

Case Summary

Complaint against the Home Affairs Department for not adhering to its own Working Guidelines in handling an application under Section 3A of the Building Management Ordinance (BMO) in respect of the formation of an Owners' Corporation for a group of private residential buildings

THE COMPLAINT

The complainants stated that the Home Affairs Department (HAD) had laid down a set of Working Guidelines for application for convening an owners' meeting under Section 3(A) of the Building Management Ordinance (herein after referred to as the S 3A Application). The Working Guidelines stipulated, inter alia, that a copy of the Hong Kong Identity Card (HKID card) of the applicants should be submitted to the HAD for verification.

2. In June 1997, the complainants noted that a group of owners who claimed to have obtained 37.5% (sic) of the shares of the owners of a private residential estate showing support to the formation of an Owners' Corporation (OC) had submitted an S 3A Application to the HAD. However, they understood that the group of owners had not been able to obtain sufficient HKID card copies to support the claim of having secured 37.5% of the shares in question.

3. On 22 July 1997, the complainants wrote to the HAD showing their concern and worry about how the identities and status of the applicants could be verified. However, the complainants noted that the HAD had eventually approved the S 3A Application without having sufficiently verified the identities of the applicants.

OBSERVATIONS AND CONCLUSION

4. In the present case, this Office observed that S 3(A) of the BMO had stipulated that the owners holding not less than 30% of the shares in a private building might apply to the Secretary for Home Affairs (SHA) for an order to convene an owners' meeting to appoint a management committee. The BMO did not mention that the submission of applicants' HKID card copies was a necessity.

5. The Working Guidelines were issued on 12 August 1994 and subsequently revised on 26 February 1996 before the enactment of the Personal Data (Privacy) Ordinance (PDPO) on 19 December 1996. Paragraph 3(f) of the Working Guidelines stated that the HKID card copies of the applicants should be submitted. The purpose of collecting the applicants' HKID card copies was to ascertain whether the S 3A Application submitted had been supported by owners of "not less than 30% of the shares". This was the department's administrative requirement which was not mandatory under the BMO.

6. This Office appreciated that, following the introduction of the PDPO, the applicants might have considered the submission of their HKID card copies an excessive request. Their reluctance to produce such document posed practical difficulties to the convenor in complying with the Working Guidelines.

7. This Office noted that, in the event that the applicants did not produce copies of their HKID card, the HAD had carried out thorough checking of the owners' names, flat units and shares written on the application forms against the updated land search records obtained from the Land Registry. Only those particulars matched with the land search records were counted by the HAD as valid applications. The HAD also exercised due care in ascertaining the validity of the applications in cases of co-ownership. Should the ownership be "tenancies-in-common", the application had to be signed by all owners concerned in order that it could be counted as a valid application. For "joint-tenancies", single signature from any one of the owners would suffice.

8. A total of 1,261 application forms which represented 21,854.10 shares of owners in support of the S 3A Application was received by the HAD. The HAD's checking results revealed that only 283 out of the 1,261 applicants had submitted copies

of their HKID cards. From the application forms received, the department found that the applications from owners representing 20,975 shares (or 37.79% out of a total of the buildings' 55,500 shares) were found in order. Hence, the statutory condition laid down in S 3A of the BMO was fulfilled.

9. As regards the authenticity of the applicants, the convenor had on two separate occasions made a declaration by virtue of the Oaths and Declarations Ordinance.

10. For the purpose of fostering effective building management, the HAD had committed to assisting in the early formation of the OC. Given the fact that non-submission of the HKID card copies was not a statutory ground for rejecting an S 3A Application, it was not unreasonable for the HAD to have acted in good faith by recommending the SHA to exercise his discretion in approving the S 3A Application despite most of the applicants concerned had failed to do so.

11. It was also noted that due consideration had been made by the HAD to ascertain whether the collection of the HKID card copies would invade the privacy of the applicants. The then Attorney General's Chambers (now the Department of Justice) advised that, despite the production of the HKID card copies was not the only means to verify the identity of the applicants, it should not be seen as an infringement of the personal privacy under any laws of Hong Kong. Unless the applicants could produce other evidence to prove the same, the production of the HKID card copies could not therefore be dispensed with. Over this matter, it turned out to be the fact that most of the applicants had refused to produce neither the HKID card copies nor other documentary evidence. While the HAD might have good reasons not to comply with the requirement for the production of the HKID card copies, i.e. the Working Guidelines had become so impractical that could not be strictly adhered to, the fact remained that the Department had not adhered to its own Working Guidelines.

12. All points considered, The Ombudsman concluded that this complaint is partially substantiated.

RECOMMENDATION

13. The Ombudsman recommended the Director of Home Affairs (DHA) to review whether the submission of the HKID card copies would still be considered necessary by taking into account the PDPO, in particular, the Code of Practice on the Identity Card Number and other Personal Identifiers (implemented effecting from 19 June 1998), and to revise the Working Guidelines as appropriate.

RESPONSE FROM THE DIRECTOR OF HOME AFFAIRS

14. The DHA commented that although some of the supporting owners did not furnish copies of their HKID card copies, the non-submission per se is not a statutory ground for refusing the application.

15. Taking into account the PDPO, in particular the Code of Practice on the Identity Card Number and other Personal Identifiers, the DHA considered that the submission of the HKID card copies of the applicants would no more be required.

FINAL REMARKS

16. The Ombudsman is pleased to know that the DHA has accepted our recommendation at para 13 above and revised the Working Guidelines for S 3A Applications which are now put into effect.

Office of The Ombudsman

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