

TD responds to HKJA statement

The statement made by the Hong Kong Journalists Association (HKJA) on January 23 on the refined arrangements for issuing Certificate of Particulars of Vehicle (the Certificate) was based on an erroneous interpretation of the Court of Final Appeal (CFA) judgment which led to false accusations against the Transport Department (TD). The TD considers it necessary to make the following response to set the record straight.

The Commissioner for Transport has the right and responsibility to prevent misuse of the vehicle particulars

The judgment of HKSAR v Choy Yuk Ling (Final Appeal No. 2 of 2023 (Criminal)) (the Judgment) handed down by the CFA in June 2023 clearly pointed out that:

- Personal data contained in the register of vehicles (the Register) involved the right to privacy and was entitled to protection (Note 1).
- The Commissioner for Transport (the Commissioner) has the duty to properly manage the data kept in the Register, and to minimise the risk of potential abuse of the data kept therein (Note 2).
- The Commissioner may limit the purposes for which vehicle particulars may be required to be supplied, and is entitled to ask an applicant to provide his own identification details, and the purpose and reason for application for making a decision on whether to issue the Certificate or not (Note 3).

Risk of the original mechanism being abused

The CFA indicated that the phrase "other traffic and transport related matters" included in the original application form was not clear and unambiguous (Note 4), and noted that providing personal data of the vehicle owners under the application mechanism at that time would impose a risk of being abused (Note 5).

In light of the Judgment, the TD should improve the relevant application process and strengthen the regulatory framework, in order to ensure that the purpose of application for the Certificate conforms with the purposes of establishing the Register.

The refined arrangements

The refined arrangements aim to state clearly the purposes of establishing the Register and specify the conditions for issuing the Certificate, in order to ensure that the purpose of application conforms with the purposes of establishing the Register and is lawful and legitimate, and the relevant information will only be used for the purpose(s) as specified in the application, and will not be misused or abused. The refined arrangements stipulate seven specified purposes for which a Certificate could be issued,

and the "Guidance Notes on the Applications for a Certificate of Particulars of Vehicle" (the "Guidance Notes") provide the application procedures, the interpretation and examples of the specified purposes for which a Certificate could be issued, points to note, etc., for applicants' reference.

The refined arrangements have also established an avenue for making applications under "exceptional circumstances". If any person (including journalists) considers that his application does not meet the specified conditions but there is a need to ascertain the registered particulars of a vehicle due to other circumstances that involve the ownership or uses of the vehicle and significant public interest, and wishes the Commissioner to give special consideration for issuance of a Certificate, he may make an application under exceptional circumstances through a written submission to the Commissioner. Details on making an application under exceptional circumstances are also set out in the "Guidance Notes".

"Public interest" is a frequently used concept under common law. As for what matters constitute "public interest" and the weight that should be given, it would depend on the individual circumstances. Upon receiving the applications under exceptional circumstances, in order to discharge the duty of properly managing the Register, the Commissioner would consider each application on a case-by-case basis and will only approve the application if the Commissioner is satisfied that the following conditions are met:

- (1) the applicant's obtaining and disclosure of the vehicle particulars (or part of the particulars) to the applicant is lawful and legitimate;
- (2) the public interest in disclosing the vehicle particulars (or part thereof) to the applicant outweighs the registered owner's right to privacy, and the lawful rights and interests of other persons and society as a whole in the overall circumstances of the case; and
- (3) the concerned particulars will be used by the applicants solely for the stated purpose(s) without any misuse or abuse.

The Commissioner will consider whether to approve an application in accordance with the requirements and relevant factors as set out in paragraphs 15 to 18 of the "Guidance Notes". It is the responsibility of applicants to provide sufficient information to facilitate the Commissioner to make a decision on whether to approve an application or not. All applications would be handled in accordance with the law in a fair and just manner, and the Government has established mechanisms to prevent civil servants from being involved in conflicts of interest in discharging their official duties.

The refined arrangements are in line with human rights protection and the spirit of the CFA Judgment

Freedom of the press is not an absolute right and freedom. Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms guaranteed by the Basic Law and the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong,

including freedom of speech and freedom of the press. However, in accordance with the relevant provisions of the Basic Law and the ICCPR, these rights and freedoms may be restricted as necessary and as prescribed by law for such justifiable reasons as the protection of national security, public order, or the rights and freedoms of others. The right to privacy is also a basic right protected by the relevant provisions of the Basic Law and the ICCPR. The refined arrangements for issuing the Certificate have struck a reasonable balance among all applicable basic rights. The refined arrangements are in line with the spirit of the CFA Judgment.

Notes:

1. Paragraph 31 of Choy Yuk Ling case.
2. Paragraph 35 of Choy Yuk Ling case.
3. Paragraphs 32, 36, 37, 52 and 75 of Choy Yuk Ling case.
4. Paragraph 73 of Choy Yuk Ling case.
5. Paragraph 66 of Choy Yuk Ling case.