

**SNUFFING OUT THE CANDLE IN
THE HONGKONG SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE'S REPUBLIC OF CHINA**

The public's right to know is an old chestnut, but it is still a chestnut that should not be allowed to be roasted over a government's fire – any government's fire.

As history has proved, totalitarian government's fall in time because the thirst of the public to be kept informed of its affairs is unquenchable.

In spite of the lessons of history, however, slowly but surely, the Government of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) appears to be intent on chipping away at the concept that the public has a right to know of its affairs, and of future considerations, simmering on the fires of Government planners.

Such thinking will, inevitably, lead the public to be suspicious of the State, and to think that the State is defending itself from the public at large, rather than the public, being defended against an ambitious autocratic government.

The Personal Data (Privacy) Ordinance, Chapter 486 of the Laws of the HKSAR, is an example of how a government can, legally, under the umbrella of protecting the rights of the public, make it impossible for members of the public to pursue their right to know what their government is doing.

The Personal Data (Privacy) Ordinance reads well, but it could be held that there appears to be another, perhaps hidden, agenda that the HKSAR Government had in mind when it promulgated this Ordinance.

The main principles of this Ordinance, conceptually, that could give Government the weapons it needs to prevent the spread of information of any kind, information which, normally, would be within the public domain, are contained in Schedule One.

Schedule One of the Ordinance lists 6 Data Protection Principles, but only 2 of these Principles are required by Government to effect prevention of public information from being disseminated.

These Data Protection Principles are Principle One and Principle Three.

'Principle One – purpose and manner of collection of personal data

- (1) *Personal data shall not be collected unless –*
 - (a) *the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;*
 - (b) *subject to paragraph (c), the collection of the data is necessary for or directly related to the purpose; and*
 - (c) *data are adequate but not excessive in relation to that purpose.*
- (2) *Personal data shall be collected by means which are –*
 - (a) *lawful;*
 - (b) *fair in the circumstances of the case.*
- (3) *Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that –*
 - (a) *he is explicitly or implicitly informed, on or before collecting the data, of –*
 - (i) *whether it is obligatory or voluntary for him to supply the data; and*
 - (ii) *where it is obligatory for him to supply the data, the consequences from him if his fails to supply the data; and*

- (b) *he is implicitly informed –*
 - (i) *or on before collecting the data, of –*
 - (A) *the purpose (in general or specific terms) for which the data are to be used; and*
 - (B) *the classes of persons to whom the data may be transferred; and*
 - (ii) *or on before first use of the data for the purpose for which they were collected, of -- ...'*

As for the use of personal data, this is covered in:

Principle 3 – use of personal data

Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than --

- (a) the purpose for which the data were to be used at the time of the collection of the data; or*
- (b) a purpose directly related to the purpose referred to in paragraph (a).'*

The media of the HKSAR can, effectively, be gagged by the use of these 2 Principles, simply by Government maintaining that any one of a number of breaches had taken place, during the collection of the data.

Further, Government could maintain that the use of the data, collected by a member of the public, while the collection of the data may have been effected by lawful means, the intended use of the data would not be the original purpose for which the data was gathered and, as a direct consequence, Government has a duty to prevent the gathering of such data.

As convoluted as the above sentence may read, the use of legalese of this type could well be the first approach to grinding away at the freedoms which the people of the HKSAR have grown accustomed to enjoy.

It follows on, that, while the Original Jurisdiction Book (known as the OJ Book), located at the Office of the Registrar of the High Court of the HKSAR, is open to any member of the public upon the payment of the prescribed fee, determined by Government, from time to time, members of the Press, local and overseas, may be excluded from scanning this HKSAR Government record on the grounds that the stated purpose of members of the Press to see this record is to republish same in mass circulation newspapers, television programmes, radio programmes, and etc.

If that argument should fail, for one reason or another, Government may just increase the cost to any and all members of the public to scan the OJ Book to a prohibitive level, making it uneconomic for members of the Press, and/or others, to gather that information to which, hitherto for, they had a right to obtain.

It has already been announced by The Land Registry, on January 26, 2000, that, effective April 1, 2000, the names of parties to conveyancing transactions will be excluded from the Memorial Day Book (equal to the OJ Book in the High Court).

The Government's argument, here, is that while it is bound, under Chapter 32, The Companies Ordinance, to collect data, relating to property transactions in the HKSAR, dissemination of that information upon payment of a prescribed fee to any member of the public, is contrary to the intent of Chapter 486, The Personal Data (Privacy) Ordinance, specifically Principle One and Principle Three.

That does not mean, the Government maintains, that the information with regard to the purchaser and vendor of a piece of property, or the parties which have entered into an agreement in respect of a piece of

property, or the use of part of a piece of property, is not available, but it does mean that the Government will not make that information readily available, as had been the situation in the past.

The argument has the immense flaw of not taking into consideration that many conveyancing transactions are not entered into between 2 individual members of the public, but via artificial entities, such as limited liability companies.

Whereas, in the past, the Government maintained a Memorial Day Book, in which the names of purchasers and sellers, along with details of the property, were made available for any member of the public to scan, now, the names of the parties, entering into property transactions of all kinds, are omitted from the Memorial Day Book.

This will make it possible for conveyancing transactions and agreements in respect of properties to take place in secret.

This would include Government transactions, transactions between individuals, who are members of Government, in spite of this being contrary to Civil Service Rules and Regulations, as well as transactions between parties, who are not employed by Government.

Thus, the Government may know of a property transaction between a member of its staff and a non-member of its staff and know that that transaction was not officially sanctioned, but keep quiet about the matter since the transaction would only be known to a limited few people in the in Government circles.

The Government would not be accountable to the people and, therefore, would not have to take action since nobody would be watching the legally appointed watcher.

Thus, Government may, legally, hide behind the legislation, which it has drafted and promulgated for its own benefit, masquerading as promulgating legislation to protect the rights of privacy of members of the public.

Which, no doubt, was never the intention of legislation, aimed at protecting the rights of individuals from being invaded by parties, who are intent on trespassing on the privacy of others for reasons that are not within the province of the public's right to know.

The HKSAR Government, in proscribing the inclusion of the names of parties, involved in conveyancing transactions, from being shown in the Memorial Day Book, is not stating that the information in respect of the names of the parties, entering into agreements with regard to leasehold property in the HKSAR, is not being made available, but, effective April 1, 2000, such information may only be made available, provided that the party, wishing to gather that information, knows the designation of the property, exactly.

And, then, Government intends to charge a minimum of \$HK10 per viewing of a specific entry, formerly contained in the Memorial Day Book, that entry, being complete with names of purchaser(s) and seller(s).

Since there are, on average, more than 1,000 property transactions per day in the urban areas of the HKSAR, it would mean that the gathering of the data of all daily conveyancing transactions would cost a member of the public about \$HK300,000 per month.

This compares with a nominal fee, paid to Government, prior to April 1, 2000.

This, effectively, prevents members of the Press from performing one of their most important functions: Keeping the public informed on matters within the public realm.

In defence, Government would, no doubt, maintain that it is simply obeying the intent and meaning of the law, as contained in Chapter 486.

The Public's Right To Know

If there is no accountability in Government, then all manner of irregularities are possible.

The intention behind the open court system is that any member of the public, with a few special exceptions, such as in the case of minors, etc, may view the process of law.

'Justice should not only be done, but should manifestly and undoubtedly be seen to be done,' said Lord Hewart in 1923.

Lord Hewart, a British judge, popularised this well-worn sentence while making his determination in quashing a conviction on technical grounds. (KBR Vol. One (1924).

Thus, today, in English Common Law jurisdictions, the idea that Court Proceedings should be open to any member of the public, without payment of any fee, is held to be a sacred right.

The magistracies of the HKSAR have, already, omitted to include the names of parties, involved in cases, coming up before magistrates.

Magistracies in the HKSAR handle criminal cases, only.

The reasoning behind this singular act of The Registrar of the High Court, which lays down procedural rules, is unknown to TARGET.

Will the names of parties, involved in civil and criminal litigation in the High Court of the HKSAR, and the HKSAR Court of Final Appeal, also, one day be omitted so that members of the public will be excluded from knowing that justice is being done and that it is manifestly and undoubtedly be seen to be done?

Will the HKSAR enter the information *'dark ages'* as did Europe from the 5th Century until the 11th Century?

It must be that indifference is the accomplice to the crime of corruption.

Whenever a man takes no action, sighting as his major reasons, others' corrupt practices and prejudices, one may point to Government as the main culprit for such erroneous thought.

When President Bill Clinton was facing Impeachment Proceedings, the finger of suspicion was, originally, pointed in the direction of *'that Jewish lady'*, Ms Monica Lewinski, with suggestions that, if President Clinton had uttered falsehoods to the highest court in the land, if he acted in a manner, unbecoming the leader of the most powerful nation on earth, it was not his fault because he must have been trying to protect his family from scandal and, in any event, Ms Lewinski must be immoral so that one should not put any store in the utterings of such a person.

The fact that President Clinton may have acted contrary to the law of the land (which was proved to be the case), laws that he was sworn to uphold, was, to many people, overlooked, or, at least, clouded with other, less important, matters.

For a President of the United States of America to think that he could thwart the intent of the laws of the country where he holds sway was almost forgotten as people concentrated on the lurid love affair of Bill Clinton and Monica Lewinski, complete with admissions of fellatio and cunnilingus and cigars, being stuck into the vagina of Ms Lewinski.

It was only through the open court system was the truth was squeezed out and President Clinton had to admit to his wrongdoings.

(There are still those who maintain that he should have been impeached for his actions, disgracing as he did the Office of the President of the United States)

By making the President of the most powerful nation on earth subject to scrutiny, thus making the Government of the United States accountable to the people, does the United States do credit to itself and set an example for the free world to follow.

But somebody must first light the candle in order that there be enduring and lasting light.

And once lighted, that candle of knowledge must be protected lest its wick be pinched and the light extinguished ... ever more.

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