



Summary of Judgment

**Junior Police Officers' Association of the Hong Kong Police Force and Anor
(collectively as "Applicants")**

v

**Electoral Affairs Commission, Chief Electoral Officer, Electoral Registration Officer
(collectively as "the Putative Respondents")**

Hong Kong Journalists Association ("Intervener")

HCAL 3042/2019; [2020] HKCFI 554

**Decision : Leave for judicial review granted
Application for judicial review dismissed**

Date of Hearing : 16-17 December 2019

Date of Judgment/Decision : 8 April 2020

Background

1. Under s 20(3) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation, Cap 541A ("**Cap. 541A**"), the Electoral Registration Officer ("**ERO**") must make available for public inspection a copy of the Final Register. Under s 21(1) of Cap 541A, the ERO may make available an extract of the Final Register for any purpose related to an election to any person the ERO considers appropriate. Under s 38(1) of Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation, Cap 541F ("**Cap. 541F**"), the Chief Electoral Officer ("**CEO**") must supply to each candidate in any District Council ordinary election an extract of the part of the Final Register which relates to the constituency for which that candidate is nominated.
2. The Final Register contains information linking the name of registered electors directly with their principal residential addresses, i.e., "**Linked Information**".
3. The 1st Applicant, the Junior Police Officers' Association ("**JPOA**") of the Hong Kong Police Force, a society registered under the Societies Ordinance, Cap 151, applied for judicial review challenging whether the provisions under Cap 541A and Cap 541F, and/or the decision(s) or practice(s) of the Putative Respondents under or pursuant to those provisions, which permit the public, including candidates in a District Council Election, to access the Linked Information, constitute a disproportionate interference with the registered electors' right to privacy, family



and home under Art 14 of the Hong Kong Bill of Rights (“**BOR 14**”) and/or right to vote under Art 26 of the Basic Law (“**BL 26**”). The 2nd Applicant is an individual police officer.

4. The Hong Kong Journalists Association was granted leave to intervene.
5. The rolled-up hearing was held before the Court of First Instance (“**CFI**”) from 16 – 17 December 2019. On 8 April 2020, the CFI granted leave to apply for judicial review and dismissed the substantive application for judicial review.

Issues in dispute

6. The principal issues in dispute are:-
 - (i) Whether BOR 14 is engaged;
 - (ii) Whether BL 26 is engaged;
 - (iii) Whether the restriction to BOR 14 and BL 26 is rationally connected with the legitimate aims of (a) maintaining the accuracy and completeness of electoral registers (“**the Electoral Status Aim**”); (b) ensuring electoral integrity (“**the Transparent Election Aim**”); and (c) facilitating electioneering activities (“**the Electioneering Aim**”); and
 - (iv) Whether the encroachment upon the right protected by BOR 14 and BL 26 is justified under the proportionality test.

Department of Justice’s Summary of the Court’s rulings

(Full text of the judgment at:

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=127355&QS=%2B&TP=JU)

7. The CFI first noted that the challenges by the Applicants against the relevant decisions by reference to “*the Electoral Affairs Commission’s application of or practice under s 20(3) of Cap 541A*” and “the decision of the CEO, pursuant to s 38(1) of Cap 541F” are inapt and misconceived as the ERO and the CEO are under a statutory duty to comply with s 20(3) of Cap 541A and s 38(1) of Cap 541F respectively, and have no discretion to do otherwise.
8. Although the ERO has a discretion under s 20(4) of Cap 541A to make available for public inspection a copy of a specific section or subsection of the Final Register, such discretion goes only to the question of whether to do so at a place additional



to the place specified in the notice published under s 20(1), but not whether the Final Register as made available should show the Linked Information. The same comment applies to s 21(1) of Cap 541A. (paras. 32-36)

9. In relation to issue (i), the CFI held that BOR 14 is engaged as disclosure of a person's name and residential address to the public would, *prima facie*, constitute an interference with that person's privacy. (para. 41)
10. In relation to issue (ii), the CFI held that a fundamental right protected by the Basic Law or the Hong Kong Bill of Rights may be engaged by governmental measures or sanctions which create a chilling effect on the exercise of that right. On the fact, BL 26 is engaged as there is encroachment upon the right to vote. (para. 47)
11. In relation to issue (iii), the CFI held that the Electoral Status Aim, the Transparent Election Aim and the Electioneering Aim are all legitimate aims which the Putative Respondents may properly pursue. (para. 56)
12. Whether a measure is rationally connected with advancing a legitimate aim is essentially a matter of logic and common sense. The question is not whether the adopted measure is the best means of advancing the aim, or whether there is some other, less intrusive, means of advancing the aim. The question is simply whether it can, or is likely to, advance or assist in the pursuit of the aim. (para. 57)
13. The CFI held that making the Linked Information available to the public and candidates would advance the Transparent Election Aim and the Electioneering Aim. (para. 59)
14. In relation to issue (iv), the CFI held that a holistic assessment is required. The appropriate standard of review applicable in the present case is "manifestly without reasonable foundation" as this case concerns the validity of various aspects of the electoral laws relating to the public disclosure of registered electors' personal information the contents of which are inevitably much affected by political or policy considerations, and also the allocation and use of limited public resources available to the Putative Respondents for the detection of vote-rigging and other election malpractices. (para. 69)
15. As regards BOR 14, the CFI held that the right to privacy is not traditionally regarded as being amongst the most fundamental ones and only minimal personal information concerning an elector is contained in the Register. The CFI further held



that respect for an individual’s privacy will be narrower when it is brought into contact with public life or is in conflict with other protected interests and there are statutory and administrative safeguards against any unauthorised use or disclosure of information obtained from the Register made available to the public or the candidates (paras. 70-72, 81-84)

16. As regards BOR 14, the CFI held that there is no evidence that anyone has in fact been deterred from registering as an elector or exercising his right to vote because of a concern that his Linked Information is available to the public and candidates and the interference to the right to vote is indirect and limited. (paras. 73-74)

17. The CFI also added that the same conclusion would be reached even if a more stringent standard of review, i.e. the “no more than necessary” standard, should be applicable in the present case. (para. 80)

18. The CFI rejected the Applicant’s argument that there are three core systemic defects of the present system, namely (a) no opt-out system; (b) no discretion to withhold Linked Information and (c) no differentiation in providing access to the Linked Information as between the disparate categories of the public. (para. 87)

19. As regards (a), after examining various overseas jurisdictions, the CFI held that no uniform practice on whether electors may opt-out of providing their personal information could be found and the registration and electoral system in any jurisdiction is moulded by its own unique historical background and social and political system. (paras. 88-91)

20. As regards (b) and (c), they are also rejected as the question for the CFI is not about whether the current system can be improved, but whether it amounts to a disproportionate restriction of the rights engaged. (paras. 92)

21. The CFI held that all four steps of the proportionality test are satisfied and the relevant restrictions are constitutionally compliant. (para. 99)

Civil Division
Department of Justice
April 2020