

立法會 *Legislative Council*

LC Paper No. CROP 53/13-14

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Report of the Committee on Rules of Procedure on access to documents and records of the Legislature

Purpose

This report gives an account of the background to and the proposal of the Committee on Rules of Procedure ("CRoP") to seek the Council's authorization for providing access to documents and records of the Legislature¹.

Background

2. The Legislative Council Secretariat ("the Secretariat") has received and dealt with access requests to documents and records of the Legislature held by the Secretariat since its establishment in 1994. Documents and records of the Legislature are those documents and records produced in connection with or arising from the Legislature in discharging its constitutional functions. They may broadly be defined as open or closed. Most of them are open in nature and are already available for public access via the Legislative Council ("LegCo") Website as well as at the LegCo Library and LegCo Archives. While access requests to closed documents and records of the Legislature are at present dealt with on a case-by-case basis, closed documents and records of certain defunct committees (such as select committees) are not available for public access.

3. To formalize and enhance the existing arrangements, it is considered that a formal access to information policy should be introduced. The policy should clearly set out the procedure by which documents and records may be obtained, the maximum records closure periods, timing for conducting declassification reviews, exempted categories applicable in refusing disclosure, response time to access requests, fees and charges involved, and a review and complaints mechanism for access refusals. The Secretariat, under the direction of The Legislative Council Commission ("the Commission"), prepared detailed proposals in respect of these areas and conducted consultation exercises to seek the views of Members and the public.

¹ Unless the context otherwise requires, a reference in this report to "the Legislature" or "the Council" includes a reference to the current Legislative Council as well as the Legislative Council before the handover in 1997 and the Provisional Legislative Council. They are collectively described as the Legislature.

Consultation process

Consultation with Members

4. A consultation exercise, in the form of a questionnaire survey, with all Members was conducted in April 2013. Eight briefing sessions were conducted by the Secretariat to explain to Members and their staff the proposed policy and related issues. A total of 65 Members completed and returned the questionnaire, and they in general supported the proposals. The main findings of the consultation exercise with Members (**Appendix I**) were reported to the Commission at its meeting on 21 May 2013.

Consultation with the public

5. After obtaining Members' majority views, a public consultation exercise was conducted between July and September 2013. Members of the public were invited to complete a questionnaire posted on the LegCo Website. The Secretariat also approached the Hong Kong News Executives' Association, the Hong Kong Journalists Association and the Hong Kong Foreign Correspondents' Club, as well as 21 tertiary institutions and professional/interest groups for views on the proposed policy. Two briefing sessions were organized for the media and the academia on 23 August and 6 September 2013 respectively. The majority views received from the returned questionnaires as well as those expressed at the briefing sessions were in general supportive of the proposals. The views obtained through the questionnaire as well as those expressed by the media and academia at the two briefing sessions are in **Appendices II** and **III** respectively.

Study by the Committee on Rules of Procedure

6. The Commission noted that while it could make access decisions in respect of closed documents and records under its control, i.e. documents and records of the Commission and the Secretariat, the Council, as the Legislature, enjoys certain exclusive privileges including whether and how the documents and records of the Legislature are to be provided for public information², hence

² Such privileges are based on the common law. See the judgment of the United Kingdom ("UK") Supreme Court in *R v Chaytor and others* [2010] UKSC 52. In *LEUNG Kwok-hung v The President of the Legislative Council and another*, unreported, CACV123/2012 (dated 1 February 2013), the Court of Appeal of Hong Kong affirms that the Legislative Council enjoys similar privileges. In relation to the privileges in the context of disclosing parliamentary materials by the UK Parliament, see paragraphs 14 to 21 of the information note prepared by the Information Commissioner's Office on section 34 of the Freedom of Information Act at http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/section_34_parliamentary_privilege.ashx [accessed on 11 March 2014].

The Canadian Parliament also enjoys similar privileges on disclosing its materials. See Chapter 8, *Parliamentary Privilege in Canada*, second edition, 1997, by J.P. Joseph Maingot, Q.C.

authorization of the Council for accessing the documents and records of the Legislature is required. Furthermore, implementing the maximum closure periods and declassification reviews will have a bearing on the operation of the Council and the committee system. The Commission therefore invited CROp to study how the Council's authorization should be sought with a view to having the authorization put in place by April 2014.

7. CROp held two meetings, on 14 January and 24 February 2014 respectively, to discuss how the Council's authorization may be sought and related issues. The main points of CROp's deliberations and recommendations are set out in the ensuing paragraphs.

Types of documents and records to be covered by the authorization

8. CROp notes that most open documents and records are already available for public access. For closed documents and records (including those prepared for or related to closed meetings or the Redress System which are not intended to be available for public access), not all of them are classified materials, i.e. documents and records graded as "restricted" or "confidential". Examples of open, unclassified and classified documents and records kept by the Secretariat are given in **Appendix IV**.

Maximum records closure periods and declassification review

9. Under the existing access arrangements, closed documents and records would remain closed unless they are requested access by the public and do not fall under certain exemptions. As sensitivity of documents and records diminishes over time, it follows that no documents and records should be kept closed forever unless the disclosure is prohibited by law. The majority views of Members obtained in earlier consultation is that:

- (a) the maximum closure period for classified documents and records should be 50 years unless the disclosure is prohibited by law. These documents and records should be subject to review for declassification within 25 years against the exempted categories set out in **Appendix V**. For those classified documents and records which remain to be classified after a review, they should be reviewed again at least once every four years until they can be open to the public or upon expiry of their closure periods, whichever is earlier; and
- (b) the maximum closure period for unclassified documents and records should be 20 years subject to a review to ensure that the disclosure is not prohibited by law.

Delegation of Council's authority

10. While it is for the Council to determine whether and how access to its documents and records are to be provided, it is inconceivable that the Council will have to make access decisions in respect of each and every of its closed documents and records. Hence, it is considered necessary for the Council to appoint an appropriate authority to make access decisions on its behalf. CRoP has made reference to the relevant practices of overseas jurisdictions. It is noted that in Parliaments of the United Kingdom, Canada, Australia and Germany as well as the Congress of the United States, the authority to review and determine public access to closed parliamentary or congressional documents and records often rests with the Speaker³ or the Clerk⁴, as both are entrusted by the Parliaments or Congress with responsibilities to ensure the orderly conduct of the business of the House.

11. CRoP has considered whether the work may be delegated to the President or the Clerk to LegCo, as under the existing Rules of Procedure ("RoP"), the President and the Clerk to LegCo have certain roles to play in respect of keeping and making available documents and records of the Legislature for public access⁵.

12. However, in the earlier consultation exercises to solicit views from Members and the public, the general view obtained was that the decision on access to a document or record should not be made by a single person but by the Commission or a committee comprising Members from different political parties and groupings. Nonetheless, the Commission does not have nor may it be given the authority to determine on behalf of the Council on questions concerning access to a document or record of the Legislature. Hence, it would be necessary for the Council to appoint a committee to make decisions on access and related matters, and to assign the Clerk to LegCo to undertake declassification reviews, deal with access requests and other related duties.

³ The Speaker is considered as the representative of the House in its powers, proceedings and dignity. He also has administrative responsibilities, including overseeing the administrative support to the Parliament. See *Erskine May* (24th ed.), page 59.

⁴ The Clerk of the House is the chief permanent officer of the House and the Chief Executive Officer of the House service. He is also the custodian of records and documents laid before the House. See *Erskine May* (24th ed.), page 105.

⁵ For instance, under Rule 6(5) of RoP, the Clerk shall be responsible for the custody of the votes and records, bills and other documents laid before the Council, which shall be open to inspection by Members and public officers acting in the course of their duties relevant to Council business at all reasonable hours, and by other persons under arrangements approved by the President.

13. Taking into account the above considerations, CRoP proposes to amend RoP to set out, in the form of a schedule, a policy on access to documents and records together with new provisions in the body of RoP for setting up a dedicated committee and the Clerk to LegCo to implement the policy. The details are set out below.

CRoP's proposals

Proposed Committee on Access to the Legislature's Documents and Records

14. CRoP proposes that the committee appointed by the Council to undertake the work be named the Committee on Access to the Legislature's Documents and Records ("the Committee"). The composition and size of the membership of the Committee should be modelled on those of the Commission. In order to give due recognition to the role of the President in regulating public access to documents and records laid before the Council under RoP, the President should be the ex officio chairman of the Committee.

15. Modelling the membership of the proposed Committee (**Appendix VI**) on the Commission would have the advantage of ensuring that the membership of the proposed Committee is balanced and broadly representative of that of the Council.

16. The proposed Committee should have the following functions:

- (a) to determine that the documents or records of the Legislature should be made available for access earlier than the expiry of their respective maximum closure periods as specified in the Council's policy on access to documents and records;
- (b) to set guidelines for implementing the said policy;
- (c) to consider any objection against the denial of access to a closed document or record of the Legislature by the Clerk to LegCo; and
- (d) to consider any other matter relating to or arising from the said policy.

17. The quorum, meeting, voting and reporting requirements of the Committee should follow, with necessary modifications, those of CROp, as the proposed Committee also deals with the practice and procedure of the Council, and those of the Commission which makes access decisions in respect of closed documents and records under its control. Details of these proposed requirements are set out in **Appendix VII**.

18. As the priority items of substantive business, the proposed Committee would be invited to consider the following:

- (a) adopting the exempted categories in Appendix V as appropriate for conducting declassification reviews of classified documents and records (paragraph 9(a) above refers); and
- (b) granting public access to unclassified documents and records of closed meetings, as well as those in respect of which the Council had not given consideration to their accessibility by the public, which have been in existence for 20 years or more, subject to a review to ensure that the disclosure is not prohibited by law (paragraph 9(b) above refers).

19. The proposed Committee will be invited to consider whether the policy applies to all persons including Members and how the Clerk to LegCo should implement the policy pursuant to the proposed amendments to RoP in declassification of documents and records, consideration of access requests and other related duties.

Proposed amendments to RoP

20. CROp proposes to amend RoP by adding:

- (a) a new Schedule 2 to set out the Policy on Access to the Legislature's Documents and Records with a view to adopting the maximum closure periods and periodic declassification reviews, details of which are set out in paragraph 9 above;
- (b) a new Rule 74A to provide for the appointment of a Committee on Access to the Legislature's Documents and Records;
- (c) a new Rule 6(5A)(a) to provide for the Clerk to LegCo to conduct the reviews specified in the policy; and

- (d) a new Rule 6(5A)(b) to authorize the Clerk to LegCo to deny access to documents and records in accordance with the guidelines drawn up by the Committee.

21. The wording of the proposed resolution is set out in **Appendix VIII**.

Consultation with the House Committee

22. CRoP consulted Members on its proposed amendments to RoP at the House Committee meeting on 28 February 2014. Members agreed to CRoP's proposal and noted that the proposed resolution would be moved by the Chairman of CRoP at the Council meeting of 19 March 2014.

Legislative Council Secretariat

14 March 2014

Outcome of consultation with Members on the proposed policy on public access to information and records kept by the Legislative Council Secretariat and related issues

Background

At the meeting of The Legislative Council Commission ("the Commission") on 19 March 2013, members discussed the proposed access to information policy and requested the Secretariat to consult all Members on the proposed policy and related issues to facilitate their further consideration of the matter. In this connection, a questionnaire was issued to all Members vide LC Paper No. AS179/12-13 on 2 April 2013.

2. The Secretariat also organized a total of eight briefing sessions for interested Members or their staff to further explain to them the proposed policy and related issues. Twelve Members and four Members' staff attended these briefing sessions.

Outcome of consultation

3. A total of 65 Members completed and returned the questionnaire. An analysis of the findings is set out in the ensuing paragraphs.

Proposed maximum records closure periods

4. According to the findings of the consultation, the majority of Members (84% to 90%) agree to the following proposed maximum records closure periods:

- (a) unclassified records to be open 20 years after creation or the publishing of the final report by the committee concerned, unless disclosure is prohibited by law;
- (b) classified records to be subject to review for declassification against the exempted categories of information and records of the proposed access to information policy within 25 years after creation or the publishing of the final report by the committee

concerned, unless disclosure is prohibited by law;

- (c) for those classified records which remain to be classified after the review for declassification, they be reviewed again every four years; and
- (d) all classified records be kept closed for a maximum of 50 years unless the disclosure is prohibited by law.

Proposed exempted categories of information and records

5. As regards the proposed exempted categories of information and records as set out below, the majority of Members (67% to 91%) agree that the following should be included in the exempted categories of the access to information policy:

- (a) information or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong;
- (b) information 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) information 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) information or records relating to individual complaint cases;
- (e) information or records relating to LegCo and its committees authorized by LegCo to exercise the powers under Section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and investigation committees that is subject to declassification 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) information or records relating to the on-going work of LegCo 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 advantage;

- (g) information or records obtained or transferred in confidence between Members and the Secretariat;
- (h) information or records relating to the business and operation of the Commission and the Secretariat the disclosure of which would harm or prejudice such business and operation;
- (i) information or records the access to which would be detrimental to their preservation; and
- (j) information or records considered by the Commission to be not suitable for disclosure.

6. Members may wish to note that for the proposed exempted categories (h) and (j) above, some Members suggested that the Archivist be designated to determine whether or not the requested information and records fall under these exemptions and if access should be granted. Moreover, one Member suggested that where an application is refused, the applicant should be informed, in writing, of the reason(s) for access denial. It is proposed that this suggestion should also be included in the proposed policy for public consultation.

Timing of issuance of proposed access to information policy

7. Furthermore, the majority of Members (91%) also agree that the proposed access to information policy should be implemented first and other related details, including the length of the records closure periods, be incorporated to the policy later.

Other views

8. Other views about the proposed policy are set out in **the Annex**.

**Other views provided by Members on
the proposed policy on access to information**

Proposed exempted categories of information and records

Six Members suggest that whether or not to disclose the information or records under the proposed exempted categories of "information or records held for or provided by any party under an explicit understanding that it would not be disclosed with the consent of that party" and "information or records obtained or transferred in confidence between Members and the Secretariat" should be decided by the Commission.

2. Four Members consider that the Legislative Council does not need to keep records that belong to other parties.

3. Another six Members believe that individual organization should be allowed to decide whether or not to disclose its own information or records relating to complaint cases.

Response time to access requests

4. Two Members suggest that the reply to an access request should be provided within one month or 30 days, while the other Member suggests that the reply should be provided within 21 working days.

Fees and charges

5. Two Members consider that the fees and charges for providing copies of the information or record requested should aim to recover the cost or the administrative cost involved. One Member suggests that the fees and charges should be on the format of the copy as per request of the applicant unless unavailable in that format.

Review and complaints mechanism

6. One Member suggests that where an application is refused, the applicant should be informed, in writing, of the reason(s) for access denial.

Public consultation

7. One Member suggests that before formulating the access to information policy, the public should be consulted first.

Access to archival records

8. One Member suggests that "the Principles of Access to Archives" issued by the International Council on Archives should be adopted and adhered to as far as practicable and applicable to local circumstances.

Open records or information

9. Six Members suggest that open records or information should be clearly categorized to facilitate public access.

Public consultation on the proposed policy on public access to information and records kept by the Legislative Council ("LegCo") Secretariat and related issues

Findings

Total number of completed questionnaires received: 142

Question	No. of respondents (%) ¹	Agree (%)	Disagree ² (%)	Other views ³ (%)
(1) <u>Proposed maximum records closure periods</u>				
(a) Unclassified records to be open 20 years after creation or the publishing of the final report by the committee concerned, unless disclosure is prohibited by law.	138 (97.2%)	109 (76.8%)	18 (12.7%)	11 (7.7%)
(b) Classified records to be subject to review for declassification according to the exempted categories of information and records of the proposed access to information policy within 25 years after creation or the publishing of the final report by the committee concerned, unless disclosure is prohibited by law.	138 (97.2%)	111 (78.2%)	16 (11.3%)	11 (7.7%)
(c) Following on question (1)(b), for those records which remain to be classified after the review for declassification, they be reviewed again every four years.	137 (96.5%)	113 (79.6%)	11 (7.7%)	13 (9.2%)
(d) All classified records to be kept closed for a maximum of 50 years unless the disclosure is prohibited by law.	137 (96.5%)	99 (69.7%)	21 (14.8%)	17 (12%)

¹ % of all completed questionnaires received.

² A summary of views expressed by the respondents who disagreed in respect of questions (1), (2) and (4) is in **Annex A**.

³ A summary of views expressed by the respondents who expressed other views in respect of questions (1), (2) and (4) is in **Annex B**.

Question	No. of respondents (%)	Agree (%)	Disagree (%)	Other views (%)
(2) <u>Proposed exempted categories of information and records</u>				
(a) Information or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong.	136 (95.8%)	112 (78.9%)	20 (14.1%)	4 (2.8%)
(b) Information 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.	137 (96.5%)	104 (73.2%)	26 (18.3%)	7 (5%)
(c) Information 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.	136 (95.8%)	117 (82.4%)	16 (11.3%)	3 (2.1%)
(d) Information or records relating to individual complaint cases.	137 (96.5%)	103 (72.5%)	29 (20.4%)	5 (3.5%)
(e) Information or records relating to LegCo and its committees authorized by LegCo to exercise the powers under Section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("P&P") and investigation committees that is subject to declassification the premature disclosure of which would cause harm or damage to the parties concerned or impede the operation of such committees or later committees.	137 (96.5%)	103 (72.5%)	28 (19.7%)	6 (4.2%)

Question	No. of respondents (%)	Agree (%)	Disagree (%)	Other views (%)
(f) Information or records relating to the on-going work of LegCo 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 advantage.	137 (96.5%)	109 (76.8%)	24 (16.9%)	4 (2.8%)
(g) Information or records obtained or transferred in confidence between Members and the Secretariat.	136 (95.8%)	111 (78.2%)	18 (12.7%)	7 (4.9%)
(h) Information or records relating to the business and operation of the Commission and the Secretariat the disclosure of which would harm or prejudice such business and operation.	138 (97.2%)	96 (67.6%)	35 (24.6%)	7 (4.9%)
(i) Information or records the access to which would be detrimental to their preservation.	136 (95.8%)	98 (69%)	29 (20.4%)	9 (6.3%)
(j) Information or records considered by the Commission to be not suitable for disclosure.	137 (96.5%)	88 (62%)	40 (28.2%)	9 (6.3%)
(3) <u>Other views, if any, on the proposed access to information policy</u>				
Question	No. of respondents (%)	Summary of views		
(a) Scope of the policy	17 (12%)	<ul style="list-style-type: none"> ● The proposed scope of the policy is adequate and acceptable. ● The policy should cover all the documents produced and held by LegCo and its committees and also the Secretariat, as well as those submitted to LegCo by the Government and other organizations. 		

Question	No. of respondents (%)	Summary of views		
(b) Response time to access requests	23 (16.2%)	<ul style="list-style-type: none">● The proposed response time to access requests mentioned in the policy is good and reasonable.● The response time may be reduced from the proposed within 21 working days to two to 20 working days.● The response time may be extended to within one month.		
(c) Fees and charges	20 (14.1%)	<ul style="list-style-type: none">● The proposed fees and charges for making copies of the requested information or records set out in the policy are cheap, reasonable, fair and acceptable.● Copies of the requested information or records should be provided free of charge.● Electronic version of the requested information or records should also be provided.		
(d) Review and complaints mechanism	16 (11.3%)	<ul style="list-style-type: none">● The proposed review and complaints mechanism mentioned in the policy is acceptable.● An independent LegCo committee comprising outside experts should be formed to deal with appeal cases. Its decisions should also be made known to the public.		
(4) <u>Implementation schedule</u>				
The proposed access to information policy is to be implemented first with the maximum records closure periods and related details be incorporated to the policy later.	No. of respondents (%)	Agree (%)	Disagree (%)	Other views (%)
	133 (93.7%)	118 (83.1%)	9 (6.3%)	6 (4.2%)

(5) <u>Any other views</u>	
No. of respondents (%)	Summary of views
11 (7.7%)	<ul style="list-style-type: none"> ● The preservation of LegCo records is of paramount importance to Hong Kong which is a society governed by law. The effort of the Secretariat in dealing with the issue head on is commendable. ● To facilitate the public to make request for information they need, it is importance that the LegCo Archive Catalogue is made freely available to the public on the Internet. ● Hong Kong should implement an access to information policy according to the best international practices. The Government must be obligated to provide information except when specifically prohibited by law. ● An archives law for Hong Kong is essential before anything else. This would ensure the safeguarding and proper recording of Hong Kong's documentary heritage.
(6) <u>Area of work (optional)</u>	
No. of respondents	75
Academia	37
Information technology	14
Media	8
Others (e.g. sales and marketing, finance, social welfare, arts, etc)	16

**Summary of views expressed by the respondents who disagreed
in respect of questions (1), (2) and (4)**

(1) Proposed maximum records closure periods

Question 1(a): Unclassified records to be open 20 years after creation or the publishing of the final report by the committee concerned, unless disclosure is prohibited by law.

- Unclassified records should be open immediately after records creation.
- The maximum records closure period should be reduced from the proposed 20 years to five to 15 years after records creation.

Question 1(b): Classified records to be subject to review for declassification according to the exempted categories of information and records of the proposed access to information policy within 25 years after creation or the publishing of the final report by the committee concerned, unless disclosure is prohibited by law.

- The period for conducting declassification review should be reduced from the proposed 25 years to five to 20 years after records creation.
- Public interest test should be applied when considering whether classified records should be declassified.

Question 1(c): Following on question (1)(b), for those records which remain to be classified after the review for declassification, they be reviewed again every four years.

- Classified records should be reviewed again annually or once every two years.

Question 1(d): All classified records to be kept closed for a maximum of 50 years unless the disclosure is prohibited by law.

- The maximum closure period for classified records should be reduced from the proposed 50 years to 10 to 35 years.
- An independent LegCo committee should be formed to review all records assigned as classified.

(2) Proposed exempted categories of information and records

Question 2(a): Information or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong.

- As LegCo business concerns public interest, the disclosure of information or records of the Council should not be prohibited by common law.

- Information or records which fall under this and other exempted categories can be disclosed after a reasonable closure period.

Question 2(b): Information 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.

- This exempted category is very broad and may result in most classified records being made unavailable to the public.

Question 2(c): Information 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.

- This exempted category is too general.

Question 2(d): Information or records relating to individual complaint cases.

- The relevant information or records can be disclosed after deleting or concealing the personal data mentioned in the complaint cases.
- Information or records which fall under this exempted category can be disclosed after a period of time, e.g. 10, 15 or 20 years.

Question 2(e): Information or records relating to LegCo and its committees authorized by LegCo to exercise the powers under Section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("P&P") and investigation committees that is subject to declassification the premature disclosure of which would cause harm or damage to the parties concerned or impede the operation of such committees or later committees.

- By referring to "later committees", this becomes almost a blanket statement that nothing from these committees will ever be made public.

Question 2(f): Information or records relating to the on-going work of LegCo 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 advantage.

- Referring to "data and planned publications" is very broad.

Question 2(g): Information or records obtained or transferred in confidence between Members and the Secretariat.

- Need to describe specifically how the common law of confidentiality is being interpreted in this instance.

Question 2(h): Information or records relating to the business and operation of the Commission and the Secretariat the disclosure of which would harm or prejudice such business and operation.

- As the business and operation of the Commission and the Secretariat is being paid from general tax revenue, the relevant information or records should be made as open and transparent as possible.

Question 2(i): Information or records the access to which would be detrimental to their preservation.

- There are many ways to make records which fall under this exempted category accessible, such as digitizing or making copies of these records.
- There are very few records which cannot be duplicated and made available to the public while at the same time preserving their "original copy" for preservation.

Question 2(j): Information or records considered by the Commission to be not suitable for disclosure.

- The Commission should not control what information or records suitable for disclosure. Hence, this exempted category should be removed.
- The Commission must not be given such sweeping powers. There should be an independent LegCo committee to decide when information and records are not made open to the public. Their decision must be made open.

(4) Implementation schedule

Question 4: The proposed access to information policy is to be implemented first with the maximum records closure periods and related details be incorporated to the policy later.

- The proposed policy and the maximum records closure periods and related details should be implemented together after the public consultation exercise.

**Summary of views expressed by the respondents who expressed other views
in respect of questions (1), (2) and (4)**

(1) Proposed maximum records closure periods

Question 1(a): Unclassified records to be open 20 years after creation or the publishing of the final report by the committee concerned, unless disclosure is prohibited by law.

- Unclassified records should be open immediately after records creation.
- The maximum closure period should be reduced from the proposed 20 years to five to 15 years after records creation.
- Archive legislation is essential to make any law on issues about privacy, disclosure and access to information meaningful (similar views for other questions).

Question 1(b): Classified records to be subject to review for declassification according to the exempted categories of information and records of the proposed access to information policy within 25 years after creation or the publishing of the final report by the committee concerned, unless disclosure is prohibited by law.

- The declassification review of classified records should be conducted as soon as possible, such as within 10 to 20 years.
- As unclassified records will be open 20 years after creation, the declassification review of classified records should also be conducted within 20 years after records creation.

Question 1(c): Following on question (1)(b), for those records which remain to be classified after the review for declassification, they be reviewed again every four years.

- Classified records should be reviewed again annually or once every two, three or five years.
- Personnel files which contain personal data should never be declassified.

Question 1(d): All classified records to be kept closed for a maximum of 50 years unless the disclosure is prohibited by law.

- If the disclosure of classified records may affect the whole country, then the records should be closed forever.
- An archives law should be enacted before a decision is made on this issue.

(2) Proposed exempted categories of information and records

Question 2(a): Information or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong.

- This exempted category may affect news reporting.

Question 2(b): Information 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.

- There is reason not to disclose information or records of on-going cases, but there is no reason to keep the information or records locked away for 30 to 50 years.
- This exempted category may be used to exempt all sorts of information from disclosure.

Question 2(c): Information 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.

- Information or records held for or provided by other parties are not private information or records.

Question 2(d): Information or records relating to individual complaint cases.

- Ongoing complaints or complaints that have been found groundless should not be disclosed.
- The complainant should be allowed to decide whether or not they want their information disclosed while keeping identity confidential.

Question 2(e): Information or records relating to LegCo and its committees authorized by LegCo to exercise the powers under Section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("P&P") and investigation committees that is subject to declassification the premature disclosure of which would cause harm or damage to the parties concerned or impede the operation of such committees or later committees.

- Independent experts should be invited to review appeal cases.

Question 2(f): Information or records relating to the on-going work of LegCo 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 advantage.

- Broadly agree, but this exemption should not be applied cynically to prevent disclosure which is in the public interest.

Question 2(g): Information or records obtained or transferred in confidence between Members and the Secretariat.

- After obtaining the consent of the parties concerned, information or records which fall under this exempted category could be disclosed.

Question 2(h): Information or records relating to the business and operation of the Commission and the Secretariat the disclosure of which would harm or prejudice such business and operation.

- The business and operation of the Commission and the Secretariat is to serve the public interest, so exemption in this area should be the exception not the norm.

Question 2(i): Information or records the access to which would be detrimental to their preservation.

- Register the identity of the applicant to prevent abusive use of the information or records which fall under this exempted category.

Question 2(j): Information or records considered by the Commission to be not suitable for disclosure.

- This exempted category could easily be abused.
- The inventory of such records should be open to the public.

(4) Implementation schedule

Question 4: The proposed access to information policy is to be implemented first with the maximum records closure periods and related details be incorporated to the policy later.

- A time limit should be set for the implementation of the proposed policy and the maximum records closure periods and related details.
- An archives law for Hong Kong is essential to make any access to information, privacy etc. meaningful.

**Summary of views and suggestions made by the participants
at the briefing sessions held on 23 August and 6 September 2013**

Two briefing sessions on the proposed access to information policy were held for the media and the academia at the Legislative Council ("LegCo") Complex on 23 August 2013 and 6 September 2013 respectively.

2. In general, the participants welcomed the proposed policy and the public consultation exercise. They considered that the proposed policy was ahead of the Government in promoting transparency and easy access to public information and records, and there was the need for the Government to introduce legislation on archives and freedom of information. The following suggestions were also made by the participants at the briefing sessions:

- (a) providing more information on the different categories of information and records kept by the Secretariat to facilitate the public in making access requests for such information and records;
- (b) providing a full list of the archival records kept by the Secretariat to the public;
- (c) reducing the maximum records closure periods to a shorter period ranging from immediate disclosure to 15 years;
- (d) inviting professionals such as archivists or persons of high social standing such as retired judges to oversee records classification and declassification;
- (e) deleting "information or records considered by the Commission to be not suitable for disclosure" as a category of exemption, as it gives the Commission broad power to refuse access requests;
- (f) setting up an independent committee comprising LegCo Members and outside experts to handle appeal cases of access request refusals;
- (g) providing written explanations to applicants whose access requests are refused;
- (h) publishing periodically a list of all cases of refusals including the reasons for non-disclosure;
- (i) reviewing the access to information policy on a regular basis, say every four years, to ensure effectiveness of the policy and to cater for changing needs and requirements;
- (j) reducing the copying fees or permitting the use of digital cameras by members of the public to make free copies; and
- (k) providing copies of records if the originals are in poor physical condition.

Appendix IV

Examples of open, unclassified and classified documents and records kept by the Legislative Council ("LegCo") Secretariat

Classification of documents and records	Examples of documents and records of the Council and its committees
Open: documents and records which are already available for public access	agendas, papers and minutes of LegCo meetings; Hansard; agendas, papers and minutes of open meetings of Panels, Bills Committees and other committees
Unclassified: documents and records which are neither open nor classified	agendas, most of the discussion papers, and minutes of meetings of the Committee on Rules of Procedure
Classified: documents and records which are graded restricted or confidential	internal deliberations of the Public Accounts Committee and select committees; complaint case files

Exempted categories

Access may be refused if the requested documents and records fall under the following exempted categories. Where circumstances warrant, such documents and records may be made available if public interest outweighs the harm and prejudice of disclosure unless it is prohibited by law.

- (a) Information or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong;
- (b) information 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) information 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) information or records relating to individual complaint cases;
- (e) information or records relating to LegCo and its committees authorized by LegCo to exercise the powers under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and investigation committees that is subject to declassification 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) information or records relating to the on-going work of LegCo 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 advantage;

- (g) information or records obtained or transferred in confidence between Members and the Secretariat; and
- (h) information or records the access to which would be detrimental to their preservation.

2. The above exempted categories were drawn up with reference made to the freedom of information laws and policies of various jurisdictions including Australia, Canada, Germany, New Zealand, the United Kingdom, the United States and the HKSAR Government as well as a number of public bodies in Hong Kong.

**Membership of
the Committee on Access to the Legislature's Documents and Records**

It is proposed that the Committee should consist of the following members:

- (a) the President, who shall be the Chairman of the Committee;
- (b) the Chairman of the House Committee, who shall be the Deputy Chairman of the Committee;
- (c) the Deputy Chairman of the House Committee; and
- (d) not more than 10 other Members who shall be elected at a House Committee meeting and in such manner as the House Committee may determine.

2. It is also proposed that the term of office of members elected under (d) above should be one year or until the next House Committee meeting held for the election of the Committee members, whichever is the earlier.

Appendix VII

Quorum, meeting, voting and reporting arrangements of the Committee on Access to the Legislature's Documents and Records

- (1) The Chairman and three other members shall constitute a quorum of the Committee.
- (2) In the event of the temporary absence of the Chairman and Deputy Chairman, the Committee may elect a chairman to act during such absence.
- (3) All matters before the Committee 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 the Rules of Procedure.
- (4) The Committee shall meet at the time and the place determined by the Chairman. Written notice of the place, day and time 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 in any case where the Chairman so directs. Rule 79B of the Rules of Procedure applies where the Chairman cannot be contacted for making such determination.
- (5) Meetings need not be held in public unless the chairman otherwise orders in accordance with any decision of the committee.
- (6) Where the Chairman so orders, any matter for the decision of the Committee may be considered by circulation of papers to the members of the Committee and each member may signify his approval in writing submitted to the Chairman. If a majority of the members so signify before the expiry of the period specified by the Chairman for the purpose, and if upon expiry of that period no member has (in writing submitted to the Chairman) signified disapproval of the matter or requested that the matter be referred for decision at a meeting of the Committee, it shall be deemed to be approved by the Committee.
- (7) The Committee may make such reports as it considers appropriate to the Council.
- (8) Subject to the Rules of Procedure, the practice and procedure of the Committee shall be determined by the Committee.

Appendix VIII

Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

Resolution

(Under Article 75 of the Basic Law of the Hong Kong Special
Administrative Region of the People's Republic of China)

Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region

Resolved that the Rules of Procedure of the Legislative Council of
the Hong Kong Special Administrative Region be amended as set out
in the Schedule.

Schedule

Amendments to Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region

1. Rule 4 amended (election of President)

Rule 4(1)—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

2. Rule 6 amended (duties of the Clerk)

After Rule 6(5)—

Add

- “(5A) (a) The Clerk shall conduct the review referred to in paragraph (b) of the Policy on Access to the Legislature’s Documents and Records in Schedule 2 within 25 years of the existence of the document or record as to whether access should be made available at an earlier time, and to conduct a further review of the document or record, if not already made available for public access, at least once every four years from the last review.
- (b) The Clerk may deny access to a document or record in accordance with any guidelines set by the Committee on Access to the Legislature’s Documents and Records.”.

3. Rule 74A added

After Rule 74—

Add

“74A. Committee on Access to the Legislature’s Documents and Records

- (1) There shall be a committee to be called the Committee on Access to the Legislature's Documents and Records 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 specified in paragraph (a) of the Policy on Access to the Legislature's Documents and Records in Schedule 2;
 - (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 under Rule 6(5A)(b) (Duties of the Clerk); and
 - (d) consider any other matter relating to or arising from the Policy.
- (2) The committee shall consist of—
 - (a) the President, who shall be the chairman;
 - (b) the chairman of the House Committee, who shall be the deputy chairman;
 - (c) the deputy chairman of the House Committee; and
 - (d) not more than 10 other members who shall be elected at a House Committee meeting in such manner as the House Committee may determine.
- (3) The term of office of the elected members shall be one year or until the next House Committee meeting held for the election of members, whichever is the earlier.
- (4) The chairman and three other members shall constitute a quorum of the committee.
- (5) In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence.
- (6) All matters before the committee 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.

- (7) The committee 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 in any case where the chairman so directs.
- (8) Meetings need not be held in public unless the chairman otherwise orders in accordance with any decision of the committee.
- (9) Where the chairman so orders, any matter for the decision of the committee may be considered by circulation of papers to the members of the committee and each member may signify his approval in writing submitted to the chairman. If a majority of the members so signify before the expiry of the period specified by the chairman for the purpose, and if upon expiry of that period no member has (in writing submitted to the chairman) signified disapproval of the matter or requested that the matter be referred for decision at a meeting of the committee, it shall be deemed to be approved by the committee.
- (10) The committee may make such reports as it considers appropriate to the Council.
- (11) Subject to these Rules of Procedure, the practice and procedure of the committee shall be determined by the committee.”.

4. Schedule amended

- (1) The Schedule—
Renumber the Schedule as Schedule 1.
- (2) Schedule 1, Annex I, paragraph 1—
Repeal
“the Schedule”
Substitute
“Schedule 1”.

5. Schedule 2 added

After Schedule 1—

Add

“Schedule 2

[Rules 6 & 74A]

Policy on Access to the Legislature’s Documents and Records

The documents and records of the Legislature (and its committees) in the custody of the Legislative Council Secretariat may be made available for access subject to the following—

- (a) if the Legislature (or its committee) considers that any of its documents or records should not be made available for access or prescribes a period for which it should not be made so available, access to the document or record may not be made available until the prescribed period has expired or it has been in existence for 50 years, whichever is shorter;
- (b) any such document or record may be made available for access before expiry of the closure period specified in paragraph (a) consequent to a review;
- (c) any other document or record of the Legislature (or its committee) may be made available for access at any time but must be made so available when it has been in existence for 20 years; and
- (d) access to any document or record or any part of it shall not be made available if such access is prohibited by law.”.