

For information

Legislative Council Panel on Constitutional Affairs

Code on Access to Information and Management of Public Records

This paper sets out the progress of the follow-up actions arising from the meeting of the Panel on Constitutional Affairs held on 17 May 2010 on the Code on Access to Information and management of public records.

Matters discussed at the meeting

(a) The Administration's response to views expressed and recommendations

2. Details of the Administration's response to views expressed and recommendations made by deputations at the meeting and in the submissions received are set out at the **Annex**.

(b) &(c) Exchange of views and meetings with relevant organizations

3. We welcome opportunities to exchange views with relevant organisations on matters related to management of public records and access to public information. In December 2009 and April 2010, the Administration met with representatives from the Archives Action Group and explained to them the various improvements to the existing records management system. We would be pleased to keep in touch with the interested parties, and will report to the Panel the views received and the Administration's response as appropriate.

(d) Setting up an independent body to monitor the administration of public records

4. The Government Records Service (GRS) is keen to listen to the views of users of archival records and members of the public, and will take into account their views in appraising the archival value of government records. The Administration will explore as to whether the existing arrangement on gathering views of stakeholders can be improved.

5. As the current records management system is functioning effectively, we do not consider it necessary to establish another body to monitor the administration of public records.

(e) Staff establishment of the Government Records Service and qualifications required of staff members at management level

6. GRS has an establishment of 85, of which 22 are at the officer level. Regarding the management team, GRS is headed by GRS Director who is at the rank of Directorate Pay Scale Point 1. He is supported by officers ranked at Archivist, Senior Assistant Archivist, Assistant Archivist, Curator, Assistant Curator II, Chief Executive Officer, Senior Executive Officer, Executive Officer I and Executive Officer II levels.

7. While duties on the management of archival records are undertaken by the Archivist Grade, those on conservation and preservation of archival records are shared by the Curator Grade and Archivist Grade. Records management and administrative support are undertaken by the Executive Grade, whilst duties on Electronic Records Management are shared by the Archivist Grade and Executive Grade.

8. The entry qualifications for Assistant Archivist (i.e. the entry rank for the Archivist Grade) include a bachelor degree in history, political science or public administration plus two years' post-graduate research, study or training in these subjects. The entry qualification for Assistant Curator II in Conservation Stream (i.e. the entry rank for the Curator Grade deployed on conservation work) is a bachelor degree with at least 33% of the credit units in conservation, applied chemistry/chemistry or materials science/ materials engineering. The entry qualification for Executive Officer II (i.e. the entry rank for the Executive Grade) requires a bachelor degree.

(f) Papers prepared for, and records of meetings and deliberations of the Executive Council (ExCo)

9. When the Code on Access to Information was first drawn up in 1995, the categories of information which might be exempted from disclosure were determined 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 practice of classifying papers prepared for ExCo and records of meetings and deliberations of ExCo as information to which the public may be refused access is long-established. These documents

contain sensitive information. Like Cabinet papers in the United Kingdom¹, Australia² and Canada³, they are entitled to a high degree of protection against disclosure.

10. The above notwithstanding, the public can have access to ExCo papers and decisions older than 30 years at the GRS, unless they contain sensitive information the disclosure of which would cause real harm to the public interest (e.g. information relating to security).

(g) Internal guidelines on writing of minutes of meetings

11. The Administration has issued guidebooks on written communication in the civil service, including writing of minutes of meetings for service members' reference. Broadly speaking, there are four types of minutes :

- (a) **Resolution minutes** document decisions to be implemented.
- (b) **Narrative minutes** record in full everything said in the meeting.
- (c) **Action minutes** clearly indicate decisions requiring action and the officers responsible for implementing the action.
- (d) **Notes** are an informal record, summarizing important points raised in discussion.

12. The general guideline in writing of minutes of meetings is that the course of the meeting and results of discussions should be recorded truthfully and objectively. In general, while members may hold different views on a subject, the minutes should capture views and opinions of the pro and con sides rather than recording the arguments put forward by individual members. For important issues involving, for instance, directives and policy matters, the arguments of the respective members should be recorded for future reference.

13. Apart from that, the Civil Service Training and Development Institute conducts classroom training on writing minutes of meetings. There are also self-learning web courses on the subject.

¹ Freedom of Information Act 2000 in the UK provides exemption for ministerial communications including proceedings of the Cabinet documents under the Formulation of government policy provision of the Act.

² In Australia, there are provisions under the Freedom of Information Act 1982 which protect Cabinet papers and Executive Council documents from disclosure.

³ The Access to Information Act of Canada 1982 does not apply to confidences of the Queen's Privy Council for Canada, including committees of the Queen's Privy Council, Cabinet and committees of Cabinet with a few exceptions.

(h) Data collected during census should not be destroyed after use

14. We have reflected Panel members' views to the Census and Statistics Department. According to the Census and Statistics Department, it is the Government's established practice to conduct a population census once every 10 years and a by-census in the middle of the intercensal period. For the population census, the entire Hong Kong population is counted and enquired of their basic socio-economic characteristics (detailed characteristics of the population are based on sampled quarters). A by-census differs from a census in not having a complete headcount of the population but simply enquiring on the detailed characteristics of the population on the basis of a large sample. The data collected from the population census/by-census cover the demographic and social, economic, educational, housing, internal migration and household characteristics of individual persons and households.

15. As stipulated by the Census and Statistics Ordinance (Cap. 316), the date of destruction of all census questionnaires has to be specified in the Census Order. In the past censuses/by-censuses, it was stipulated in the relevant Census Order that all questionnaires were destroyed within one year after the census operation period. By that time, all statistical compilation work should have finished and therefore, there may not be a need to retain the questionnaires. It is also desirable to keep the date of destruction close to the completion of statistical compilation work. This arrangement is to ensure that the confidentiality of the census data is strictly maintained.

16. While all the census questionnaires and computer data files containing identifiable records of individual persons, households and quarters are destroyed as stipulated by the law, computer data records without identifier to a particular quarter/household/person are kept for statistical analysis and tabulation. To cater for users' specific needs, tailor-made tabulations which satisfy the criteria for release can be generated from the data records according to user specifications at a charge.

**Constitutional and Mainland Affairs Bureau
Administration Wing, Chief Secretary for Administration's Office
October 2010**

**Code on Access to Information and Management of Public Records
The Administration's Responses to Views Expressed and Enquiries and Recommendations made by Deputations
at the Panel Meeting and in the Submissions Received**

I. The Administration's responses on matters relating to the Code on Access to Information	
Summary of views/recommendations/enquiries	Administration's response
1. Need for legislation on freedom of information	
Legislation on freedom of information should be introduced to replace the current administrative Code on Access to Information (the Code).	<p>As an open and accountable Government, we are committed to making available to the public as much government information as possible. Since 1995, the Code has authorised, and required, civil servants to provide Government-held information to the public unless there are specific reasons under the Code for not doing so.</p> <p>Since the implementation of the Code in 1995, 98% of the requests for information have been met in full or in part, demonstrating that the Code provides an effective framework to provide for members of the public access to a wide range of information held by the Government. 2% of the requests have been refused and they were based on the reasons stated under the Code. Generally speaking, the current administrative arrangement achieves the purpose of providing access for members of the public to government information.</p>

	<p>We have no plan to enact freedom of information legislation. The Government will continue to promote awareness of and compliance with the Code and review the effectiveness of administration of the Code from time to time.</p>
<p>2. Exemption categories of the Code</p>	
<p>The exemption categories of the Code are too broad and general. Some deputations suggested reducing the number of exemption categories. There should also be clear standards in deciding whether members of the public can access government information.</p>	<p>The Code authorizes and requires bureaux and departments (B/Ds) 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 exemptions are specified and were determined having regard to best practices of access to information in overseas jurisdiction. To help B/Ds implement the Code, we have also issued a set of detailed Guidelines on Interpretation and Application of the Code which are regularly updated.</p>
<p>3. Mechanism to seek redress</p>	
<p>There was concern on the mechanism to seek redress if the Access Information Officer (AIO) refused an applicant's request for information. There was also enquiry about the consequence if government departments failed to comply with the requirements of the Code. Some deputations suggested setting up a separate body, e.g. Information Commissioner and</p>	<p>Under the Code, if a person who has requested a B/D to provide information considers that the B/D has failed to comply with any provision of the Code, he/she may ask the B/D 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 B/D has failed to properly</p>

<p>Information Tribunal which should be independent of the Government, to handle reviews and complaints in relation to access to information.</p>	<p>apply any provision of the Code may lodge a complaint with The Ombudsman.</p> <p>From March 1995 to June 2010, B/Ds received a total of 63 requests for review. Of the 61 completed review cases, the B/Ds concerned upheld the original decision for 40 cases, released information in full for 14 cases while for the remaining 7 cases, information was released in part to the applicants.</p> <p>During the same period, The Ombudsman received 148 such complaints and completed 136 cases. Of these 136 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 B/D 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. Since the implementation of the Code, no B/D has refused to comply with the recommendations of The Ombudsman.</p> <p>To enhance understanding of and application of the Code, CMAB has stepped up efforts in promoting the Code within the Government. The CMAB has also stepped up</p>
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	<p>monitoring of compliance with the Code by requesting B/Ds to provide in the quarterly returns more detailed information to show whether sufficient explanation for not disclosing the requested information in full or in part was given and whether complaint/review channels were provided in the replies.</p>
<p>4. Coverage of the Code</p>	
<p>Some deputations said at the Panel meeting that the Code did not apply to all B/Ds, e.g. Civil Service Bureau, Central Policy Unit, and Executive Council. Some suggested that all publicly-funded organizations should be covered by the Code.</p> <p>Some suggested that the legislation on freedom of information should apply to all government departments, the Executive Council and public bodies, including human rights organizations, such as the Equal Opportunities Commission, The Ombudsman and the Office of the Privacy Commissioner for Personal Data.</p>	<p>The Code embraces all B/Ds including the Civil Service Bureau as listed in the Appendix. As regards the Central Policy Unit, it is under the Offices of the Chief Secretary for Administration and the Financial Secretary and, therefore, is subject to the Code.</p> <p>We have been encouraging public bodies under the jurisdiction of the Ombudsman Ordinance to adopt the Code or a similar guide. The following 19 out of the 22 public bodies in Schedule 1 of the Ombudsman Ordinance have adopted the Code/similar guide :</p> <ol style="list-style-type: none"> (1) Hong Kong Housing Authority; (2) Hospital Authority; (3) Airport Authority; (4) Auxiliary Medical Services; (5) Civil Aid Services; (6) Consumer Council; (7) Employees Retraining Board; (8) Equal Opportunities Commission;

- (9) Estate Agents Authority;
- (10) Financial Reporting Council;
- (11) Hong Kong Arts Development Council;
- (12) Hong Kong Examinations and Assessment Authority;
- (13) Hong Kong Housing Society;
- (14) Hong Kong Sports Institute Limited;
- (15) Kowloon-Canton Railway Corporation;
- (16) Mandatory Provident Fund Schemes Authority;
- (17) Privacy Commissioner for Personal Data;
- (18) Securities and Futures Commission; and
- (19) Urban Renewal Authority.

Vocational Training Council is developing a similar guide. Subject to its finalisation, the guide will be issued shortly. As regards the remaining two public bodies, namely, Legislative Council Secretariat and West Kowloon Cultural District, the latest position of adoption of the Code or a similar guide is as follows –

- Legislative Council Secretariat will formulate an access policy to archival records and detailed access rules on classified Council records in consultation with the Clerks to the Council and its committees.
- West Kowloon Cultural District Authority has planned to adopt the Code or a similar guide.

If, in future, other bodies are brought under the purview of

	The Ombudsman, we will urge them to adopt the Code or a similar guide.
II. The Administration's responses on matters relating to the management of public records	
Summary of views/recommendations/enquiries	Administration's response
1. Need for archival legislation	
An archival legislation should be introduced to replace the current administrative arrangements on records management.	The present records management system based on administrative arrangements is functioning effectively. The Code on Access to Information and the records management system together ensure accountability, transparency and public access to Government information. We will continue to keep the present records management system under review and refine it as appropriate.
2. Scope of proposed archival legislation	
The proposed archival legislation should cover items like the definition of government records, the scope of authority of the Government Records Service (GRS), obligations of B/Ds to create, keep and manage public records and transfer those having archival value to GRS for public access with a right for appeal in case of denial of access. There should be sanction for malpractices such as unauthorized destruction of record. A sample archival legislation has been drawn up by the Archives Action Group, which will be provided to Panel and LegCo members upon request.	In general, the current records management system adopted by the Government covers the proposed items. The set of mandatory records management requirements is binding on all Government employees.

3. Mismanagement, unauthorized destruction and loss of records	
<p>There were incidents of poor recordkeeping by B/Ds, resulting in loss and unauthorized destruction of records. There were also concerns on whether records inventories are kept; adequate records are created to record important decisions/business; and there are regular deposits of archival records in the Public Records Office (PRO).</p> <p>There were doubts as to whether the administrative guidelines issued by GRS have been updated over the past few years having regard to the prevalence of electronic records.</p>	<p>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. Good records management enhances operational efficiency while minimizing costs. We seek to enhance proper records management in B/Ds. The mandatory records management requirements introduced in April 2009 require, amongst others, each B/D to maintain an accurate records inventory; keep e-mails together with paper documents created or received in the course of official business as records; regularly transfer archival records to GRS; obtain prior agreement from the GRS Director before destruction of records; and put in place arrangements to ensure proper custody and storage of records. In addition, GRS has developed a set of records management practices and guidelines for an electronic recordkeeping system (ERKS) as a response to the prevalence of electronic records. GRS also updates other administrative guidelines regularly.</p>
4. Electronic records management (ERM)	
<p>Government should promote ERM and manage electronic records as an integral part of a government-wide archives and records management programme, bearing in mind the issues of interoperability and IT security.</p>	<p>GRS has been working in conjunction with the Office of the Government Information Officer and the Efficiency Unit to formulate policy, strategies and standards for effective management of electronic records. The ultimate objective is to develop new records management practices and tools to assist B/Ds to manage both electronic and non-electronic</p>

	<p>records in an integrated, efficient and consistent manner. Guidelines were promulgated in 2001 to help B/Ds to identify, create, file and manage e-mail records, which are the most common type of electronic records. An ERKS pilot run was also conducted between September 2007 and September 2008, and IT security was one of the issues addressed. The review of the pilot project has identified the need for undertaking further work to address issues relating to ERM and ERKS, including development of records management standards on metadata and on transfer of records from one ERKS to another; and preservation of electronic records with archival value.</p>
<p>5. Statutory bodies</p>	
<p>The administrative guidelines on records management do not apply to statutory bodies established to take over functions previously performed by Government.</p>	<p>The Government introduced a set of mandatory requirements in April 2009 stipulating that B/Ds have to seek GRS Director's prior agreement before transferring records to non-government bodies due to such reasons as corporatization or privatization. This will ensure that records having archival value are preserved in PRO of GRS prior to the establishment of non-government bodies.</p>
<p>6. Authority and standing of GRS</p>	
<p>GRS should be given greater authority and independence, e.g. reporting directly to the Chief Executive, or expanding GRS into a large government department, so that it can perform its functions without interference from the Administration Wing of the Chief</p>	<p>Generally, GRS has adequate authority and autonomy to perform its functions effectively. Nevertheless, we will review this from time to time to see whether further improvements can be made. With the introduction of mandatory records management requirements in April 2009,</p>

Secretary for Administration's Office, including securing regular transfers of archival records from B/Ds for appraisal and retention, monitoring B/Ds' compliance with mandatory records management requirements, and ensuring that records management in the Government is consistent with international standards.

B/Ds are required to regularly transfer archival records to GRS. Further, each B/D is required to designate a directorate officer to review its records management programme regularly and report to GRS. These provide GRS with the authority and opportunity to review records management of B/Ds both on a regular and an ad hoc basis. Any government employee failing to comply with the mandatory records management requirements will be liable to disciplinary action.

GRS recognizes the importance of performing its functions to international standards. Taking ERM as an example, GRS has formulated a set of functional requirements for ERKS and developed a set of records management practices and guidelines with regard to international standards, best practices advocated by an international professional organization, namely the International Council on Archives and those adopted by relevant authorities in Australia, the European Union, the United Kingdom and the United States of America. Further, other records management practices adopted by GRS are also broadly in line with international records management standards such as ISO 15489 on "Information and documentation - Records Management" promulgated by the International Organisation for Standardization.

7. Staffing and professional expertise of GRS

There were concerns on whether there are adequate professional staff in GRS, including whether new Archivist Grade staff should be recruited so that there are sufficient staff to undertake appraisal work in a consistent manner, and to clear backlog in processing archival records for access by members of the public.

GRS fully appreciates the importance of appropriate manpower deployment to the development of its work. To discharge its various duties effectively, GRS is now staffed by the Archivist, Curator and Executive grades at officer level. GRS will deploy its manpower in accordance with the expertise of different grade staff and nature of the jobs. In general, the staffing complement is appropriate, but we will review the situation from time to time to make the necessary arrangements.

We recognize the need to strengthen work on records appraisal and are considering the deployment of additional staff. Taking reference from experience in other jurisdictions, we have also compiled a set of appraisal guidelines to ensure consistency in appraisal work.

On processing archival records for public access, GRS has been taking measures to strengthen work in this regard, including deployment of additional resources, reviewing priority of work regularly and streamlining the work process.

We attach great importance to enhancing the professionalism of GRS. GRS will continue to arrange local and international training courses, conferences/seminars and attachment to overseas institutions for its staff so as to ensure they possess the expertise in records

	management.
8. Advisory body on archival records	
There should be an independent advisory body comprising members of the public to review the enactment of archival legislation or to advise on selection of archival records.	GRS is keen to listen to the views of users of archival records and members of the public, and will take into account their views in appraising the archival value of government records. We will explore whether the existing arrangement on gathering views of stakeholders can be improved. As the current records management system is functioning effectively, we do not consider it necessary to establish an advisory body on archival legislation at this stage.
9. Public access to archival records	
Public access to archival records should be a right, and an appeal mechanism introduced for decisions denying public access; archival records at PRO should be made available for public inspection after an appropriate period of time, depending on sensitivity; and the closure period for archival records should be reduced from 30 years to 20 years.	The right of and arrangements for public access to archival records are clearly spelt out in the Public Records (Access) Rules 1996, which are at GRS' website. In general, public access will be granted to archival records containing open information and those containing classified information which have been closed for 30 years, reflecting the need to close records according to their sensitivity. Though there is no explicit provision in the rules to provide for appeal against decision on access, a person aggrieved as a result of denial of access to closed archival records may seek a review of the decision through the Director of Administration, the record-originating B/D or other open means.

	<p>Members of the public may apply to inspect closed archival records containing open information. For the period from January 2009 to June 2010, access was granted either in full or in part in respect of all such applications except one which was still under consideration by the relevant B/D. Hence, there is no urgent need at present to reduce the closure period of archival records to 20 years.</p>
<p>10. Publicity on GRS and Government records</p>	
<p>GRS should publicize its work more, especially using channels other than its website and in venues other than the Hong Kong Public Records Building (HKPRB). Further, contents on Government records should be included in the curricula of secondary schools.</p>	<p>GRS does publicise its work in channels other than its website and in venues other than HKPRB. For example, GRS collaborated with the MTR Corporation to stage photographic exhibitions in various districts showing the history of the districts. Together with the Education Bureau, GRS has also organised seminars outside HKPRB to promote the use of archives amongst secondary teachers and students. We will consider strengthening work in this area.</p> <p>The history curriculum for secondary 4 to 6 students already makes specific reference to using government records kept by PRO.</p>

**Constitutional and Mainland Affairs Bureau
Administration Wing, Chief Secretary for Administration's Office
October 2010**