

Privacy for the privileged

Hong Kong's privacy law

There is probably no one in the world that does not demand privacy from time to time. Even in the most gregarious of societies, unencumbered by the many layers of social hierarchy that characterise today's modern welfare states, there must exist individually self-defined space that when intruded on by others results in defensive action, if not anger and outright hostility towards the intruder. Indeed, privacy is important to everyone, but how we define it differs from society to society according to the traditions, legal codes, and commonly accepted behavioural patterns of each. Then too, in any given society what is considered private is not always clear, else why would there be interpersonal disagreement and conflict? What happens, however, when privacy becomes an excuse to stifle public dialogue?

Recently I asked the Hong Kong Immigration Department to allow my company to access their data base for the purpose of gathering information for a scientific study.¹ To this end I developed a method whereby the personal information required by my company would never be seen by anyone but the Immigration Department and those whom my company sought to contact. In short, there would be no release of personal data to which anyone was not already privy -- least of all those whom the government claimed it wants to protect.

Firstly, I went to the Births, Deaths, and Marriages Records Section and was told that "personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were used at the time of collection ...[,] or a purpose directly related to that purpose". It was then pointed out to me that nothing in my company's research project was related to the purpose for which the Births, Deaths, and Marriages Records Section collects information. As I had already heard a similar argument from the HKEAA, this made good sense.² So, I did not press the matter, and was redirected to the Registration of Persons, Administration Section.³ Their reply was "access and disclosure of registration of persons information are protected by Hong Kong's privacy laws,

¹ Hong Kong Language Needs Assessment Project. Understanding the nature, cause, magnitude, and direction of English language attrition in Hong Kong society: measurement and assessment. [online pdf document - 1 MB] Project proposal.

<http://homepage.mac.com/moogoonghwa/earth/current/hklna/documents/proposals/030828-1.pdf>

² The HKEAA is an acronym for Hong Kong Examinations and Assessment Authority. These restrictions are based on signed statements used at the time the data is collected.

³ Hong Kong requires that everyone carry a personal identification card. In order to obtain this card one must provide one's name, age, and address. In addition one is required by law to keep his personal information up to date in the department. Moreover, the Immigration Department is responsible for the issuance of this card to all Hong Kong citizens -- not just foreign residents and immigrants. Thus, I am certain that the Immigration Department has what I needed. For further information in this regard see http://www.immd.gov.hk/ehhtml/public_3.htm

I regret...."⁴

Having been warned about the probable outcome of my request by someone who is in the business of collecting survey data about Hong Kong citizens, I was not surprised by the department's second refusal. Neither did I pursue the matter -- at least not until my most recent visit to the Immigration Office.

On page two of my visa-extension application form, stated in normal-size print under the headings Personal Data Privacy and Purpose of Collection, was the following: "The personal data provided in the application form will be used by the Immigration Department for one or more of the following purposes ... (iv) for research and statistical purposes, and (v) any other legitimate purposes."⁵ Was it that Hong Kong's foreign residents are treated so very differently from Hong Kong citizens? Or was it that someone in the Department had sought to pull the wool over my eyes?⁶ A fairly thorough search of Hong Kong's Personal Data (Privacy) Ordinance suggested strongly that my company's request was well within the boundaries of the law.⁷ Simply it would require additional effort on the part of the Immigration Department to obtain external approval for meeting my request.

As nearly a half percent of all Hong Kongers would be sampled in the study, and the number of those sampled could be nearly halved with the Immigration Department's co-operation, the cost savings would be phenomenal.⁸ It is for this reason that my company offered monetary compensation to the department for probable inconvenience and diversion of departmental staff from their normal duties. Obviously the department has yet to set aside a special office to handle such requests. Mind you my company is not selling anything to those with whom it seeks to establish contact; it merely requests their volunteer participation in a survey for the good of most everyone!

Now it may be that the Hong Kong Immigration Office simply is not interested in science, or that as a government bureaucracy it does not want to be bothered by problems related to other governmental departments. Notwithstanding, the Immigration Department does depend on the English language for at least a small, but important, perhaps even large, part of its total operations. As a result they would be a key beneficiary of my

⁴ Facsimile received on 25 July 2003 from the Head of the Registration of Persons Administration Section, Hong Kong Department of Immigration.

⁵ Immigration Department, The Government of the Hong Kong Special Administrative Region. Application for an Extension of Stay, 2.

⁶ A brief look at other documents issued for the purpose of data collection suggests that the same rules apply to everyone.

⁷ Hong Kong Ordinances. Personal Data (Privacy) Ordinance. Chapter 486, See especially sections 12, 30, and 32, and Schedule I. [online document] <<http://www.hkllii.org/hk/hk/legis/ord/486/>>(7 September 2003).

⁸ There are well over 6,000,000 Hong Kong permanent residents.

company's proposed study. Certainly, I have made few trips to the Immigration Department when I have not found it necessary to repeat myself several times on more than one occasion in an effort to formulate my thoughts in such a way that the officer sitting opposite me could understand. These occasions have not been due to a deficiency in my own native English language competence.

In my letter to the Registration of Persons Administrative Section I even requested that the section please consider my company's "research needs carefully and think of ways that ... [it] could co-operate with EARTH and other governmental departments and/or offices in order to insure successful completion of this project".⁹ This portion of my requests was completely ignored in the section chief's response.

Alas, during the past two years I have run into similar difficulties with The Chinese University of Hong Kong, the Hong Kong Labour Tribunal, the Hong Kong Police Department, the Hong Kong Health Department, the Language Education Division of the Education and Manpower Bureau, and the University Grants Committee. On each occasion the data that I requested was either mysteriously absent, delayed, refused, or provided only in part. Alternatively, it was so restricted that I was afraid to utilise it in a meaningful way for fear of punishment or future denial; or it was made so costly to obtain copies that I could only afford bits and pieces.¹⁰

It may just be that the Hong Kong Personal Data (Privacy) Ordinance is still fairly new to Hong Kongers, and they have yet to understand it.¹¹ On the other hand, it may just be a double-edged sword used to protect Hong Kong residents from each other on the one hand, and the Hong Kong government from accountability unto its own citizens and residents on the other. Certainly the government knows how to use it as an excuse for not being bothered.

In a recent article written by Keith Bradsher of the New York Times James Tien, the chairperson of Hong Kong's pro-government liberal party was quoted as saying that democratically elected politicians cannot be expected to serve Hong Kong's best interests, because they are "too reluctant to accept financial contributions and other help from business leaders that might produce closer ties to the corporate sector"¹² Now, I am not entirely sure how the corporate sector can serve the best

⁹ EARTH is the acronym for my company whose full name is East Asian Research and Translation in Hong Kong.

¹⁰ The Hong Kong Labour Tribunal charges five dollars per page. One can obtain better quality print for one dollar at a convenience store.

¹¹ It was introduced in 1995 and has been revised several times since.

¹² See Keith Bradsher's article "Hong Kong protesters demand free elections" in The New York Times. Today's Headlines. [online document] (10 July 2003).

interests of the Hong Kong public without a government that is accountable to its people. With few exceptions do large corporate enterprises ever take the welfare of the general public into consideration when they themselves cannot benefit directly from it. Obviously this leaves much unaccounted for in society as a whole. Equally obvious is the inability of Hong Kongers to keep their government in check without the information they require to understand its goings-on and their own society.

The Hong Kong government prides itself in its technical prowess with regard to the electronic handling of information. I ask you, however, what good is this ability, if the information handled is largely restricted for internal use? What is free about a society in which the government hoards information? Hong Kong might have a free press, but what is public debate with only partial information?

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