

Personal Data Protection Before HK Courts



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12 July 2011

Background

- Personal Data (Privacy) Ordinance 1996
- Consultation 2009
- Proposal and Consultation October 2010
- Personal Data (Privacy) (Amendment) Bill July 2011
- 15 cases before the HK Courts

Question

- In the application and interpretation of the PDPO, how has the Hong Kong Court shaped the “expectation” of Hong Kong citizens on privacy?

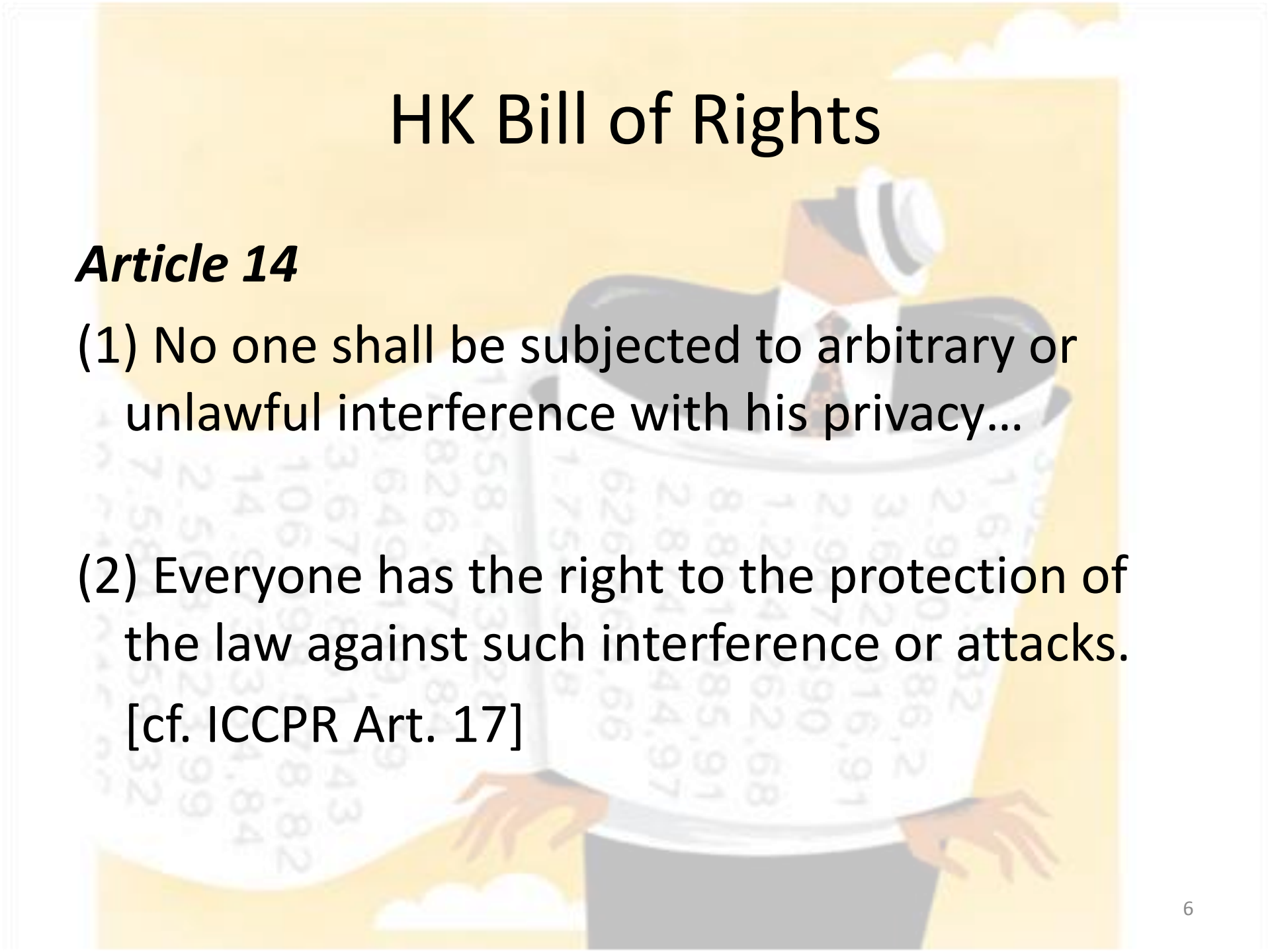
Outline

1. Legal Position on privacy protection in HK
2. Statistical Overview 1996-2010
 - a) Privacy Commissioner's Office
 - b) The Administrative Appeal Board
 - c) The Court
3. Case Analysis on the underlying “Expectation”

Personal Data (Privacy) Ordinance (PDPO)

An Ordinance to protect the privacy of individuals in relation to personal data, and to provide for matters incidental thereto or connected therewith.

HK Bill of Rights

A stylized illustration of a man in a dark suit, white shirt, and a white hat with a dark band. He is holding a large, white, shield-shaped object in front of his chest. The shield is covered with various numbers in different colors and sizes, some appearing to be floating or scattered around it. The background is a light yellow color with some white cloud-like shapes at the top and bottom.

Article 14

- (1) No one shall be subjected to arbitrary or unlawful interference with his privacy...
- (2) Everyone has the right to the protection of the law against such interference or attacks.
[cf. ICCPR Art. 17]

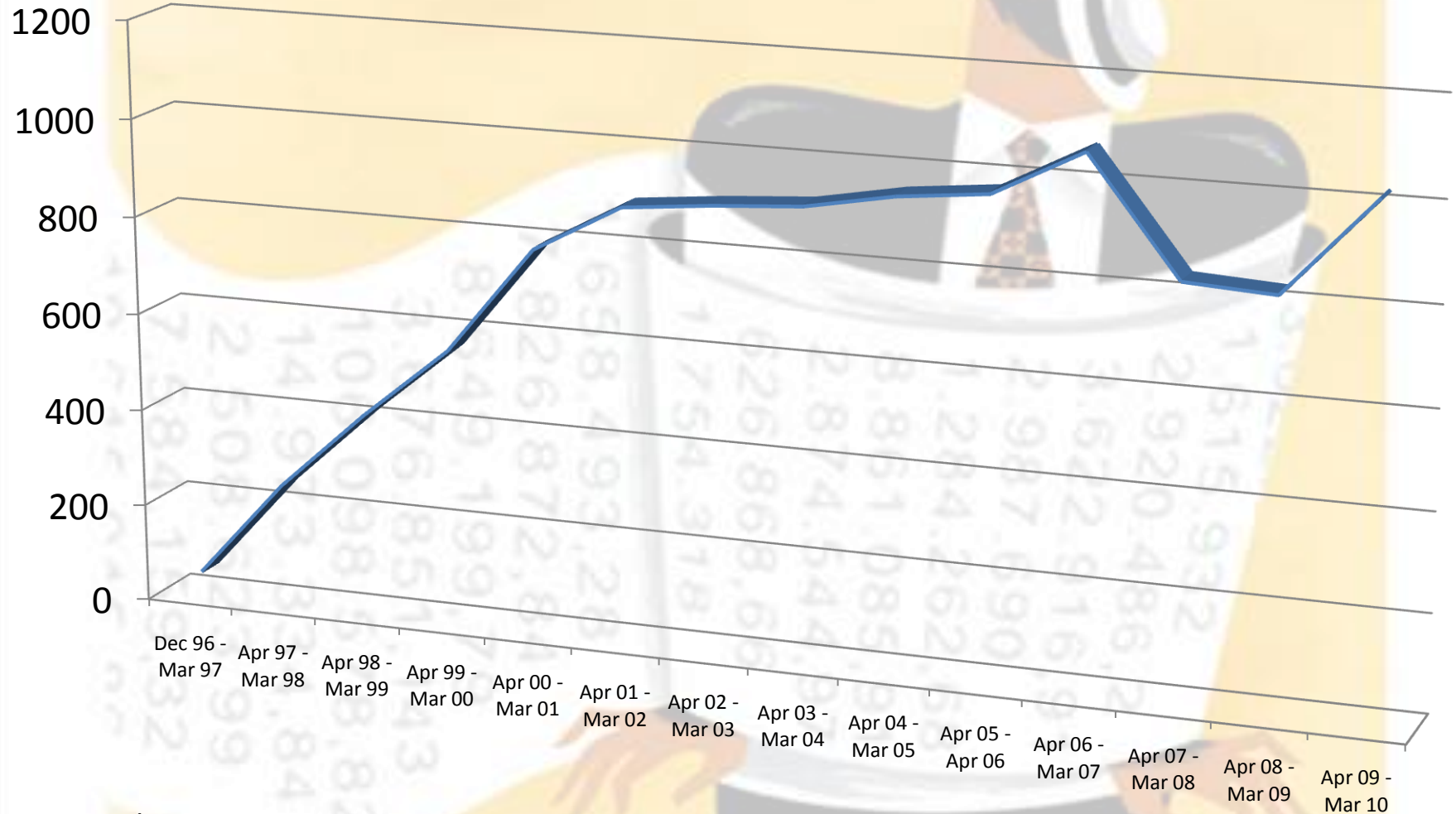
Common Law Position in the UK

Campbell v MGN (2005)

- ‘the touchstone of private life is whether in respect of the disclosed facts the person in question had a reasonable expectation of privacy’. (Lord Hope)



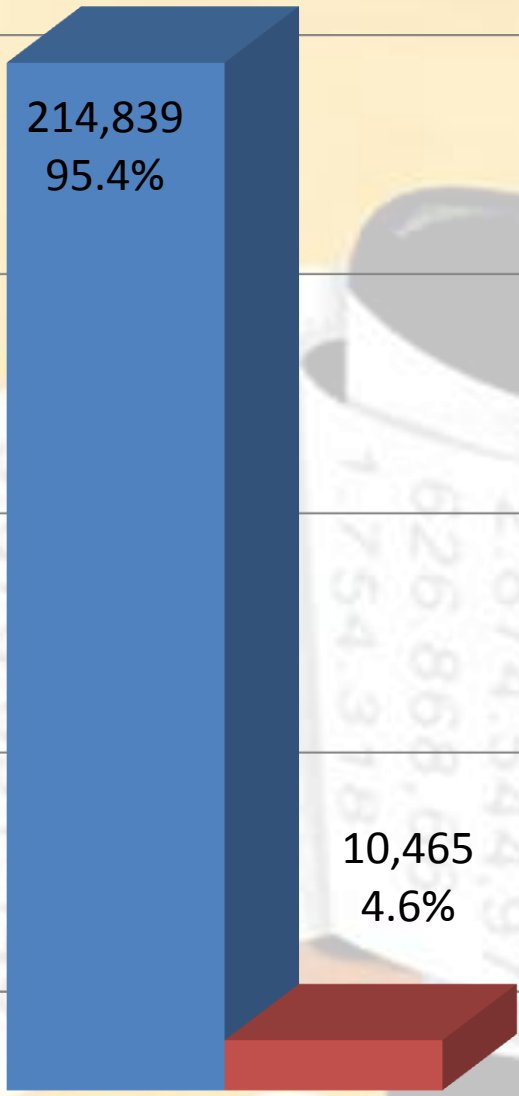
PCPD Annual Complaint Caseload, 1996 -2010



Total: n=10465

PCPD Caseload Comparison, 1996 -2010 (March)

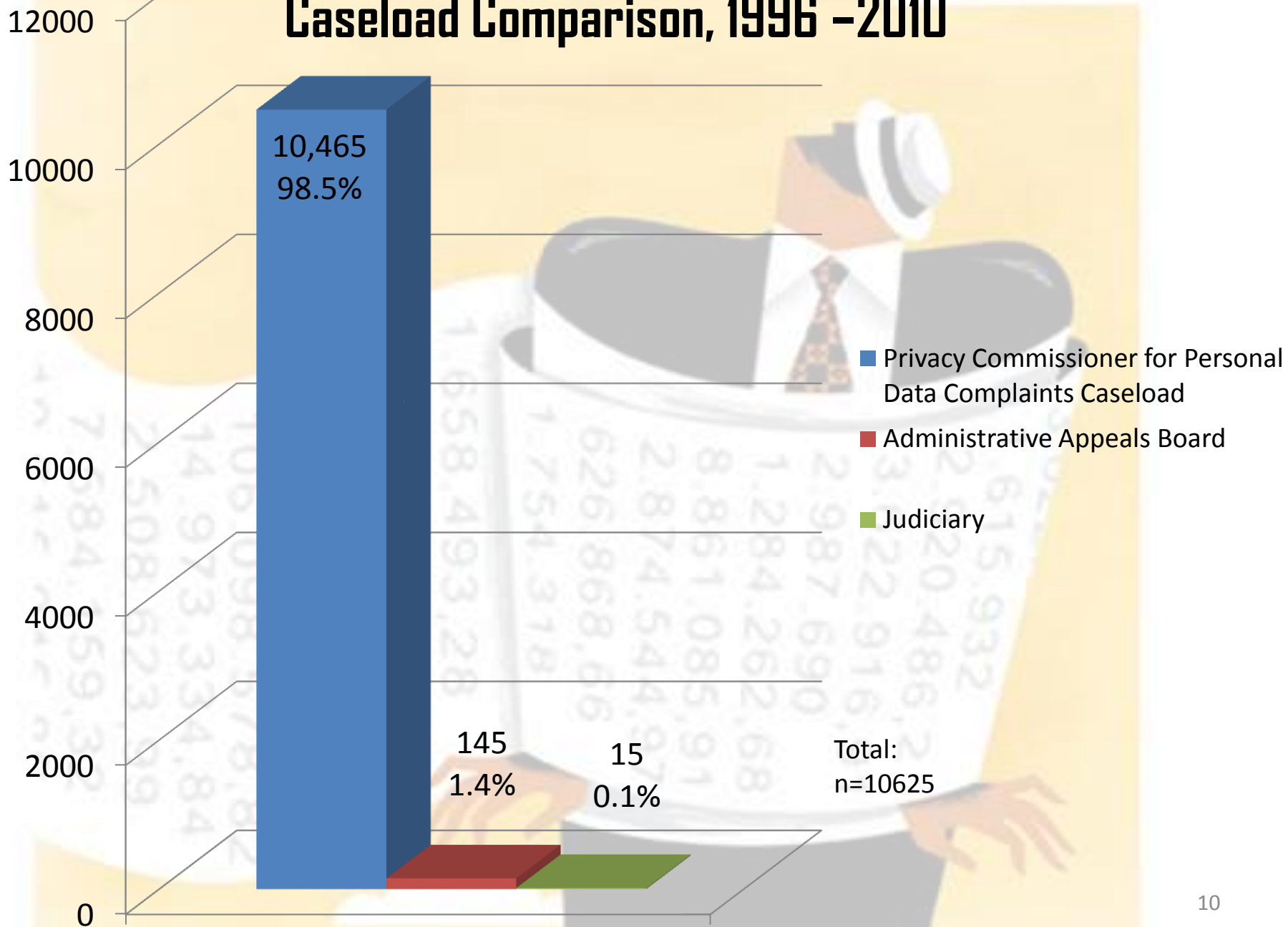
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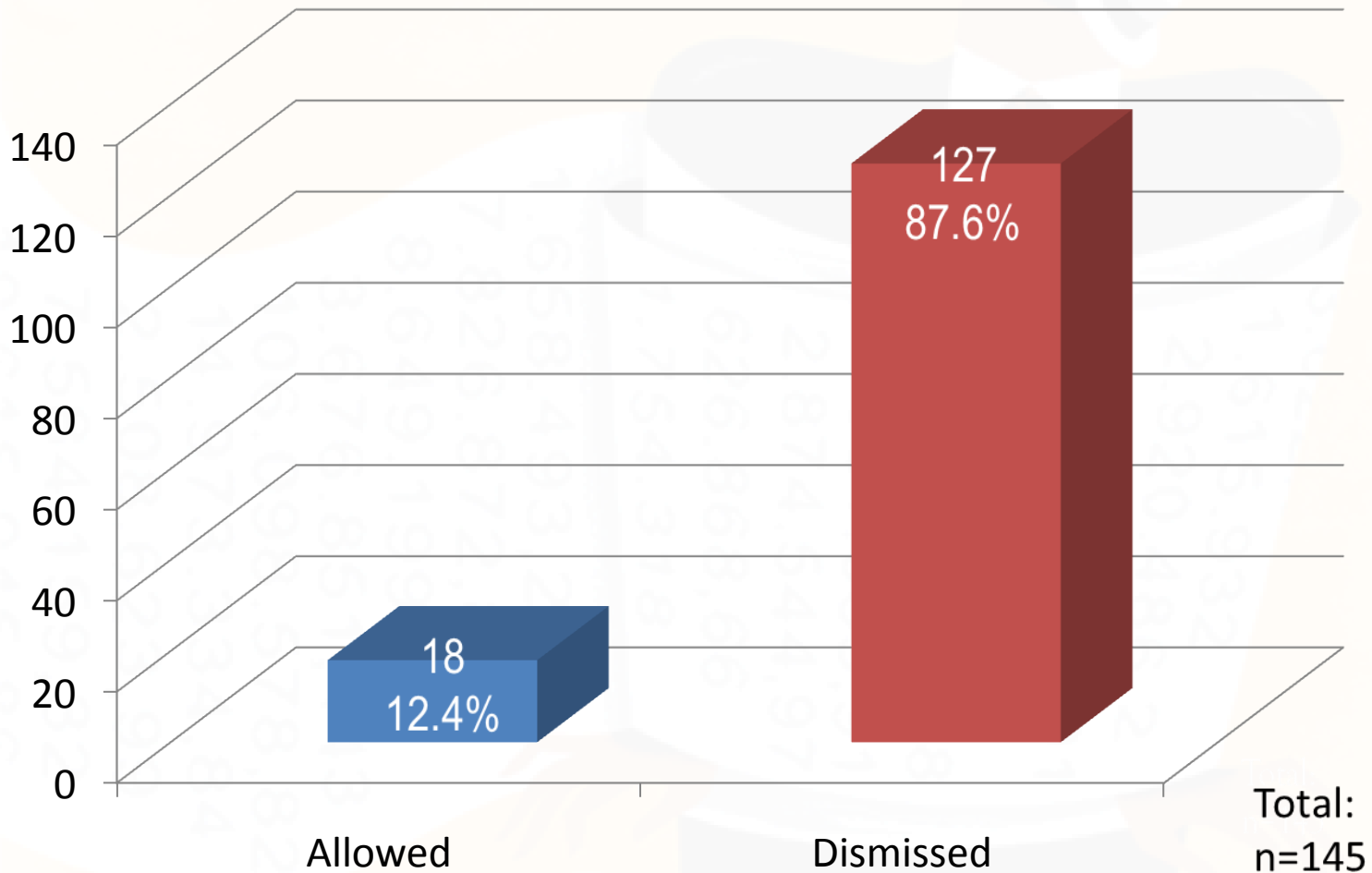
- Privacy Commissioner for Personal Data Enquiries Caseload
- Privacy Commissioner for Personal Data Complaints Caseload

Total:
n=225304

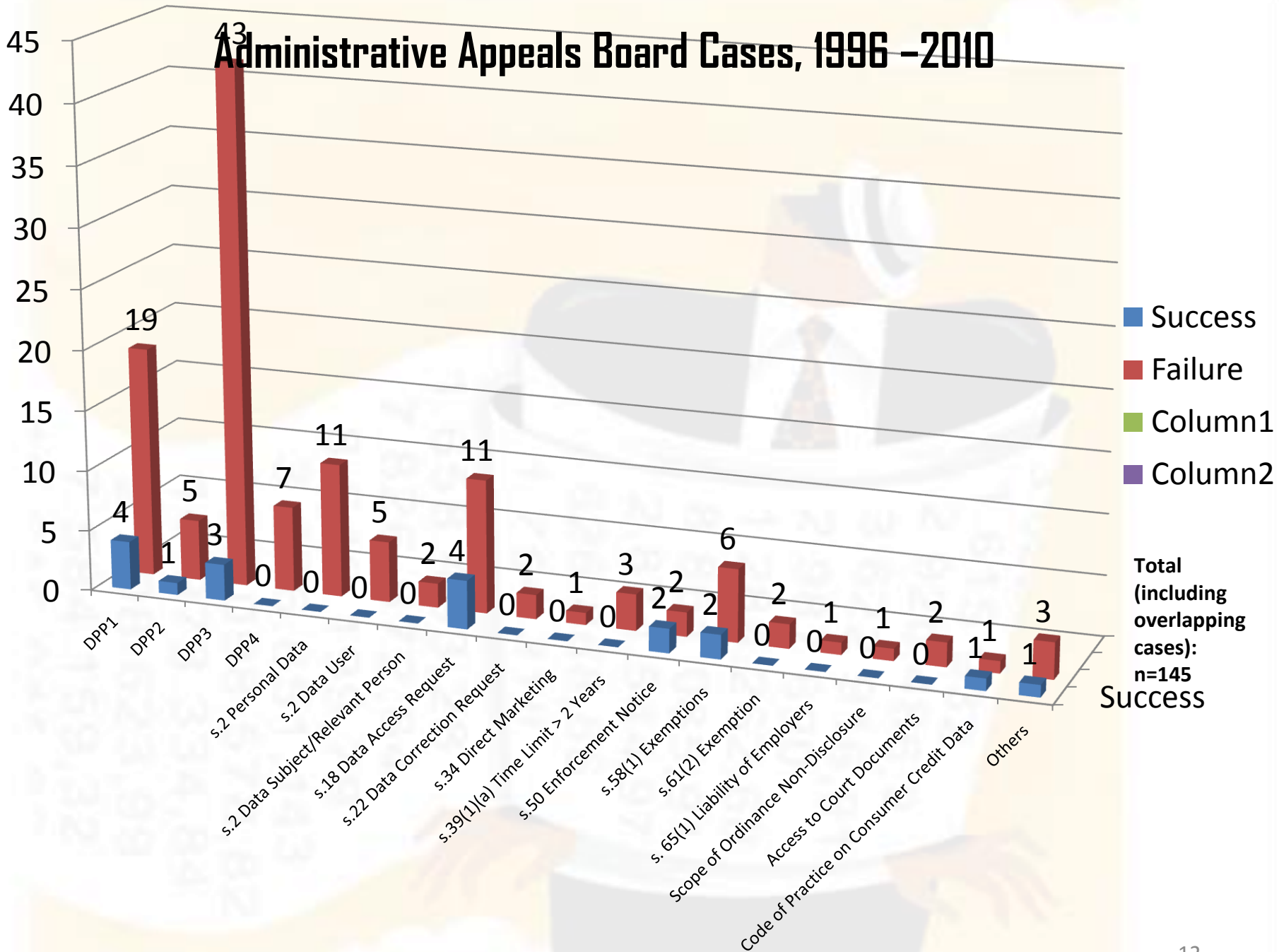
Caseload Comparison, 1996 -2010



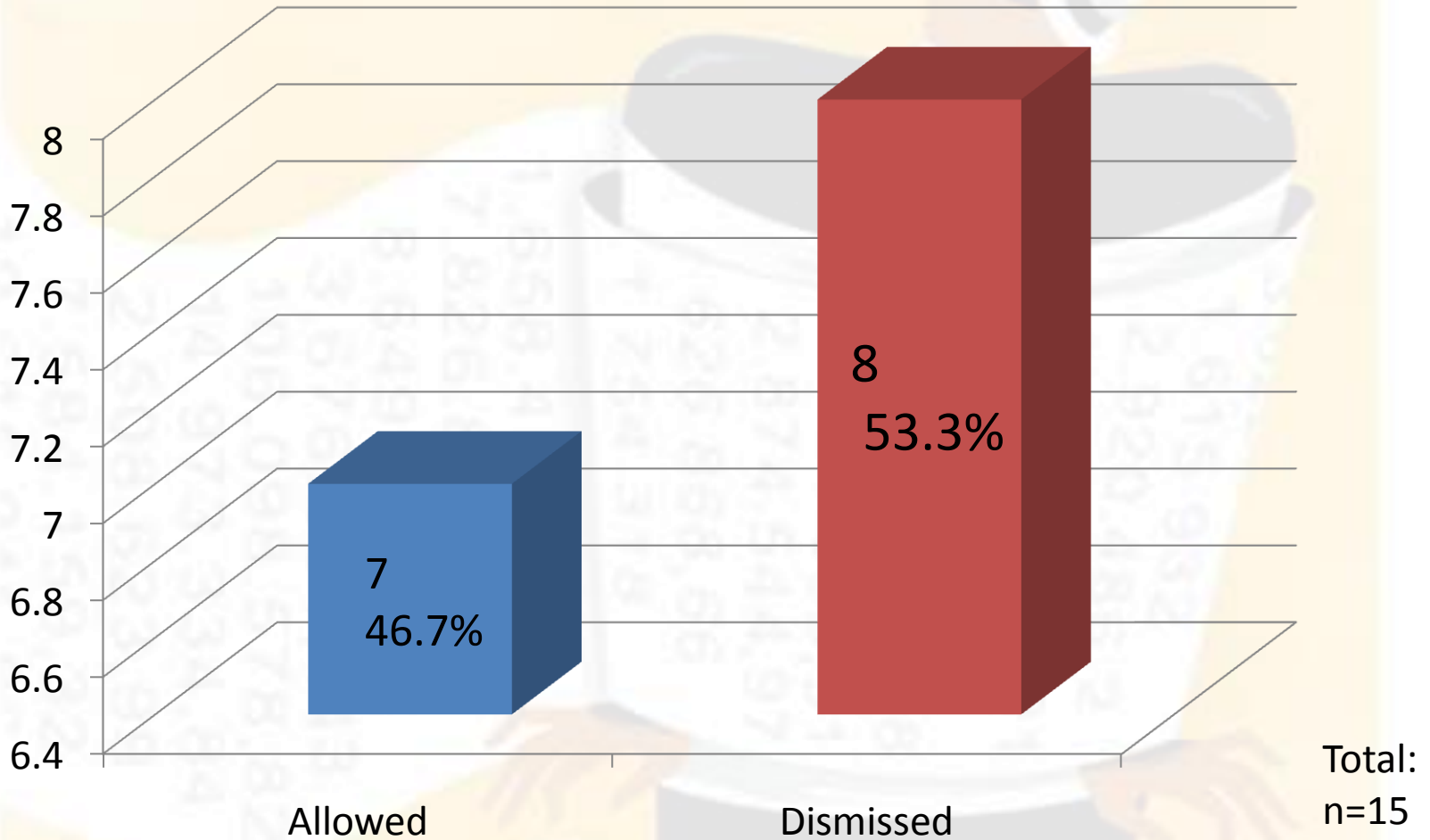
Cases and Result Before the Administrative Appeal Board, 1996-2010



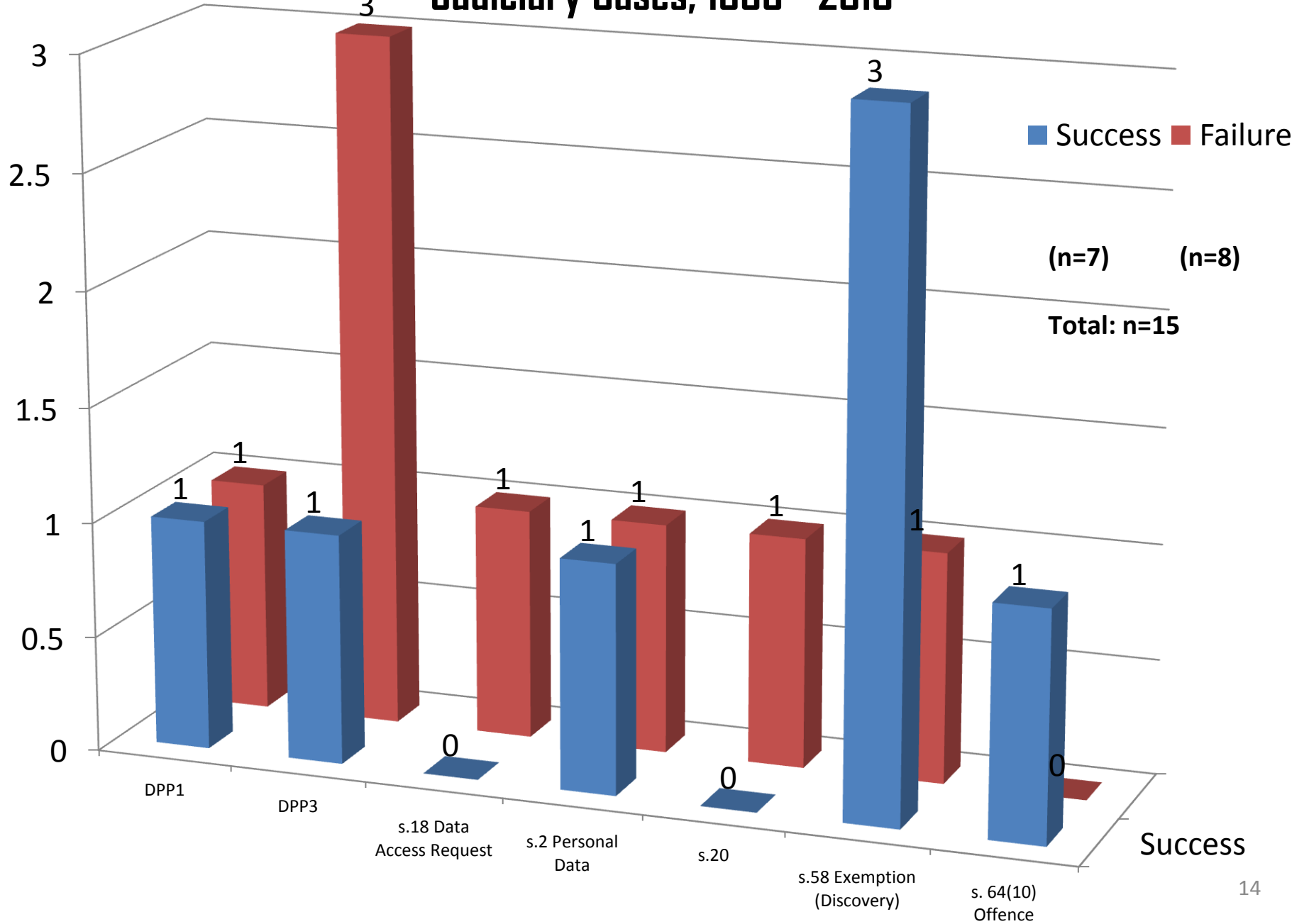
Administrative Appeals Board Cases, 1996 - 2010



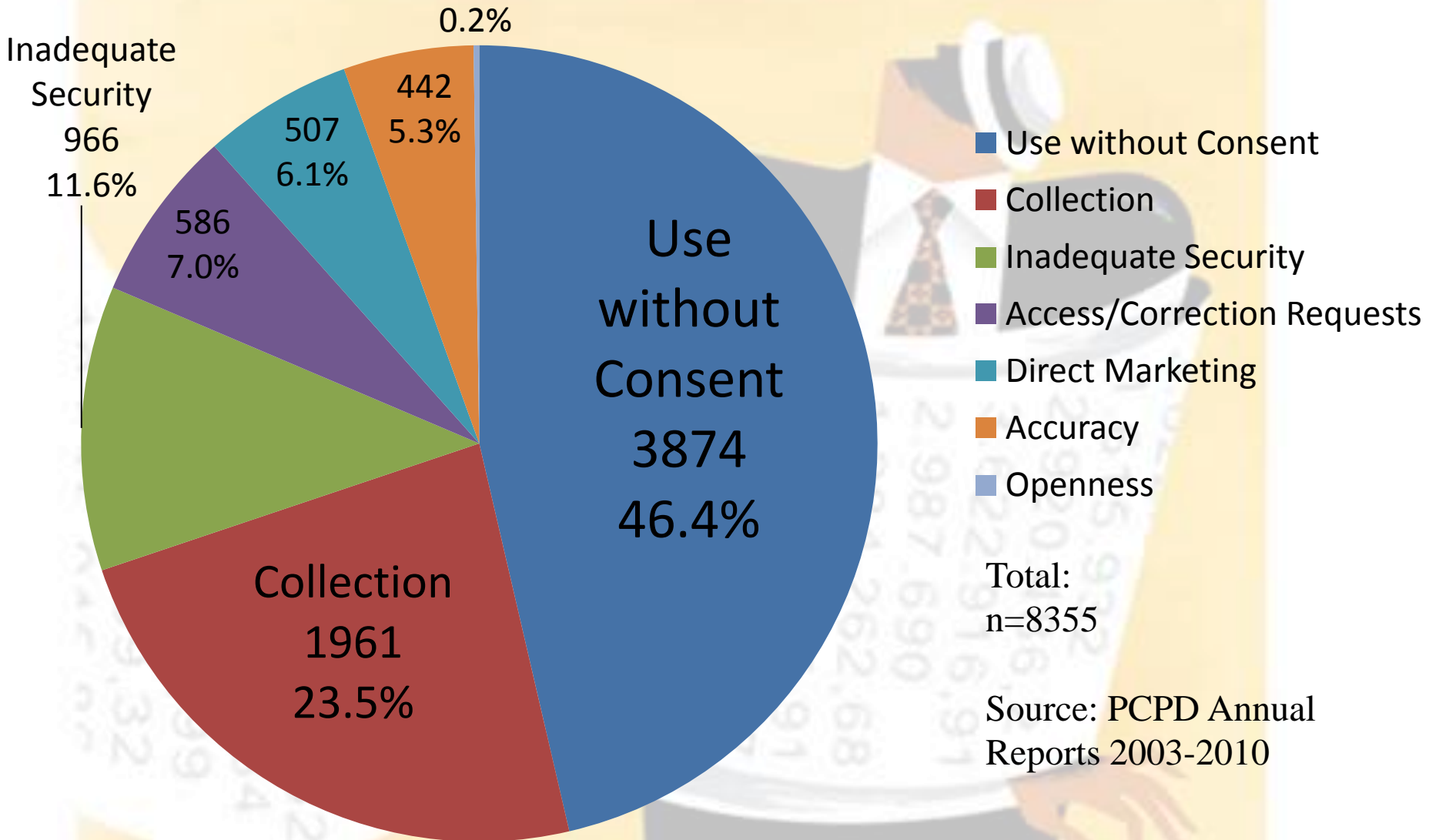
Cases and Result Before Courts, 1996-2010



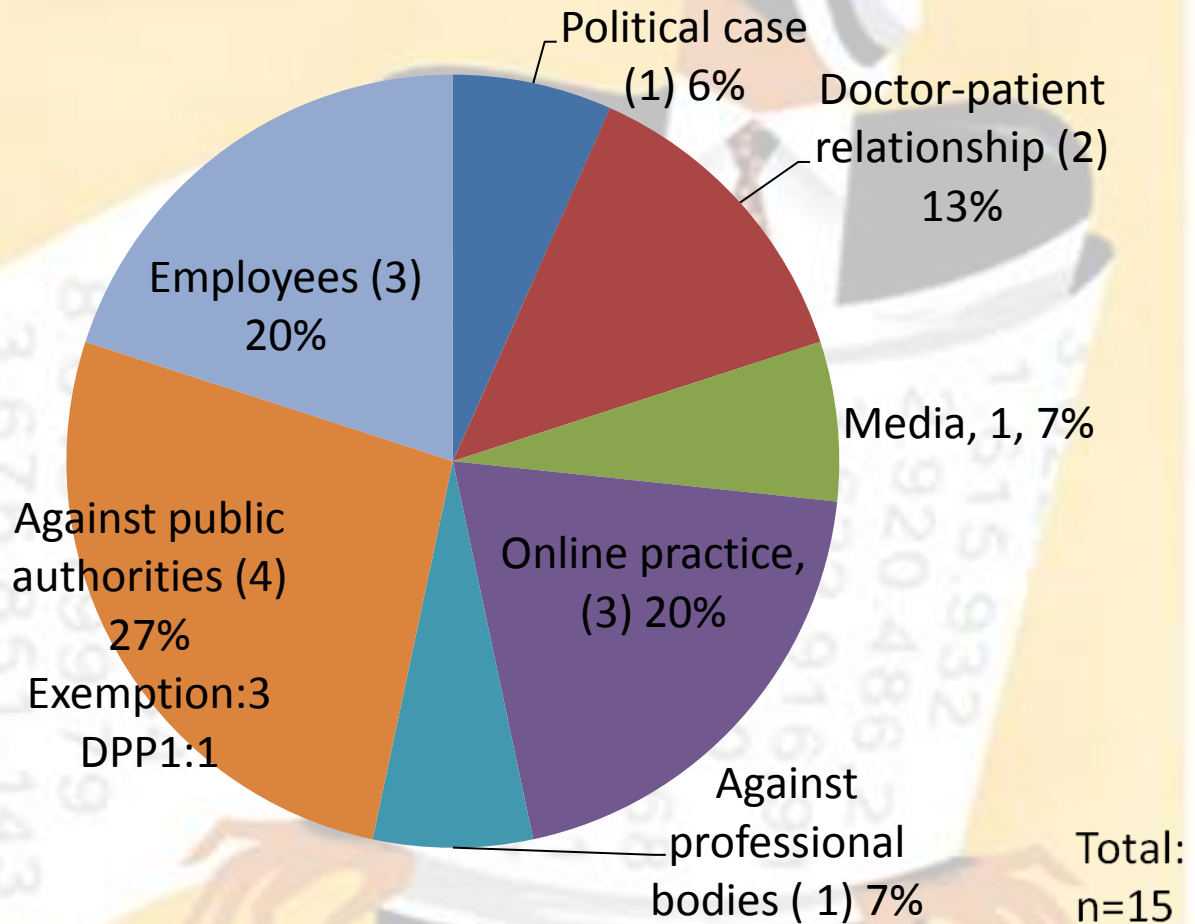
Judiciary Cases, 1996 - 2010



PCPD Nature of Complaints (Major Categories) 2003-2010



Some Features of Cases Before Courts



1. Against Public Authorities

- Cases against authorities on s. 58
- 1997-2003
- Prevention,...or unlawful or seriously, conduct, or dishonestly or malpractice by persons

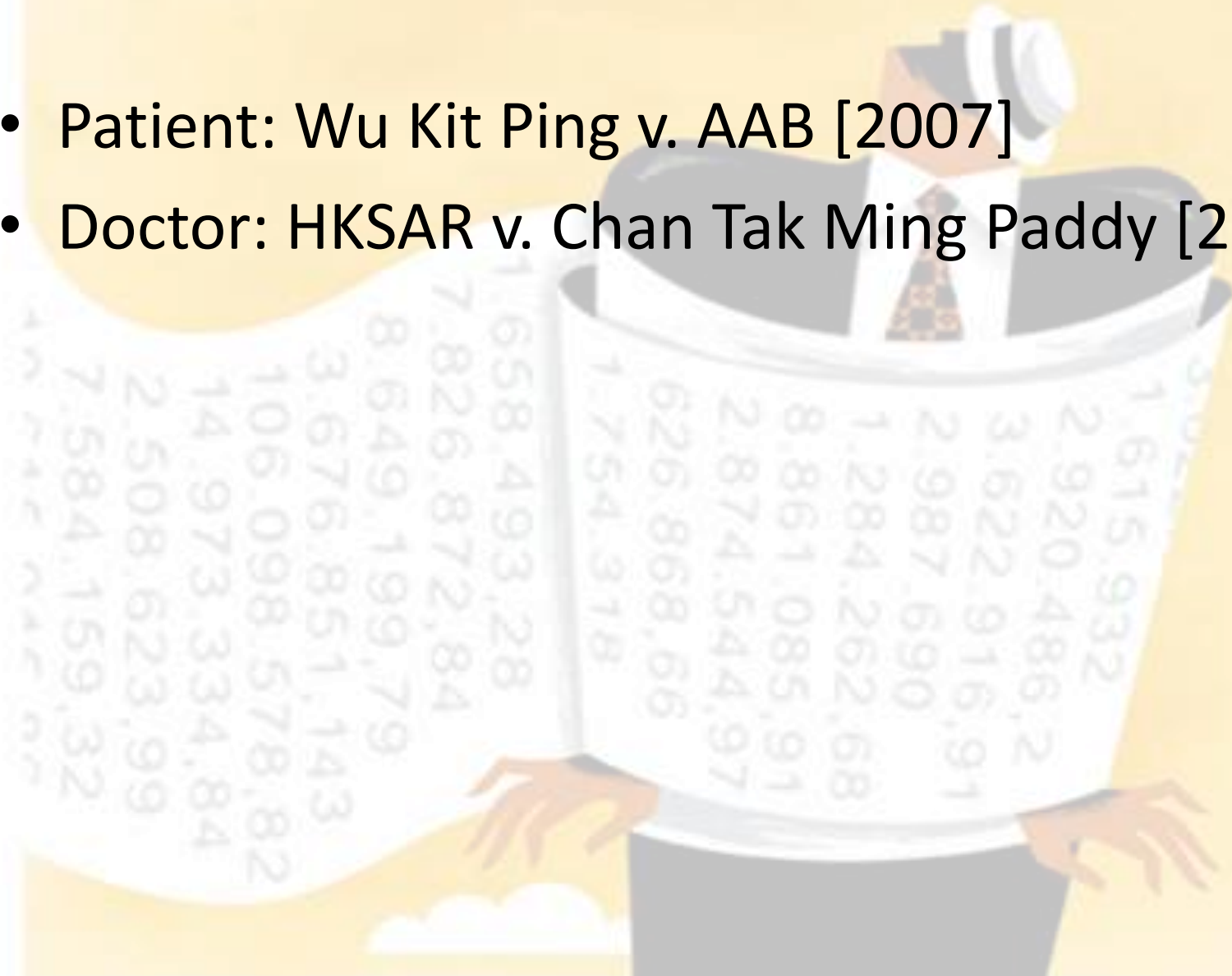


Hospital Privacy (Mainly USB) Leakages

Date	Incident
25-26 April 2008	Tuen Mun Clinic (665 patients); United Christian Hospital (26 patients); Kowloon Hospital (5 patients).
28 April 2008	Pamela Youde Nethersole Eastern Hospital (50 patients)
5 May 2008	Pamela Youde Nethersole Eastern Hospital (983 patients); Kowloon Hospital (43 patients); Queen Mary Hospital (3000 patients); Tuen Mun Hospital (1885 patients)
6 May 2008	Privacy Commission releases news Prince of Wales Hospital (10,000 patients)
20 March 2009	United Christian Hospital (47 patients)
11 April 2009	United Christian Hospital (8 patients)

2. Doctors-Patients Relationship

- Patient: Wu Kit Ping v. AAB [2007]
- Doctor: HKSAR v. Chan Tak Ming Paddy [2003]



3. Online Practice

- P2P file sharing: Cinepoly Records Ltd (2006)
- Online 'revenge' against one boss: Hui KC v PC (2009)
- IP address (Shi Tao case from ABB)

Cinepoly Records Ltd (2006)



Hui Kee Chun v The PC (CA 2009)



Shi Tao v PC (AAB 2007)



Shi Tao

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Hong Kong Law

- By furnishing information to the Mainland authorities, has it breached the PDPO?



But

- Was personal data involved?
- Yahoo! (HK) provided the
 1. User registration information
 2. IP log-in information
 3. And certain email contents
- Claimed not aware of the exact nature of investigation and the real identity of the user in the PRC
- The HK Privacy Commissioner ruled...

A stylized illustration of a man in a white suit, a patterned tie, and a white hat. He is holding a large white bowl filled with various numbers. The background is a light yellow with a faint pattern of numbers. The word 'YAHOO!' is written in large, red, bold letters at the bottom right.

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Because...

- IP address and log on information *per se* were only indirect evidence relating to an individual
- Only a telephone no., a business address and a computer could be deduced
- IP address alone was not considered capable of directly identifying an individual conclusively

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Yahoo Inc. Cleared in Hong Kong Case

SYLVIA HUI
Associated Press
Wednesday, March 14, 2007, 5:52 AM

HONG KONG -- Yahoo Inc. did not violate Hong Kong's privacy laws when it provided prosecutors with information about a Chinese reporter accused of leaking state secrets, authorities said Wednesday.

Tao, a former journalist for the Dangdai Shangbao or Contemporary Business Newspaper in the central province of Hunan, was sentenced last year to 10 years on charges of leaking state secrets.

Tao was alleged to have e-mailed the contents of a secret official memo about media restrictions to the U.S.-based Democracy Forum web site.

Human rights activists criticized Yahoo Inc. after it emerged that the Hong Kong branch had given prosecutors e-mail from Shi's account.

Hong Kong's privacy commissioner said in a statement Wednesday that there was not enough evidence to support the view that Yahoo Hong Kong violated privacy laws.

The statement was in response to a complaint from Hong Kong lawmaker Albert Ho who said last year he had obtained a document implicating the company to Shi's case.

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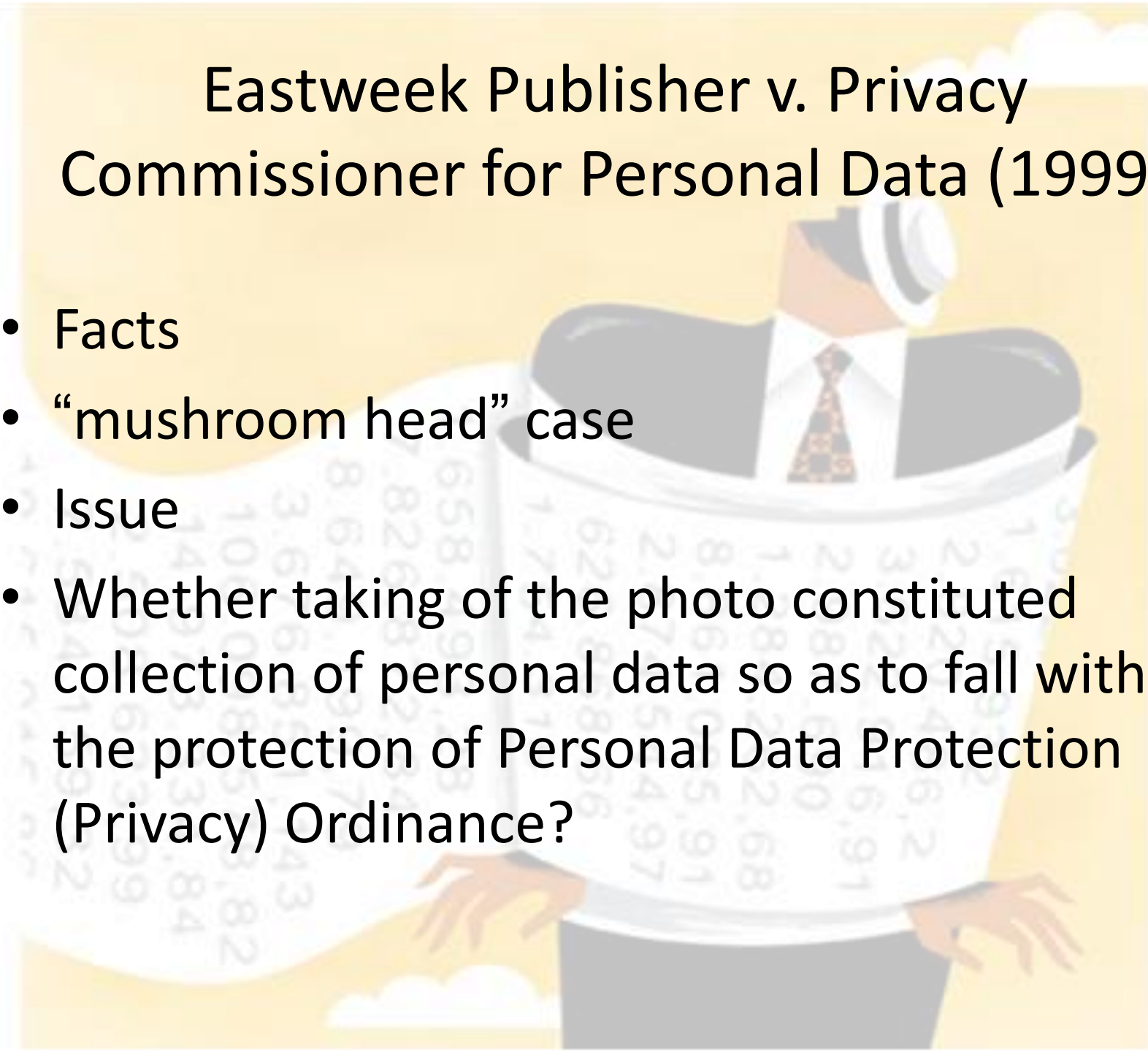


4. Media Practice



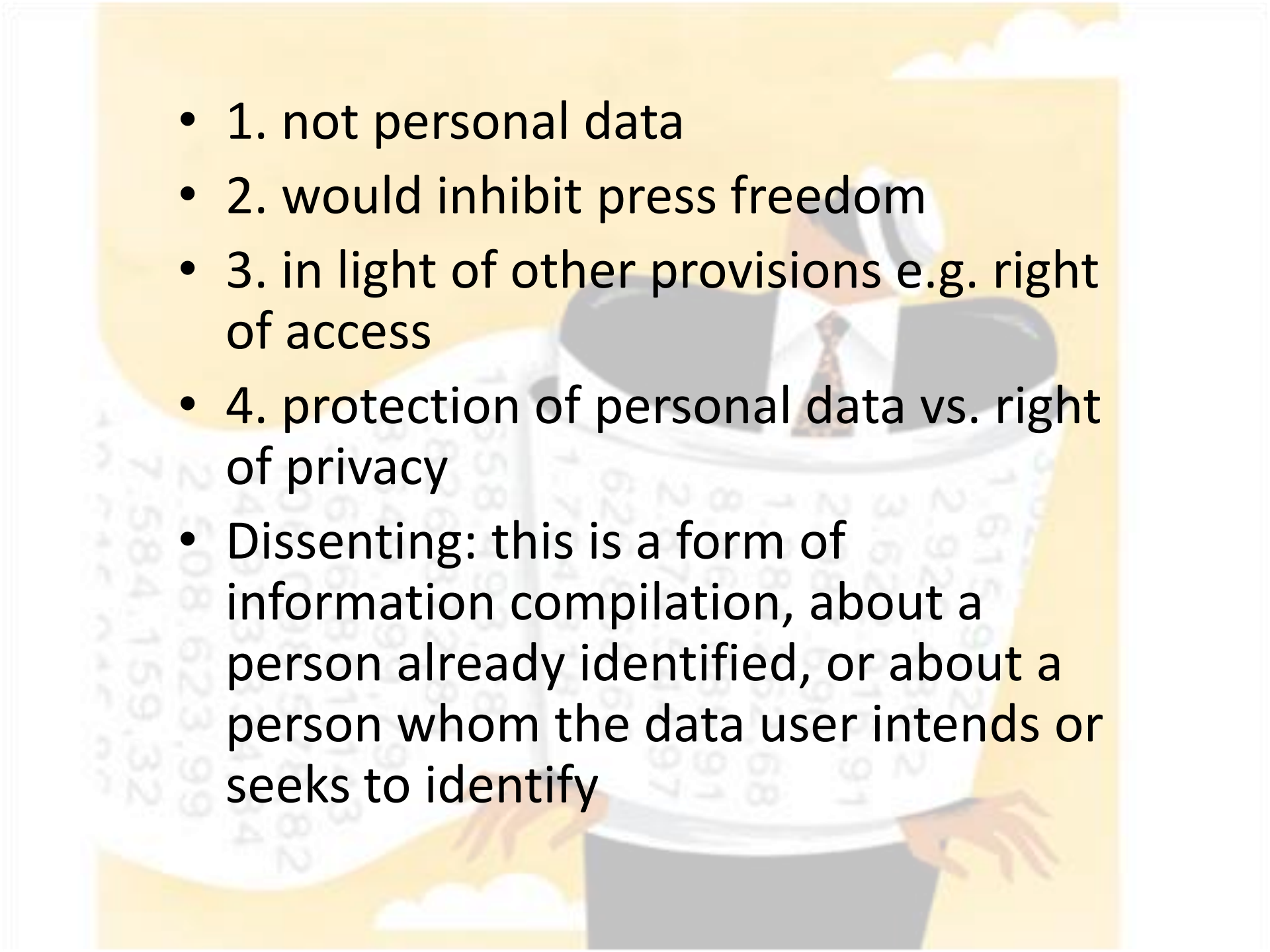
Eastweek Publisher v. Privacy Commissioner for Personal Data (1999)

- Facts
- “mushroom head” case
- Issue
- Whether taking of the photo constituted collection of personal data so as to fall within the protection of Personal Data Protection (Privacy) Ordinance?



Application of the Law

- Must be identifiable and retrievable; Her identity was not essential, anonymous subject, not intended to be retrievable, not interested in her as an identified individual
- Legitimate journalistic activity and photo-journalism
- A form of malicious amusement, may be unfair, but not within the Ordinance,

- 
- 1. not personal data
 - 2. would inhibit press freedom
 - 3. in light of other provisions e.g. right of access
 - 4. protection of personal data vs. right of privacy
 - Dissenting: this is a form of information compilation, about a person already identified, or about a person whom the data user intends or seeks to identify

Conclusion: “Expectation” of Personal Data/ Privacy Protection

Relatively Settled Areas

- Public authorities on exemption s. 58
- Doctor-patient relation
- Employment relation

Evolving Areas

- Online practice: 63.2% worried
- Media: 64.7% do not trust the media