that C for T actually has the power to impose restrictions on applications for vehicle particulars and refuse applications unrelated to the purposes of maintaining the register). Nevertheless, TD only posted a notice on its website reminding Certificate applicants to use the new form from October 2019, without explaining in detail the reasons for the amendments and ramifications. The situation was unsatisfactory.

30. As cited in **paragraphs 20 and 24**, TD considered the complainant to have been clearly provided with a legitimate method for access to vehicle particulars for news reporting purpose. We notice that the complainant had asked KTLO staff and TD's IPRU how to properly complete the new version of Form TD318 if a Certificate was applied for news reporting purpose. Both KTLO and IPRU staff merely repeated that applicants were required to complete all items in Form TD318, and TD would not process Form TD318 unless it was properly completed. We believe that what TD actually meant is that it would only approve applications where the information was to be used for traffic and transport related matters. Any news reporting purpose should also be related to traffic and transport matters as a prerequisite for lawfully applying for access to information. In other words, an application for access to vehicle particulars solely for news reporting purpose but unrelated to traffic and transport matters would not be approved, irrespective of being made with Form TD318, under the Code or by other means. TD, however, did not point that out directly in its reply. In this connection, we reckon that TD should have given the complainant a straightforward reply to facilitate its understanding.

31. In April 2021, TD informed the complainant that enquiries for access to the particulars of vehicles or their owners would be handled according to the Code and relevant legislation/guidelines (see **paragraph 23**). Nevertheless, in June 2021, TD replied that the complainant should complete Form TD318 to apply for the information (see **paragraph 24**). TD's inconsistent and vague replies certainly confused the complainant. As a result, the complainant made an application under the Code, which had no chance of approval, and had reasons to query whether TD was conversant with the Code. We consider that TD should have replied to public enquiries more carefully and informed the enquirers of its consideration factors if permitted by circumstances.

32. We understand that TD can hardly compile a comprehensive and exhaustive list with all matters related to traffic and transport. However, to give applicants some guidance, TD should proactively provide more information as far as practicable. In

our view, it is advisable for TD to explain in detail, with specific guidelines and examples, what matters are related to traffic and transport for reference by applicants, such that they have a clearer basis for deciding whether their purposes for obtaining Certificates (such as reporting news of traffic accidents) are related to traffic and transport. Given that applicants wrongly ticking a box in Form TD318 are liable for prosecution for making a misrepresentation or false statement, TD should provide sufficient information for the public to avoid breaking the law inadvertently.

33. Overall, from an administrative perspective, we consider there is no impropriety on the part of TD in reviewing the Certificate application procedures in response to public views on protection of vehicle owners' personal data, and deciding, after consulting DoJ, PCPD, etc., to introduce relevant administrative measures requiring applicants to declare in Form TD318 that Certificates are obtained only for purposes related to traffic and transport matters. Nevertheless, TD falls short of good administrative standards in failing to explain clearly the reasons for introducing the new arrangement, its details and approving criteria (including specific examples of "traffic and transport related matters" for reference) upon implementation.

34. The Ombudsman, therefore, considers the complaint **unsubstantiated but other inadequacies found**.

Recommendation

35. The Ombudsman recommends that TD provide more and clearer points to note for Certificate applicants and specific examples on its website and in Form TD318 to facilitate their understanding of TD's approving criteria.

TD's Response

36. We have considered and incorporated in part TD's feedback on our draft investigation report and comments in this final report.

37. TD agreed to adopt our recommendation in **paragraph 35** regarding points to note for applicants. TD will strive to provide further information and guidelines as far as practicable, explain in detail the points to note for Certificate applicants, and remind them to carefully consider how to use the particulars on Certificates and ensure that their actual purpose is related to traffic and transport matters.

38. In response to our recommendation of giving specific examples, TD said that each application involves different facts, nature and situation. Giving examples with the facts, nature and situation of individual cases might pose a risk of overgeneralisation and mislead the public, which is not in line with good administrative standards.

Concluding Remarks

39. As mentioned in **paragraph 37**, we are pleased to note that TD has accepted our recommendation.

40. Regarding TD's difficulties in giving specific examples (see **paragraph 38**), we have already acknowledged in **paragraph 32** that TD can hardly compile a comprehensive and exhaustive list, and the public will generally understand that the examples are for reference. We consider it will not pose a risk of overgeneralisation and mislead the public if TD reminds applicants that the examples given are only some situations and are for reference solely. Although TD has undertaken to explain the points to note for applicants as far as practicable (see **paragraph 37**), it will not alleviate the confusion of the public and related sectors if the points to note only remind applicants to use the particulars on Certificate carefully and ensure that their actual purpose is related to traffic and transport matters, without any elaboration on what these matters are.

41. After considering TD's feedback, we maintain the recommendation made in **paragraph 35**, including giving specific examples of the three options listed in Form TD318 for reference to applicants.

Office of The Ombudsman

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