HCCM 191/2021

[2021] HKCFI 3586

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

CONFIDENTIAL MISCELLANEOUS PROCEEDINGS  
NO 191 OF 2021

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN THE MATTER of Schedule 7 of the Implementation Rules for Article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

J 1st Applicant

H 2nd Applicant

N 3rd Applicant

C 4th Applicant

D 5th Applicant

and

Commissioner of Police Respondent

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Before: Hon Alex Lee J in Chambers (Not open to public)

Date of Hearing: 27 October 2021

Date of Ruling: 29 November 2021

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| RULING |

Introduction

1. This is about the two summonses[[1]](#footnote-1) taken out by the Applicants for:
2. variation of Production Orders (“**POs**”) granted by this Court against each of the Applicants on 27 August 2021 (“**Variation Summons**”)[[2]](#footnote-2); and
3. extension of time for compliance with the POs within 14 days of the final determination of the Variation Summons (“**Time Summons**”)[[3]](#footnote-3).
4. The POs were granted to the Respondent pursuant to s 3(2) of Schedule 7 to the Implementation Rules (“**Sch 7**”; “**IR**”) made under Article 43 of the Law of the People’s Republic of China of Safeguarding National Security in the Hong Kong Special Administrative Region (“**NSL**”). On 1 September 2021, the POs were served on Applicants who were given 7 days for compliance.
5. The POs are all made in identical terms by which each of the Applicants, being trustee of [the Association], is required to produce the following materials[[4]](#footnote-4):

“Either solely or jointly with others, copies of all correspondence (“**Correspondence**”) of [the Association] and following items: -

1. management accounts, accounting ledgers, transaction records with all relevant supporting documents or agreements, business records, meeting minutes (including meetings held with places outside Hong Kong using communications technologies) of [the Association] from 1 Jun 2019 to present (“**Category (i)**”);
2. the particulars of donors (including name, type and number of identification document, contact telephone number and residential address) in relation to those donations which are more than HKD100,000 each of [the Association] from 1 Jun 2019 to present (“**Category (ii)**”);
3. details of donations/subsidies recipients (including name, type and number of identification document, contact telephone number and residential address), relevant reasons for granting the donations or subsidies and details of programmes or events subsidized in relation to those donations which are more than HKD 50,000 each of [the Association] from 1 Jun 2019 to present (“**Category (iii)**”); and
4. any agreement / trust deed / legal arrangement entered with [a third party] or other local / foreign political organization of [the Association] from 1 Jun 2019 to present (“**Category (iv)**”) ”
5. On 7 September 2021, the Applicants produced documents in Category (ii) and (iv) to the Respondent *without* any redactions and at the same time they applied for extension of time for compliance regarding the other materials covered by the POs. By consent, the deadline for compliance was extended to 13 October 2021.
6. As aforesaid, on 7 October 2021 the Applicants filed the Variation Summons and the Time Summons, seeking redaction of the following personal data (“**Personal Data**”) of donation/ subsidy recipients from documents in Category (i) and Category (iii), namely: -
7. telephone numbers;
8. residential addresses;
9. email addresses;
10. the last four digits of their HKID or such other identification documents (including but not limited to passports);
11. prisoners’ numbers, and
12. particulars of psychological and medical treatments including consultation, advice, diagnosis, operations and hospital stay.
13. On 12 October 2021 and 15 October 2021, the Applicants produced to the Respondent the Correspondence and documents in Category (i) (except some of the supporting documents). Therefore, what remains in dispute are some of the documents in Category (ii) (namely the supporting documents) and documents in Category (iii) (collectively “**Disputed Documents**”).
14. On 22 October 2021, the Disputed Documents (redacted in the way proposed by the Applicants) were produced to the Police[[5]](#footnote-5). Then on 25 October 2021, the Disputed Documents in unredacted form were also produced and sealed in the presence of the Applicants’ solicitors and the representative of the Police[[6]](#footnote-6). Because of this development, it would not be necessary for the court to rule on the Time Summons, if the Applicants’ request for redaction was either totally acceded to or rejected.

Contentions of the parties

1. It is the Applicants’ case that the Personal data was obtained by [the Association] pursuant to an “Assurance” of confidentiality given to the donations/subsidies recipients, which invokes the equitable doctrine of confidence. Mr Pang, SC, points out that the Personal Data is protected by the right to privacy under Article 14(1) of the Hong Kong Bill of Rights Ordinance, Cap 383 (“**BOR 14**”)[[7]](#footnote-7) and the Personal Data (Privacy) Ordinance, Cap 486, more specifically s4[[8]](#footnote-8) and Sch 1, s3(1)[[9]](#footnote-9). He submits that the above matters are relevant to the public interest consideration under s3(4)(d), Sch 7, IR and also the exercise of the court’s discretion: *see A & Anor v Commissioner of Police*[[10]](#footnote-10).
2. In opposition, the Respondent submits that the proposed redaction is impermissible in that it is an attempt to challenge the relevance of the materials to the underlying investigation when that issue has already been determined in favour of the Respondent. It is also submitted that confidentiality and privacy are matters that had already been taken into account by the Court when the POs were granted in the first place. Moreover, bearing in mind the overriding and important need for effective national security investigations, in the absence of any exceptional difficulty or prejudice arising from the production of the materials, general confidentiality and privacy considerations, without more, are not valid grounds for discharging or varying the POs.

Some initial observations

1. Before addressing the contentions of the parties, it is necessary to set out what are not in fact in dispute in the present application.
2. First, there is no systemic challenge to the constitutionality of the provisions in Sch 7.
3. Secondly, there is and can be no question that confidentiality and privacy are matters which the court is entitled to take into account when considering whether or not to grant a PO under Sch 7. This is because of s2(4)(d)(iv), Sch 7:

“that there are reasonable grounds for believing that it is in the public interest that an order under subsection (2) should be made in respect of that person or those persons, having regard to—

…

(iv) the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates).”

1. Thirdly, both Mr Pang for the Applicants and Ms Cheung for the Respondent agree that the Disputed Documents are covered by the terms of the POs, including medical records of donation/ subsidy recipients. Had it been otherwise, there would be no need for the application for redaction.

Consideration

Statutory criteria

1. Because of the coercive and potentially intrusive nature of the special powers contained in Sch 7, a judicial safeguard (in the form of prior authorization) is put in place to ensure that the use of those special powers is not unwarranted or oppressive. This prior judicial authorization would provide an opportunity for the conflicting interests of the state and the individual to be assessed before the event so that the individuals’ right to privacy (guaranteed by the Basic Law[[11]](#footnote-11) and BOR 14) would be breached only where the appropriate standard had been met. The court vetting an application for PO must approach the task judicially with an independent mind balancing the conflicting interests: *Keen Lloyd Holdings Ltd & Ors v Commissioner of Customs & Excise[[12]](#footnote-12)*. The court would not authorize the issue of a PO under s3(2) unless it is satisfied that the relevant statutory criteria set out in s3(4) [[13]](#footnote-13) are met: cf *R v Central Criminal Court, ex p Bright*[[14]](#footnote-14), applied in *A & Anor v Commissioner of Police*[[15]](#footnote-15).
2. In the present case, given that there is no systemic challenge to the special powers contained in Sch 7 and also that there has already been partial compliance by the Applicants, the application for variation (redaction) must be considered against the backdrop that the POs are legally and validly made.
3. In the preamble of each of the POs, it is stated that “the conditions in s3(4)(b), (c) and (d) of Sch 7 of the Implementation Rules are fulfilled”[[16]](#footnote-16). By the reference to s3(4)(b) of Sch 7 in the POs, it must be understood that the investigation is said to be into a person’s proceeds of a suspected offence endangering national security. Furthermore, although the Respondent’s affirmation filed in support of the application of the POs has not been disclosed to the Applicants, it would not be difficult to fathom out, from the nature of the documents sought, that a major purpose of the POs is to facilitate the police investigation into the fund flow and the reasons for payments. These are important factors to be taken into account when the court is weighing the public interest under s3(4)(d) which I will come to that in a moment. At this junction, it is pertinent to note that the threshold for s3(4)(b), namely “reasonable grounds to suspect” at the investigatory stage is relatively low. This is because it is settled that “suspicion” is a state of conjecture or surmise where proof is lacking and is a far cry from *prima facie* proof: *Hussein v Chong Fook Kam*[[17]](#footnote-17), applied in *P v Commissioner of the ICAC*[[18]](#footnote-18)*.* The condition of having “reasonable grounds to suspect” requires additionally that the “suspicion” is based on “reasonable grounds”, so that anyone looking at those grounds objectively would so suspect: cf *HKSAR v Harjani Harest Murlidhar*. [[19]](#footnote-19)
4. Apart from s3(4)(b), the court was satisfied that there are “reasonable grounds for believing” that the material to which the application relates (i) is likely to be relevant to the investigation for the purpose of which the application is made; and (ii) does not consist of or include items subject to legal professional privilege: s3(4)(c). Besides, the court was also satisfied that there are “reasonable grounds for believing” that it is in the public interest that the material should be produced or that access to it should be given, having regard to (i) the benefit likely to accrue to the investigation if the material is obtained; and (ii) the circumstances under which the person in possession or control of the material holds or controls it, as the case may be.
5. It is pertinent to note that the threshold test of “reasonable grounds of believing” applicable to both s3(4)(c) & (d) is higher than that of “reasonable grounds for suspecting” applicable to s3(4)(b). This is because it is settled that “belief”, though less than “knowledge”, is more than “mere suspicion”: *Gifford v Kelson*[[20]](#footnote-20), applied in *McIntosh v Webster*[[21]](#footnote-21). That said, it is necessary to bear in mind that the Court, when considering with an application under s3(2), is not dealing with either “reasonable grounds to suspect” or “reasonable grounds of believing”, as the case may be, as an element of offence. Furthermore, the court is not tasked at the *ex parte* stage to make any “findings of fact” as such. Instead, the court is only tasked to form an objective assessment of the statutory criteria based on the limited information available and ask whether any reasonable man looking at that information objectively would have the requisite belief.

The present application

1. A legal issue arises as to whether this court, having ordered the issue of a PO, should entertain an application for variation on the grounds of relevancy under s3(4)(c)(i), Sch 7. Besides, Mr Pang invites this Court to re-conduct the balancing of public interest under s3(4)(d), Sch 7. Mr Pang goes further to submit that it is for the Respondent to satisfy the court on the relevancy and utility of the Personal Data to the investigation; otherwise, the redactions as proposed should be ordered[[22]](#footnote-22).

Relevance

1. Even though the court retains a discretion not to order a PO even though all the statutory criteria contained in s3(4), Sch 7 are met, the room for exercising this discretion would be restricted and the justification for refusal has to be strong. This is in view of the plain statutory intent that the integrity and effectiveness of the investigation should not be compromised. In this regard, it is noted that in the context of the POBO regime, it has been held that where the statutory criteria are satisfied, the test for the exercise of the discretion to refuse an order is whether compliance with the s14(1)(d) notice would be oppressive to the subject. As Li CJ, who gives the judgment of the Court of Final Appeal in *P v Commissioner of the ICAC*, says[[23]](#footnote-23):

“29. Plainly, the statutory intent is that the integrity and effectiveness of the investigation, which is sought to be advanced by the use of the special investigative power in s.14(1)(d) as authorized by a court order, should not be compromised. Consistent with this intent, the scope of the court's discretion is circumscribed. Where the statutory criteria are satisfied, the test for the exercise of the discretion nevertheless to refuse an order is whether compliance with the s.14(1)(d) notice would be oppressive to the subject. That the proper test is one of oppression is not disputed by Mr McCoy SC for the appellant. See *Chan Cheung Yuk Lin & Another v Harknett* [1978] HKLR 123 at p.126 where this test was used.”

(Emphasis supplied)

1. Again, in the context of the POBO regime, apart from the ground of “oppression”, the court may discharge the s14(1)(d) notice *ex parte* order on the ground that, having regard to the proper interpretation of the provision, the order is invalid as it goes beyond what is contemplated by the statue. Further, the statutory notice may be discharged on the ground of fraud which would involve the proof of bad faith. However, it has been stressed that the cases in which this could properly be alleged would be rare[[24]](#footnote-24).
2. In my judgment, what Li CJ says in *P’s* case about not compromising the integrity and effectiveness of the investigation applies equally, if not with greater force, to a PO issued under Sch 7. This is because of the utmost importance of national security as explained in *HKSAR v Lai Chee Ying*[[25]](#footnote-25).
3. Secondly, it has also been held in *P v Commissioner of the ICAC* that an application for variation should not be entertained when it relates to the substance of the investigation, as it may run the risk of compromising the integrity and effectiveness of the investigation[[26]](#footnote-26):

“45. As has been pointed out, the clear statutory intent is that the integrity and effectiveness of the investigation, which is sought to be advanced by the use of the special investigative power in s.14(1)(d) as judicially authorized, should not be compromised. That being so, under the scheme, the court cannot entertain an application by the subject to discharge or vary it on the ground that the first two statutory criteria are not satisfied. This is fairly accepted by Mr McCoy SC for the appellant.

46. The rationale for this is clear. These two criteria relate to the substance of the investigation. The court has to be satisfied that there are reasonable grounds for suspecting that: (1) an offence under the POBO has been committed; (2) the information to be sought from the subject is likely to be relevant to the investigation or proceedings. If it were open to the subject to apply on the ground that the court should not be satisfied that there are reasonable grounds for suspecting (1) and/or (2), there would be a serious risk of jeopardising the investigation. The investigation would be dragged down by a contest at the investigatory stage as to whether the relatively low threshold of the first two criteria have been met. This could not have been the legislative intent.”

(Emphasis supplied)

1. In my judgment, the above quoted passages are directly applicable to s3(4)(c)(i), Sch 7 which is similar in terms and purpose to s14(1B)(b) of the POBO, both of them concern the potential relevancy of the material to the investigation sought by the law enforcement agency. The same can be said about s3(4)(d)(i), Sch 7 which is about the potential utility of the material sought. In this regard, I agree with the submission of Ms Cheung that at the investigation stage some latitude has to be given to the Police and due weight should be given to them as to what is likely to be relevant or useful, both of them pertaining to the substance of the investigation. Besides, the court should not impede on existing criminal investigation and should not be required to carry out the impossible task of determining prematurely what is relevant or useful to the investigation. As to this, an analogy could be drawn between a PO and a search warrant: *Apply Daily Ltd v Commissioner of the ICAC (No 2)[[27]](#footnote-27)*; and *Lee Chu Ming Martin & Ors v A Permanent Magistrate, Eastern Magistracy & Anor*[[28]](#footnote-28). That, of course, is not to say that the court would proceed on the basis of a bare assertion by a police officer even in cases involving national security. As emphasized above, a judge has personally to be satisfied that he statutory requirements as to assess conditions in s3(4), Sch 7 are met: *R v Central Criminal Court, ex p Bright[[29]](#footnote-29)*.
2. As Mr Pang fairly accepts during the course of his submission, the Applicants are not in a position to mount a meaningful challenge to the POs on the ground of relevance, as they do not have the sight of the affirmation evidence filed by the Respondent at the *ex parte* stage.
3. Based on the above, I come to the conclusion that, as a matter of principle, the court generally should not entertain an application or invitation to discharge or vary POs on the ground of relevance or utility, when there has already been a decision by the court on those at the *ex parte* stage.

Public interest

1. As regards the Applicants’ invitation to this court to reconsider the balance of public interest under s3(4)(d), Sch 7, the relevant countervailing interests are: (1) the potential utility of the Personal Data; and (2) the privacy right of the recipients and the corresponding common law duty of confidentiality on the Applicants. More specifically, the Court’s attention is drawn to the fact that the Disputed Documents include supporting documents showing hospital charges and treatment information of the recipients concerned.
2. Notwithstanding my judgment above that a PO should not be subject to challenge on grounds relating solely to the substance of the investigation, in fulfillment of the court’s role as the final safeguard against abuse and oppression, it is permissible for the court to re-conduct the balancing exercise under s3(4)(d) when facing with an application for discharge or variation. This is because at the *ex parte* stage, it is likely that the police would not have much information to provide the court with on s3(4)(d)(ii). On the other hand, such information is more likely to be available from the person who is the subject of the PO when there is an application for discharge or variation. Although the POBO does not have a provision similar to s3(4)(d)(ii) as an access requirement, the situation is not unlike a challenge to a s14(1)(d) notice on the ground of lack of access (the third statutory criterion). In *P v Commissioner of Independent Commission Against Corruption*[[30]](#footnote-30) , Li CJ says that in which case it is important for the court to deal with the ground in way which does not affect the integrity and effectiveness of the investigation. The court should not conduct a trial with cross-examination and should decide the matter on the basis of the affidavit evidence, including that adduced by the subject. In my judgment, a similar mechanism should be adopted for the purpose of the Sch 7 regime. The task of the court then is again to perform an objective assessment of the requirement of s3(4)(d), taking into account also the affirmation evidence filed by the subject. This, however, does not involve the application of a burden of proof: cf *HKSAR v Lai Chee Ying[[31]](#footnote-31)*. In my view, pending resolution of the application, the better practice is to have the documents in disputed sealed in the presence of the representatives of each party and then handed to the Police, like what has happened in the present case.
3. In the present case, having taken into account the affirmations of the 3rd Applicant[[32]](#footnote-32), I come to the conclusion that the present application for redaction has no merits. My reasons are as follows.
4. The first thing to note is that the fact that the Applicants might breach their “Assurance” of confidentiality is in itself not sufficient to excuse them from compliance: s3(11)(b)[[33]](#footnote-33), Sch 7.
5. Secondly, with respect, Ms Cheung makes a valid point that it is self-evident that a PO, by its very design, would involve seeking information from parties other than their owners and without their consent. This would, in many (if not all) instances, cut across confidentiality and privacy. A common example is information of bank account holders and bank transactions in that the existence of banker/customer confidentiality could not exempt a bank from complying with a PO: *R v Leicester Crown Court, ex parte Director of Public Prosecutions*[[34]](#footnote-34); and *Barclays Bank plc v Taylor*[[35]](#footnote-35). This coercive feature is not unique to the IR regime and is common to other similar statutory regimes: see the Drug Trafficking (Recovery of Proceeds) Ordinance, Cap 405, at s20(9)(b); the Organized and Serious Crimes Ordinance, Cap 455, at s4(12)(b); and the Prevention of Bribery Ordinance, Cap 201, at s14(4). In case a PO might be obtained pursuant to a number of separate statutes, the investigating authority could choose whichever provision most conveniently suited its purpose, provided only that an application meets the conditions precedent prescribed by that statute: *Philip KH Wong, Kennedy YH Wong & Co v Commissioner of the Independent Commission Against Corruption[[36]](#footnote-36)*.
6. Thirdly, as pointed out by Ms Cheung, it has long been recognized that the equitable duty of confidence does not extend so as to bar the disclosure to investigatory/ regulatory authorities of matters that is the province of those authorities to investigate: *Re a company's application[[37]](#footnote-37)*. As regards the Personal Data (Privacy) Ordinance, Cap 486, compliance with DPP 3 is exempted where the use of the personal data is for the prevention and detection of crime[[38]](#footnote-38) or where the use is by an order of a court[[39]](#footnote-39).
7. Moreover, there has already been a wealth of local case authorities justifying POs and other intrusively coercive disclosure regimes as “remedies in the armamentarium of the law”. The courts have consistently held that the public interests in having serious crimes (such as corruption) detected and prosecuted outweigh a suspect’s right to privacy: *P v Commissioner of the ICAC*[[40]](#footnote-40). See also *HKSAR v Wong Kwok Hung*[[41]](#footnote-41); and *HKSAR v Chan Kau Tai*[[42]](#footnote-42). These case authorities must apply, *a fortiori*, to conducts endangering national security which strike at the foundation of the “One Country, Two Systems” upon which the very existence and stability of Hong Kong as a Special Administrative Region depends: *Next Digital Limited & Ors v Commissioner of Police*[[43]](#footnote-43).
8. Fourthly, it would not be possible to re-conduct the public interest balance without having regard to the purpose of the investigation. As aforesaid, the purpose of the present investigation is to look at the fund flow and to see if the payments were genuine and for legitimate purposes. In this light, the Personal Data contained in the Disputed Documents are plainly relevant. Besides, the proposed redaction[[44]](#footnote-44) would not serve any meaningful purpose, as the Police is likely to be able to obtain the full personal particulars of the persons concerned from other sources, eg, the bank or the hospital.
9. Fifthly, there are no basis to worry that the Personal Data, once produced to the Police, would be made available to the public. To the contrary, s4[[45]](#footnote-45), Sch 7 contains provisions which restrict dissemination of information obtained by the Police under s2 and s3. The case of *Junior Police Officers’ Association of Hong Kong Police Force & Anor v Electoral Affairs Commission (No 2)*[[46]](#footnote-46)*,* which is about a systemic challenge to a legislative scheme where there was no discretion at all not to make the personal information in question open to public inspection and is based on a factual setting not relating to an investigation, is of no assistance to the Applicants.
10. Lastly, apart from the “Assurance”, the Applicants have not shown that there would be any difficulties for them to comply with the POs. In fact, as aforesaid, the unredacted version of the Disputed Documents have been produced to the Police and sealed.
11. Therefore, the balance of public interest clearly tilts in favour of production.

Conclusion

1. Based on all of the above, I dismiss the Variation Summons. As a result, it would be unnecessary to deal with the Time Summons which is also dismissed.

Costs

1. The general rule is that costs should follow the event. I have taken into account the fact the Applicants are not acting for their self-interest, but the interest of other people to whom the Applicants feel responsible. However, as discussed above, the Applicants’ application for variation clearly lacks merits.
2. Having regard to all the circumstances, in the exercise of my discretion as to costs, I make an order *nisi* that: (1) the Respondent shall have the costs of the Variation Summons, to be taxed if not agreed; and (2) there be no order as to costs as regards the Time Summons.
3. It remains for me to thank counsel for their assistance.

(Alex Lee)

Judge of the Court of First Instance

Mr Robert Pang SC, instructed by Ho, Tse Wai & Partners, for the Applicants

Ms Leona Cheung, Principal Government Counsel (Ag) and Mr Alexander Tang, instructed by Department of Justice, for the Respondent

1. Both of which dated 7.10.2021. [↑](#footnote-ref-1)
2. [A/1] [↑](#footnote-ref-2)
3. [A/2] [↑](#footnote-ref-3)
4. [A/3] [↑](#footnote-ref-4)
5. 2nd Affidavit of A3 (dated 26.10.2021), at [7]. [↑](#footnote-ref-5)
6. Ibid, at [10]. [↑](#footnote-ref-6)
7. BOR 14: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” [↑](#footnote-ref-7)
8. Section 4, PD(P)O: “A data user shall not do an act, or engage in a practice, that contravenes a data protection principle unless the act or practice, as the case may be, is required or permitted under this Ordinance.” [↑](#footnote-ref-8)
9. Sch1, s3(1), PD(P)O: “Personal data shall not, without the prescribed consent of the data subject, be used for a new purpose.” [↑](#footnote-ref-9)
10. [2021] 3 HKLRD 300, at [39]. [↑](#footnote-ref-10)
11. BL 30:

    “The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.” [↑](#footnote-ref-11)
12. [2016] 2 HKLRD 1372 [↑](#footnote-ref-12)
13. **3. Order to make material available**

    (4) The conditions referred to in subsection (2) are—

    (a) where the investigation is into an offence endangering national security, that there are reasonable grounds for suspecting that the offence endangering national security has been committed;

    (b) where the investigation is into a person’s proceeds of an offence endangering national security—

    (i) that the person has committed an offence endangering national security, or that there are reasonable grounds for suspecting that the person has committed an offence endangering national security; and

    (ii) that there are reasonable grounds for suspecting that the person has benefited from an offence endangering national security;

    (c) that there are reasonable grounds for believing that the material to which the application relates—

    (i) is likely to be relevant to the investigation for the purpose of which the application is made; and

    (ii) does not consist of or include items subject to legal professional privilege;

    (d) that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given, having regard to—

    (i) the benefit likely to accrue to the investigation if the material is obtained; and

    (ii) the circumstances under which the person in possession or control of the material holds or controls it, as the case may be. [↑](#footnote-ref-13)
14. [2001] 1 WLR 662, 678H (Judge LJ) [↑](#footnote-ref-14)
15. Supra, at [41] [↑](#footnote-ref-15)
16. See, eg, [A/3/8] [↑](#footnote-ref-16)
17. [1970] AC 942 [↑](#footnote-ref-17)
18. (2007) 10 HKCFAR 293 [↑](#footnote-ref-18)
19. (2019) 22 HKCFAR 446 [↑](#footnote-ref-19)
20. (1943) 3 DLR 441 [↑](#footnote-ref-20)
21. (1980) 30 ACTR 19 [↑](#footnote-ref-21)
22. Submissions of the Applicants, at [15]. [↑](#footnote-ref-22)
23. Supra, at [29]. [↑](#footnote-ref-23)
24. Supra, at [44] [↑](#footnote-ref-24)
25. (2021) 24 HKCFAR 33, at [12]. [↑](#footnote-ref-25)
26. Supra, at [45]-[46] [↑](#footnote-ref-26)
27. [2000] 1 HKLD 647, at 680G-H. [↑](#footnote-ref-27)
28. [2020] 5 HKC 292, at [126]. [↑](#footnote-ref-28)
29. Supra, at 673A, 677D-E. [↑](#footnote-ref-29)
30. Supra, at [46]-[47]. [↑](#footnote-ref-30)
31. Supra, at [66]-[67]. [↑](#footnote-ref-31)
32. Dated 7.10.2021 and 26.10.2021. [↑](#footnote-ref-32)
33. (11) A person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so—

    (a) might tend to incriminate the person; or

    (b) would breach an obligation as to secrecy or another restriction on the disclosure of information or material imposed by statute or otherwise. [↑](#footnote-ref-33)
34. [1987] 1 WLR 1371, at 1373H-1374C [↑](#footnote-ref-34)
35. [1989] 1 WLR 1066 [↑](#footnote-ref-35)
36. [2008] 3 HKLRD 565 [↑](#footnote-ref-36)
37. [1989] Ch 477, at 484A-B. [↑](#footnote-ref-37)
38. See s58(2), PD(P)O. [↑](#footnote-ref-38)
39. Ibid, s60B(a). [↑](#footnote-ref-39)
40. (2007) 10 HKCFAR 293, at [74]. [↑](#footnote-ref-40)
41. [2007] 2 HKLRD 621, at [67]-[68]. [↑](#footnote-ref-41)
42. [2006] 1 HKLRD 400, [116]. [↑](#footnote-ref-42)
43. [2021] 5 HKC 411, at [40]. [↑](#footnote-ref-43)
44. Examples can be seen at [B/5/19-30]. [↑](#footnote-ref-44)
45. **4. Disclosure of information obtained under section 2 or 3 of this Schedule**

    (1) Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap. 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 2 or 3 of this Schedule, that information may be disclosed by any authorized officer to the Secretary for Justice for the purposes of—

    (a) any prosecution of an offence endangering national security;

    (b) an application for a confiscation order under section 9 of Schedule 3 or an application for a forfeiture order under section 13 of Schedule 3; or

    (c) an application for a restraint order or charging order under section 6 of Schedule 3,

    but may not otherwise be disclosed.

    (2) Subject to subsection (1), information obtained by any person under or by virtue of section 2 or 3 of this Schedule may be disclosed by any authorized officer—

    (a) to the Department of Justice and the Hong Kong Police Force; and

    (b) where the information appears to the Secretary for Justice to be likely to assist any corresponding person or body to discharge its functions—to that person or body.

    (3) Subsection (2) is without prejudice to any other right to disclose information obtained under or by virtue of section 2 or 3 of this Schedule that may exist apart from subsection (2).

    … [↑](#footnote-ref-45)
46. [2020] 3 HKLRD 39 [↑](#footnote-ref-46)