

Legislative Council Panel on Constitutional Affairs

**Code on Access to Information and
Management of Public Records**

Purpose

This paper briefs Members on the Code on Access to Information and management of public records.

The Code on Access to Information

2. As an open and accountable Government, we are committed to making available to the public as much government information as possible. To this effect, a code to enhance Government transparency was developed in the 1990s having regard to best practices of access to information in overseas jurisdictions and in consultation with relevant parties, including the then Information Policy Panel of the Legislative Council. The Code on Access to Information (“the Code”) was implemented on a trial basis in March 1995, and was extended progressively to the whole Government in December 1996. It enshrines the policy that the Government will make available information that it holds, unless there are valid reasons to withhold the information. It strikes a balance between openness and the need to protect confidential and sensitive information, which is essential to the effective operation of the Government.

3. The Code (copy at **Annex 1**) defines the scope of information which bureaux and departments are to provide, either routinely or on request, and sets out procedures and timeframes by which such information is to be made available. It authorizes and requires bureaux and departments to provide the public with information requested unless there are valid reasons to withhold disclosure under specific provisions in the Code, such as those concerning defence and security; law enforcement, legal proceedings and public safety; management and operation of the public service; third party information and privacy of the individual. The approach to release of information should be positive - bureaux and departments should work on the basis that information requested will be released unless there is good reason to withhold disclosure under the provisions in the Code.

4. Under the Code, if a person who had requested a bureau/department to provide information considers that the bureau/department has failed to comply with any provision of the Code, he/she may ask the bureau/department to review the decision. The review mechanism is further underpinned by a complaint channel through The Ombudsman who is independent of the Administration. An applicant who considers that a bureau/department has

failed to properly apply any provision of the Code may lodge a complaint with The Ombudsman.

State of Compliance

5. Between March 1995 and December 2009, bureaux and departments processed a total of 25 551 requests for information, 95.5% (24 390) of which were met in full, 2.2% (573) in part, while another 2.3% (588) were refused. The refusal of the requests for information in whole or in part was based on reasons specified in the Code. The major ones were :

- (a) the requested information was related to the privacy of an individual;
- (b) the requested information was held for, or provided by a third party on the understanding that it would not be further disclosed; and
- (c) the disclosure of information would harm or prejudice the management and operation of the public service.

6. During the same period, 125 complaints were filed with The Ombudsman, of which 111 cases have been completed as at 31 December 2009. Of these 111 completed cases, 11 were substantiated and 11 partially substantiated. These cases mainly concerned unfamiliarity with procedural requirements and insufficient understanding of the provisions of the Code by the staff of the bureaux and departments concerned, for instance, not meeting the prescribed timeframes set out in the Code, not providing reasons for refusal or quoting the review/complaint channels, providing reasons for refusal not under the Code, and quoting reasons under the Code but the reasons invoked were not well justified based on circumstances of the cases. The relevant improvement measures are set out in the ensuing paragraphs. As regards the other completed cases, six were unsubstantiated, 58 settled by rendering assistance/clarification to the complainants and 25 not pursued by The Ombudsman. Since the implementation of the Code, no bureau/department has refused to comply with the recommendations of The Ombudsman.

The Ombudsman's Direct Investigation Report on Administration of the Code

7. The Ombudsman released its Direct Investigation Report on Administration of the Code (the Report) in January 2010. The Report observed that some access to information cases had not been handled satisfactorily and made a number of recommendations for more effective administration of the Code. At the same time, the Report recognised the

Government's efforts in stepping up training within the Government and commended the Constitutional and Mainland Affairs Bureau (CMAB) for making enhanced efforts in promoting awareness of the Code within the Government and in the community.

8. We attach great importance to the observations and recommendations in the Report. We are working with bureaux and departments to ensure appropriate follow up actions on the recommendations. The major issues mentioned in the Report and the progress of our follow up actions are set out in the ensuing paragraphs. Further details are provided at **Annex 2**.

Promotion and training within the Government

9. The Ombudsman recommended in the Report that the Administration should organise more, and timely, training for Access to Information Officers¹ (AIOs) and to work with bureaux and departments to organize more training for other staff.

10. To enhance understanding of and compliance with the Code, we have organised various promotion and training programmes within the Government, such as issuing circular memoranda, frequently asked questions and precedent cases (the latter two are updated regularly); included the Code in relevant grades' regular training programmes; and organised briefings/training for AIOs and trainers of bureaux and departments. In 2009 and the first four months of 2010, the CMAB conducted two train-the-trainer briefings for AIOs and trainers of bureaux and departments and two briefing sessions for new AIOs. In addition, the CMAB assisted three departments, the Executive Officers Grade and Administrative Officers Grade in conducting in-house training on the Code. Some other departments also conducted in-house training on their initiative.

11. In the coming year, we will continue to step up training within the Government to promote the Code, including providing more timely training for AIOs and working with bureaux and departments to organise more regular training for their staff.

12. We have recently issued an updated General Circular on the Code to remind bureaux and departments to provide the AIOs with appropriate guidelines, including the internal circular of the bureau/department on the Code and a set of detailed guidelines for implementation of the Code, to facilitate the

¹ Each bureau/department is required to designate its own AIOs who will be responsible for promoting and overseeing the application of the Code, co-ordinating internal efforts in meeting the requirements of the Code, ensuring that the various procedures are complied with and organising in-house training on the Code, etc.

AIOs in discharging their duties. The General Circular will be circulated on an annual basis to all officers involved in implementing the Code.

Monitoring of Compliance

13. On monitoring of compliance, The Ombudsman recommended keeping the format of the quarterly returns under regular review. We monitor the compliance of the Code through various channels, such as requesting bureaux and departments to provide quarterly returns on implementation of the Code. Information provided by bureaux and departments in the returns includes statistics on requests for information received under the Code, review cases and complaint cases lodged with The Ombudsman.

14. On review cases, we have stepped up monitoring of the cases since October 2007 and required bureaux and departments to state their considerations where requests for information originally refused were subsequently met upon review. In addition, CMAB has asked bureaux and departments for details on cases that The Ombudsman had processed by preliminary inquiries. We will also issue specific reminders to the bureaux and departments concerned to enhance compliance with the Code.

15. Starting from the second quarter of 2008, CMAB has amended the format of the quarterly returns for more detailed information, such as explanation of failure to comply with the target response time for normal cases, date of receipt of payment from the applicant and date of release of the requested information. Such information helps us monitor compliance by bureaux and departments with the Code.

16. We reviewed again the format of the quarterly returns in April 2010 to request bureaux and departments to provide detailed statistics of requests received. To better monitor cases which were refused or partially met, further information such as whether complaint/review channels were quoted and whether sufficient explanation for not disclosing the requested information in full or in part was given in the replies will be included in the quarterly returns, starting from the second quarter of 2010.

Publicity

17. On The Ombudsman's recommendation that the Administration should arrange regular publicity for the Code, in 2009-10, we incurred an expenditure of about \$1 million for conducting publicity to raise public awareness on the Code. It covered production of TV and radio announcements in the public interest (API), launching of the TV API through the broadcasting systems in buses and railways, light box advertisement at

Mass Transit Railway stations and production of posters and banners for display at various public leisure/cultural/sports centres and District Offices of the Home Affairs Department.

18. In 2010-11, we have earmarked about \$0.8 million to further publicise the Code to raise public awareness. We will continue to broadcast the APIs on television, radio and the internet and through the broadcasting systems in buses and railways, and post advertisement in Mass Transit Railway stations and posters in various government premises and public venues.

Other measures

19. The Ombudsman recommended that bureaux and departments should introduce the Code briefly on their homepages and arrange a hyperlink to the Government webpage on the Code. We have requested all bureaux and departments to follow up on this recommendation and they have all completed the task. In addition, as suggested by The Ombudsman, we have added a Chinese version of the Guidelines on Interpretation and Application of the Code to the Government webpage on the Code.

20. As recommended by The Ombudsman, we have followed up with six public bodies within The Ombudsman's purview, which had yet to adopt the Code or a similar guide. Four of them have already accepted the recommendation of adopting the Code or a similar guide. We are continuing follow up action with the other two.

21. Experience so far demonstrates that the Code generally provides an effective framework to provide access for members of the public to a wide range of information held by the Government. We will regularly review the Code and its implementation, and take further measures to promote awareness of and compliance with the Code.

Management of and Access to Public Records²

22. We fully recognize that records are valuable resources of the Government to support evidence-based decision-making, meet operational and regulatory requirements and are essential for an open and accountable government. We are also committed to identifying and preserving government records having archival value so as to enhance public awareness of Hong Kong's documentary heritage. While each individual bureau and

² For record management purposes, "pubic records" means records from legislative, judicial or executive transactions transferred to or acquired by the Government Records Service for permanent preservation.

department is responsible for establishing its comprehensive records management programme, the Government Records Service (GRS) is specifically tasked to oversee the overall management of government records and ensure that government records are properly managed and those with archival value are selected for preservation and public access.

23. Amongst other measures, the GRS has promulgated records management procedures and guidelines to ensure proper management of government records for compliance and reference by bureaux and departments. It also provides records management training and advice to bureaux and departments to enhance their records management. As an ongoing effort, the Government keeps the current administrative arrangements for records management under review and will improve on them where appropriate. For instance, we introduced a set of mandatory records management requirements in April 2009 for compliance by bureaux and departments. These requirements cover proper management of e-mail records, records classification, records disposal, proper custody and storage of records, and protection of vital records.

24. It is our policy to identify and preserve records of archival value for the people of Hong Kong. To this end, bureaux and departments are required to seek the prior consent of the GRS Director for any destruction of their records. In the process, if the records are considered as having historical value, such records will be transferred to and kept at the Hong Kong Public Records Building (HKPRB), which is a purpose-built archive providing a secure and controlled environment for the protection of archival materials for permanent preservation.

25. Access to archival records transferred to the GRS is managed through the Public Records (Access) Rules 1996. In general, public access will be granted under these Rules to archival records containing open information and those containing classified information which have been closed for 30 years. Apart from visiting the HKPRB to inspect records and other materials available for access, the public may also visit the GRS website for convenient access to the on-line catalogue of holdings of GRS and some digitized holdings, such as photographs and posters.

26. To enhance public awareness of Hong Kong's documentary heritage and help teachers and students better meet the challenges under the new Senior Secondary curriculum in terms of carrying out research projects, GRS co-organizes with the Education Bureau educational programmes to introduce to teachers and students the services and research resources of GRS. We have held four seminars since 2009 for secondary teachers from different disciplines, and will launch a new educational resources web page within the next few

months.

27. We consider that the present records management system is functioning effectively. The GRS will continue to organize records management training for staff in the civil service, update the records management guidelines to promote best practices and assist bureaux and departments to meet the mandatory records management requirements promulgated in April 2009, including regular review by bureaux and departments of their record management practices. We will continue to keep the present records management system under review and refine it as appropriate.

Constitutional and Mainland Affairs Bureau
Administration Wing, Chief Secretary for Administration's Office
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**Progress of actions in relation to the recommendations in The Ombudsman's Direct Investigation Report on
Administration of Code on Access to Information**

Recommendations	Progress
<p>Training and Promotion within the Government</p> <p>(a) to organise more, and timely, training for Access to Information Officers (AIOs) and remind bureaux and departments (B/Ds) to provide AIOs with appropriate guidelines to assist their implementation of the Code;</p>	<p><u>Training</u></p> <p>We have been organizing small group briefings to new AIOs since February 2010 upon their assumption of post. So far, two small group briefings were held. Further briefings will be conducted subject to the turnover of AIOs.</p> <p>A refresher training workshop for all AIOs will be conducted in June 2010.</p> <p><u>Internal circulars/guidelines of bureaux and departments</u></p> <p>At present, B/Ds have in place internal circulars and guidelines to facilitate the implementation of the Code. To ensure that these circulars and guidelines are</p>

Recommendations	Progress
	<p>up-to-date, we have requested B/Ds to review and update them accordingly.</p> <p>We have reviewed and issued a revised the General Circular on the Code. The revised version includes a paragraph reminding B/Ds to provide AIOs with appropriate guidelines to facilitate them in discharging their duties.</p>
<p>(b) to work with B/Ds to organise more training for other staff directly or through their B/Ds;</p>	<p>Starting from the first quarter of 2010, B/Ds are required to report on a quarterly basis details on in-house training sessions conducted on the Code. In the first quarter of 2010, 15 departments have conducted a total of 106 training sessions on the Code for over 6 000 staff members. CMAB will assist two departments in conducting training on the Code for their staff later this year.</p>
<p>(c) to prepare a dossier on the findings of The Ombudsman inquiries and investigations and the results of review cases of various B/Ds for reference in staff training;</p>	<p>Findings of The Ombudsman's complaint cases have been used as training materials for AIOs since February 2010. Results of review cases will also be used in the coming training sessions, where appropriate.</p>

Recommendations	Progress
(d) to update the frequently asked questions (FAQs) and precedent cases regularly, taking into account the development of the dossier mentioned in (c);	The FAQs and precedent cases on the Code were last updated in January and March 2010 respectively. They will be updated regularly taking into account the development of complaint cases lodged with The Ombudsman and enquiries received from B/Ds on the implementation of the Code.
(e) to update and re-circulate regularly relevant circulars;	The General Circular on the Code has been reviewed and issued in May 2010. B/Ds are reminded to provide the AIO with appropriate guidelines, including the internal circular of the B/D on the Code and a set of detailed guidelines for implementation of the Code to facilitate the AIO in discharging his/her duties. B/Ds are required to re-circulate the General Circular on an annual basis to all officers involved in implementing the Code.
Publicity (f) to arrange regular publicity for the Code;	In 2010-11, CMAB has earmarked about \$0.8 million for promoting the Code to the public. We will continue to broadcast the announcements in the public interest on television, radio and the internet and through

Recommendations	Progress
	the broadcasting systems in buses and railways, and post advertisement in Mass Transit Railway stations and posters in various government premises and public venues.
(g) to add a Chinese version of the Guidelines on Interpretation and Application of the Code to the Government webpage on the Code;	The Chinese version of the Guidelines was uploaded to the Government webpage on the Code in May 2010.
(h) to require all B/Ds' homepages to introduce the Code briefly and to be hyperlinked to the Government webpage on the Code;	All B/Ds have added an introductory note on the Code on their homepages and arranged a hyperlink to the Government webpage on the Code.
Monitoring of Departmental Guidelines (i) to provide advice to B/Ds to ensure that their guidelines are clear, correct and up-to-date;	B/Ds have been requested to update their departmental circular and guidelines on the Code. As at end April 2010, over half of the B/Ds have updated their departmental circular and guidelines. Advice has been provided to B/Ds upon receipt of their enquiries during the process of updating departmental circular and guidelines on the Code. We will continue to provide

Recommendations	Progress
	advice as and when required.
<p>Monitoring of Compliance</p> <p>(j) to keep the format of the quarterly returns under regular review; and</p>	<p>The format for reporting quarterly statistics has been reviewed and a new proforma will be in use starting from the second quarter of 2010 to capture more information about refusal/partially met cases.</p>
<p>Extension to Public Bodies</p> <p>(k) to follow up with other public bodies within The Ombudsman's purview for them to adopt the Code or some similar guide.</p>	<p>The following six public bodies were mentioned in the Report as not yet adopted the Code or a similar guide :</p> <ol style="list-style-type: none"> (1) Employee Retraining Board (ERB); (2) Legislative Council (LegCo) Secretariat; (3) Vocational Training Council (VTC); (4) Financial Reporting Council (FRC); (5) Kowloon-Canton Railway Corporation (KCRC); <p>and</p>

	<p>(6) West Kowloon Cultural District Authority (WKCDA).</p> <p>ERB, KCRC and FRC adopted a similar guide in September 2009, January and February 2010 respectively.</p> <p>VTC will issue a similar code in June/July 2010.</p> <p>LegCo Secretariat will formulate an access policy to archival records and detailed access rules to classified Council records in consultation with the Clerks to the Council and its committees.</p> <p>We are continuing following up with LegCo Secretariat and WKCDA.</p>
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Constitutional and Mainland Affairs Bureau
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