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傳媒侵犯藝人個人資料私隱的調查報告

Investigation Reports on Magazines' Intrusion to Artists' Personal Data Privacy

本所多年來擔任香港演藝人協會(“協會”)的義務法律顧問。在 2011 年 6 月，三位香港電視藝人就《FACE》及《忽然一週》兩本雜誌的攝影記者分別偷拍和刊登他們家中的私人生活照片一事向協會求助。他們在協會的支持和陪同下向香港個人資料私隱專員公署投訴。私隱專員(“專員”)在經過約 9 個月的調查後，於 2012 年 3 月 28 日向外界發表有關的調查報告。

報告內容

專員認為新聞自由和個人私隱權同等重要，而傳媒採訪新聞的手法一旦涉及收集個人資料，便受《個人資料(私隱)條例》(“條例”)(第 486 章)的管制。

兩本雜誌今次透過拍照收集藝人個人資料(即生活照片)的手法，違反條例中要求個人資料須以合法(lawful)和公平(fair)方式收集的原則。報告並提出如下重點：-

- (1) 攝影記者利用長焦距鏡頭及放大器等器材，從遠處偷拍 3 名藝人住所這種行為不符合有關藝人的合理私隱期望(reasonable expectation of privacy)；及
- (2) “公眾利益(public interest)”不同於公眾的好奇心。藝人的私人生活在一般情況下不涉及公共事務或民生等事項，不應僅憑藝人這身份便和公眾利益扯上關係。

針對今次事件，專員已根據條例向兩本雜誌發出“執行通知(enforcement notices)”，要求它們採取相應的措施糾正違反隱私的情況。一般來說，有關措施包括刪除相關個人資料及制定內部指引避免再次違反私隱等等。

結論

作為協會的義務法律顧問，我們很榮幸今次能夠協助法律事宜。專員借今次個別事件就合理收集個人資料這問題定下範例，有助以後釐清新聞採訪自由和私隱權的關係。

We have been the legal consultant for the Hong Kong Performing Artists Guild (the “Guild”) for years. In June 2011, 3 TV artists asked for assistance from the Guild in relation to (1) the photographers’ clandestine photo-taking of the artists’ private behavior at home, and (2) the subsequent publishing of those photographs by the 2 magazines, namely FACE and Sudden Weekly. With the Guild’s support and assistance. The artists lodged complaints to the Office of the Privacy Commissioner for Personal Data. After 9 months’ investigation, the Privacy Commissioner for Personal Data (the “Commissioner”) published the investigation reports on the particular incidents on 28th March 2012.

Findings in the Reports

Based on the facts of the cases, the Commissioner recognized that “freedom of press” and “right to privacy” were values of equal importance. When the relevant news collecting method amounted to collection of personal data, it would fall into the ambit of the Personal Data (Privacy) Ordinance (the “PDPO”).

In the present case, the magazines’ collection of the artists’ personal data (i.e. photographs) by means of the photo-taking in the circumstances contravened the principle in PDPO requiring such data to be collected by “legal and fair means”. The reports also emphasized the following :-

- (1) the photographers’ act of taking photographs of the 3 artists’ premises from a far distance, accompanying with the use of equipment such as long-focus lens and magnifier, transcended those artists’ reasonable expectation of privacy; and
- (2) the notion of “public interest” is different from public curiosity. Under normal circumstances, private life of an artist would be irrelevant to any issue involving public affairs or livelihood, and should not constitute public interest merely by reason of the object’s occupation being an artist.

Pursuant to the PDPO, the Commissioner served “enforcement notices” on the magazines, directing them to adopt measures to remedy the contravening acts. Such measures should normally include the deletion of relevant personal data and implementation of internal guidelines to avoid further breaches.

Conclusion

As the legal consultant of the Guild, we were honoured to take part and render our assistance in advising the 3 artists and the Guild. The Commissioner’s attempt in the present case is to define the “fair means” of collecting personal data and clarifying the relationship between freedom of press and right of privacy only in the present cases.

Nothing shall constitute legal advice to any person by Messrs. Maurice WM Lee Solicitors (Tel: (852) 2537 5833) (Website: www.wmleehk.com)

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