



來函檔號 Your Ref. :

本函檔號 Our Ref. : (15) in OMB 2007/2775 日期

圖文傳真

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Date : 20 November 2007

Mr David M Webb

私人密件
PRIVATE & CONFIDENTIAL

Dear Mr Webb,

Complaint against Registration and Electoral Office

You lodged a complaint against the Registration and Electoral Office (“REO”). You felt aggrieved at its decision to black out the addresses of non-corporate donors before releasing to you a copy of the election return in respect of the 2007 Chief Executive (“CE”) Election. You noted that addresses of donors (both individual and corporate), had been provided in the election return of the 2005 CE Election.

Since our receipt of your consent on 25 May 2007, we have conducted inquiries with REO. Further to our interim replies of 23 July and 5 October 2007, we have completed processing the case. This is our substantive reply.

REO’s ResponseThe Statute

Section 37(1) of Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) (“ECICO”) stipulates that each candidate at an election must lodge with the appropriate authority (Chief Electoral Officer in respect of CE Election) an election return setting out:

- (a) The candidate’s election expenses at the election; and
- (b) All election donations received by or on behalf of the candidate in connection with the election.

Section 37(2)(b) of the Ordinance requires candidates to accompany their returns by, among others, a copy of the receipt issued to individual donors whose donation has exceeded \$1,000, showing their particulars and the amount of donation.

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1

Section 19(1) specifies that the receipt has to show the donor's name and address as supplied by the donor.

Under Section 41 of ECICO, the appropriate authority must keep all election returns at his office so lodged, and ensure that they are available for public inspection within one year after the publication of the election result. The appropriate authority must also provide a copy of an election return or part of it, to any person asking for such, subject to payment of a copying fee.

Election Returns

Over the years, REO had made available copies of election returns and their accompanying documents (including receipts for election donations) for public inspection. Any identity document numbers in the papers would be covered before display, but not so in respect of other personal data. The arrangement applied to the election returns for various public elections, including the 2005 CE Election.

On 10 January 2007, REO read a newspaper article raising concern that some personal data had been "leaked" in the election returns and receipts submitted by two candidates in the 2006 Election Committee Subsector Elections.

Legal advice then sought was such that "receipts" were not regarded as part of the "election returns" and the law required only the latter to be made available for public inspection.

REO decided to continue making available the election returns and their accompanying documents (including donation receipts) for public inspection, because this practice had been long established and accepted by candidates, donors and the public at large. However, for the protection of personal data privacy, REO decided also to black out donors' information such as their addressees, telephone numbers and passbook numbers shown on the receipts, except for "corporate donors".

As donors' addresses were also shown in the election returns, REO decided that, for "individual" donors, they should also be blacked out. The new measure was introduced in mid-February 2007, covering the election return in respect of the 2007 CE Election.

The Review

Arising from your complaint, REO reviewed the "black-out" arrangement and sought further legal advice. It has consequently reverted to the previous arrangement to make available for public inspection the **full** election returns as submitted by candidates, in accordance with the provisions in ECICO.

On 14 September 2007, REO gave you a replacement copy of the 2007 CE Election Return, with the donors' addresses.

REO undertakes to continue maximum disclosure of election returns and other electoral documents in accordance with the law, given the community's rising awareness of personal data privacy. For the 2007 District Council Election, donors are informed, through the "Standard Receipt for Donations" drawn up by the Electoral Affairs Commission, that the receipts (with their names and addresses) will be made available for public inspection together with candidates' election returns.

Our Observations and Conclusion

We consider REO to have over-reacted to the newspaper's comment about the breach of personal data privacy in the publication of the election returns and donation receipts in respect of an election in 2006. The first legal advice on the matter clearly related to "donation receipts" only and these were not mandatory for public inspection. "Election returns" were a different item altogether. REO should have sought further legal advice, before introducing any change at all to election returns as they **are required** for public inspection.

Nonetheless, we note that REO has taken reasonable steps to remedy the situation arising from your complaint.

In this light, The Ombudsman concludes this case.

Thank you for writing to this Office.

Yours sincerely,



(Ms Paggy NG)
for The Ombudsman

cc: Mr Lam Man Ho, Chief Electoral Officer
(ref. L/M (1) in REO 23/58)