

Committee on Access to the Legislature's Documents and Records

Practice and Procedure

Committee on Access to the Legislature's Documents and Records

The Committee on Access to the Legislature's Documents and Records ("CoA") is set up under Rule 74A(1) of the Rules of Procedure ("RoP") to:

- (a) determine that a document or record of the Legislature (or its committee) should be made available for access earlier than the expiry of the closure period prescribed by the Legislature (or its committee) or 50 years since the existence of such a document or record, whichever is shorter;
- (b) set guidelines for implementing the Policy;
- (c) consider any objection against the denial of access to such a document or record by the Clerk to the Legislative Council ("the Clerk") under Rule 6(5A)(b) of RoP; and
- (d) consider any other matter relating to or arising from the Policy.

Membership, term of office, chairmanship and quorum

2. Under Rule 74A(2) of RoP, CoA shall consist of the President of the Legislative Council ("LegCo") (as the Chairman of CoA), the Chairman of the House Committee ("HC") (as Deputy Chairman of CoA), the Deputy Chairman of HC, and not more than 10 other members elected in a manner determined by HC. The election procedure determined by HC is in **Annex I**. In accordance with Rule 74A(3) of RoP, the term of office of the elected members shall be one year or until the next HC meeting held for the election of members, whichever is the earlier.

3. All meetings of CoA are chaired by the Chairman or, in his absence, by the Deputy Chairman. In accordance with Rule 74A(5) of RoP, in the event of the temporary absence of the Chairman and Deputy Chairman, CoA may elect from among its members a chairman to act during such absence.

4. In accordance with Rule 74A(4) of RoP, the Chairman and three other members shall constitute a quorum of CoA.

Voting

5. Under Rule 74A(6) of RoP, all matters before CoA shall be decided by a majority of the members voting. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall give a casting vote. In accordance with Rule 79A of RoP, the Chairman or member presiding, in exercising his casting vote on a matter before CoA, shall not exercise the vote in such a way as to produce a majority vote in favour of the question put.

Conduct of meetings and circulation of papers

6. In accordance with Rule 74A(7) of RoP, CoA shall meet at the time and the place determined by the Chairman. Written notice of every meeting shall be given to the members at least three days before the day of the meeting but shorter notice may be given if the Chairman so directs.

7. As the main function of CoA is to determine that a document or record of the Legislature (or its committees) should be made available for access earlier than the expiry of the closure period specified in Schedule 2 to RoP and to consider any objection against a denial of access by the Clerk (paragraph 13 below) or committees which are in operation (paragraph 15 below), all meetings of CoA are closed meetings to ensure that all information contained in such documents or records and all papers for the closed meetings held to consider such access request will not be disclosed until CoA has determined that the documents or records may be made available for access.

8. In accordance with Rule 74A(9) of RoP, where the Chairman so orders, any matter for the decision of CoA may be considered by circulation of papers to members and each member may signify his approval in writing submitted to the Chairman. The matter shall be deemed to be approved by CoA if a majority of the members so signify before the expiry of the period specified by the Chairman for the purpose and no member has in writing submitted to the Chairman before the specified period signified disapproval of the matter or requested that the matter be decided at a meeting of CoA. For the purpose of this rule, the period to be specified by the Chairman would normally be not less than three days.

9. If a CoA member requests to decide a matter at a meeting of CoA, the Chairman will convene a meeting to consider the matter. The member concerned should submit the reason(s) for holding such meeting in writing for the CoA's consideration.

Granting of access prior to expiry of closure periods under Rule 74A(1)(a) of RoP

Documents and records of the Legislature (excluding its committees)

10. For the handling of request for access to the documents or records of the Legislature of the current and previous term prior to the expiry of the applicable closure period under Rule 74A(1)(a) of RoP (paragraph 1(a) above), the Clerk shall conduct a review to determine whether such documents or records fall within any of the exemptions set out in **Annex II** and, if appropriate, conduct a review as contemplated under paragraph (b) of Schedule 2 to RoP. If the Clerk considers that the access request should be granted or granted with conditions, CoA's approval should be sought under Rule 74A(1) of RoP as to whether such documents and records should be made available for access before the expiry of the closure period specified in paragraph (a) of Schedule 2 to RoP.

11. For the purpose of seeking CoA's approval as to whether documents and records should be made available for access before the expiry of the closure period as mentioned in paragraph 10 above, the Clerk should submit a review report to CoA. Information including the name(s) of applicant(s), information requested by applicant(s), nature of documents and records (i.e. classified or unclassified, years of existence and other relevant information), and the Clerk's recommendations with justifications on the access request should be provided in the review report.

12. Unless the Chairman orders otherwise, CoA's approval will be sought by circulation of the Clerk's review report in accordance with the procedures set out in paragraph 8 above. The documents or records concerned should also be made available for inspection by CoA members in the LegCo Archives once the Clerk's report is issued to CoA members. The inspection period will normally be not less than three days.

13. The Clerk to LegCo may deny access to a document or record of the Legislature after having conducted a review of it on the ground of its falling within any of the exempted categories (**Annex II**), or in accordance with any guidelines set by CoA under Rule 6(5A)(b) of RoP. CoA's determination is not necessary.

Documents and records of a committee which is not in operation

14. For the handling of a request for access to the documents or records of a committee which has been dissolved within the term of the Legislature or is a defunct committee, the procedures set out in paragraphs 10 to 13 of above will apply.

Documents and records of a committee which is in operation

15. An access request for the documents or records of a committee which is in operation will be referred to the committee concerned for consideration. The committee concerned will decide whether such documents or records can be made available for access. To facilitate the committee to consider the access request, the Clerk to the committee concerned shall conduct a review to determine whether such documents or records fall within any of the exemptions set out in **Annex II** and submit a review report to the committee. Information including the name(s) of applicant(s), information requested by applicant(s), nature of documents and records (i.e. classified or unclassified, years of existence and other relevant information), and the Clerk's recommendations with justifications on the access request should be provided in the review report. The committee concerned may also deny access to its documents or records if any of them falls within any of the exempted categories set out in **Annex II**¹. CoA's determination is not necessary.

Granting of access upon expiry of closure periods under Rule 74A(1)(a) of RoP

16. In accordance with paragraph (a) of Schedule 2 to RoP, upon the expiry of the relevant closure period of a document or record, access may be granted so long as it is not prohibited by law and the Clerk has conducted a review to confirm as such. CoA's determination is not necessary.

Provision of access

17. Once a document and record is made available for access, the same set of information, and the same conditions of use, if any, will apply to future access requests for such information to the extent that they are applicable.

Partial disclosure

18. In the event that part of the information in the document or record requested falls under one or more of the exempted categories and is denied

¹ CoA will issue guidelines to assist committees in handling access requests.

public access, access to the remaining part of the document or record may be granted. Partial disclosure may take the form of extract, summary or redaction as practicable, provided that it will not distort the meaning of the document or record made available for access.

Handling of requests made by LegCo Members

19. Incumbent LegCo Members will, upon request, be allowed to access the confidential or closed documents or records of a committee which has been dissolved within the current term of the Legislature or a defunct committee, subject to the following conditions:

- (a) the Member concerned is a former member of the committee and access will be granted to the relevant documents or records insofar as these documents or records are those that the Member concerned was entitled to access whilst he was a member of the committee concerned;
- (b) the Member concerned confirms by signing a confidential undertaking that he will not make available or disclose to the public the documents or records (or their copies), or the information therein, in respect of which access was granted;
- (c) where copies of the documents or records in respect of which access was granted are provided to the Member concerned, the Member concerned undertakes that he will return such copies after use; and
- (d) the approval of CoA has to be obtained in accordance with the procedure set out in paragraphs 10 to 16 above if the Member concerned wishes to make available or disclose to the public the documents or records (or their copies), or the information therein, in respect of which access was granted.

20. The arrangement set out in paragraph 19 above does not apply to access requests made by former Members of the Legislature. Their requests will be handled in the same manner as those made by members of the public (paragraphs 10 to 16 above).

Handling of requests made by government bureaux/departments ("B/Ds")

21. B/Ds will be allowed to access the following documents or records upon their requests without the need to go through the current procedure set out in paragraphs 10 to 16 above:

- (a) discussion papers and correspondences issued by B/Ds concerned or their predecessors; and
- (b) documents or records prepared by the LegCo Secretariat which had been provided or issued to B/Ds concerned or their predecessors before the committee concerned was dissolved or became defunct (e.g. minutes of meetings between Members and B/Ds concerned).

22. For documents and records mentioned in paragraph 21(b) above, B/Ds concerned should confirm by signing a confidential undertaking that they will not disclose to the public the documents or records (or their copies), or the information therein, in respect of which access was granted. The approval of CoA has to be obtained in accordance with the current procedure set out in paragraphs 10 to 16 above if B/Ds concerned wish to make available or disclose to the public the documents and records (or their copies), or the information therein, in respect of which access was granted.

Handling of objection against a denial of access to a document or record under Rule 74A(1)(c) of RoP

23. If access to a document or record is denied by the Clerk (paragraph 13 above) or any committee of the Legislature which is still in operation (paragraph 15 above), the applicant will be informed of the denial with reasons in writing ("decision notice"). CoA will also be informed of cases of denial of access periodically.

24. Should the applicant wish to object to the decision of the Clerk or committee, he may raise an objection and make a submission in writing to the Clerk to CoA within 14 days of the date shown on the notice of decision. CoA will not consider the objection if the applicant has not submitted the objection in writing within the above time limit.

25. CoA will consider the applicant's objection together with his written submissions and may affirm, vary or overturn the decision of the Clerk. To facilitate the consideration by CoA of the objection, the Clerk or committee concerned is required to submit a report setting out the reasons of denial for CoA's consideration. The report prepared by the Clerk or committee concerned will be circulated to CoA for consideration in accordance with the procedures

set out in paragraph 8 above. The documents or records concerned should also be made available for inspection by CoA members in the LegCo Archives for normally not less than three days. If CoA considers it necessary, it may in writing invite the applicant to make further written submissions within the period specified in such invitation. If the applicant makes such further written submissions within the specified time, CoA shall consider such further written submissions before deciding whether it would affirm, vary or overturn the decision of the Clerk that is being objected to.

26. The decision of CoA is final. The applicant who raises objection will be informed of CoA's decision in writing.

Confidentiality undertaking

27. In determining whether a document or record should be allowed access, members of CoA may peruse the document or record but may not disclose any information contained therein unless and until CoA has determined that the document or record may be made available for access. On the commencement of a term of office, Members of CoA are required to sign a confidential undertaking that they shall not divulge such information and any information relating to the deliberations at meetings of CoA held in camera without CoA's consent.

Access requests and objections from members of CoA

28. No member of CoA (including Chairman and Deputy Chairman) shall participate as a member of CoA in the handling of a request or an objection made by himself/herself or at the meetings of CoA to deliberate on such a request or objection.

Report of CoA

29. Under Rule 74A(10) of RoP, CoA may make such reports on its work as it considers appropriate to the Council. CoA would normally submit a report to the Council on its work and may make other reports to the Council on matters relating to or arising from the Policy on Access to the Legislature's Documents and Records set out in Schedule 2 to RoP as it considers necessary.

Publishing lists of approved and denied requests on LegCo Website

30. The following information should be published on the LegCo Website periodically –

- (a) a list of access requests approved by CoA or acceded to by the Clerk to LegCo pursuant to paragraph (c) of the Policy on Access to the Legislature's Documents and Records in Schedule 2 to RoP; and
- (b) a list of access requests denied by the Clerk to LegCo with the reason(s) for denial.

Updating of practice and procedure

31. Subject to RoP, CoA may amend, add to and supplement this practice and procedure from time to time.

Interpretation

32. In this Practice and Procedure, unless the context otherwise requires:
- (a) "The Legislature" means the Legislative Council under Article 66 of the Basic Law as well as the colonial Legislative Council before the Reunification in 1997 and the Provisional Legislative Council;
 - (b) "Documents and records of the Legislature" means those documents and records produced in connection with, or arising from the Legislature's discharging of its constitutional functions. In case of doubt, CoA shall decide on the issue whether a document or record is part of documents or records of the Legislature;
 - (c) "Closure period" means the period specified by the Legislature (or its committee) for which a document or record should not be made available for access, or, where the Legislature (or its committee) considers a document or record should not be available for access, 50 years since the existence of the document or record; and
 - (d) "In existence" means the documents and records were created, received or accumulated by the Legislature or its committee in the course of discharging its functions. For administration purpose, the closure period of a document and record shall run from the first day of January in the year following the year in which the records were created, received or accumulated². Where documents and records are bound into, sewn or attached to a bound volume, file or

² For example, if a record subject to a 20-year closure period was created on 18 August 1994, the closure period shall run from 1 January 1995 and expire on 1 January 2015.

other compilation, the year of existence of the chronologically latest document or record therein that can be identified with the available means and reasonable effort should apply to all the other documents and records. Where the year of existence of a record or document or a bound volume, file or compilation cannot be identified practicably, the earliest year when it was known to be with the LegCo Secretariat should be taken as its year of existence.

Legislative Council Secretariat
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**Procedure for the nomination and election of members of
Committee on Access to the Legislature's Documents and Records**

1. An election of members of the Committee on Access to the Legislature's Documents and Records ("CoA") shall be conducted at a meeting of the House Committee, the date of which ("election date") shall be appointed by the House Committee.
2. The Legislative Council Secretariat ("the Secretariat") shall issue a circular and a nomination form to the Members of the Legislative Council at least seven clear days before the election date, inviting nominations to be made.
3. Each nomination form shall be for the nomination of one Member and shall be signed by one Member as the proposer, one Member as the seconder, and by the nominee Member to signify his consent to the nomination.
4. Duly completed nomination forms shall be delivered to the Secretariat at least three clear days before the election date.
5. In case where the number of nominations received by the Secretariat by the deadline for nomination is less than the number referred to in Rule 74A(2)(d) of the Rules of Procedure ("RoP"), further nominations may be proposed, at the House Committee meeting at which the election is conducted, by any Member and seconded by another, with the proposed nominee signifying his consent to the nomination.
6. In case where the number of nominations received under paragraphs 4 and 5 is less than or equal to the number referred to in Rule 74A(2)(d) of RoP, the Chairman of the House Committee shall declare the nominees duly elected.
7. In cases where the number of nominations received under paragraphs 4 and 5 is more than the number referred to in Rule 74A(2)(d) of RoP, a poll shall be taken at the House Committee meeting at which the election is conducted; voting at which shall be by secret ballot and counted in accordance with the simple or relative majority system of election (otherwise known as "first-past-the-post" system of election), whereby a Member may vote for as many nominees as the number of vacancies and no more and the nominees who get the highest numbers of votes will be declared elected.

8. In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes, a separate poll shall be taken in respect of that nominee and such other nominee(s) in accordance with the system of election mentioned in paragraph 7 above until all the remaining vacancy or vacancies are filled.

Exempted categories of the Legislature's documents and records

Access to documents and records of the Legislature and its committees may be refused if the requested documents and records fall under the following exempted categories.

- (a) documents or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong;
- (b) documents or records relating to law enforcement, legal proceedings and legal professional privilege the disclosure of which would harm or prejudice the enforcement of law, the administration of justice, any legal proceedings being conducted or likely to be conducted or the parties concerned;
- (c) documents or records held for or provided by any party under an explicit understanding that it would not be disclosed without the consent of that party;
- (d) documents or records relating to individual complaint cases;
- (e) documents or records relating to the Legislature and its committees authorized by the Legislature to exercise the powers under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and investigation committees that are subject to review the premature disclosure of which would cause harm or damage to the parties concerned or impede the operation of such committees or later committees;
- (f) documents or records relating to the on-going work of the Legislature and its committees, commercially sensitive information, research, statistics, data and planned publications the premature disclosure of which would be misleading, unfair or lead to improper gain or disadvantage;
- (g) documents or records obtained or transferred in confidence between Members and the Secretariat; and
- (h) documents or records the access to which would be detrimental to their preservation.