

政府總部民政事務局的信頭

OUR REF. : HAB/II/1/16 III
YOUR REF :
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15 July 1999

Mrs Constance Li
Clerk to LegCo's Panel on Home Affairs
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mrs. Li,

At the Panel's meeting held on 14 June 1999, one Member, when discussing whether the release of certain information concerning members of statutory/advisory bodies would contravene the Personal Data (Privacy) Ordinance, suggested that the Government, when appointing any members to such bodies, should require them to consent to the release of such information to the public. Another Member passed me a note to say that he supported the suggestion and requested me to discuss it with my colleagues.

We agree with the two Members' view that such information should be released to the public. We do not, however, consider it appropriate to *require* new appointees to statutory/advisory bodies to give consent to release of their information. In any case, the same objective can be achieved by other arrangements.

On 12 July 1999, we issued a circular memorandum to advise bureaux/departments on the arrangements to be adopted in releasing such information. I am enclosing herewith a copy of the circular memorandum and should be grateful if you could inform the Panel accordingly.

Yours sincerely,

(NG Hon-wah)
for Secretary for Home Affairs

MEMO

<i>From</i> <u>Secretary for Home Affairs</u>	<i>To</i> <u>All Bureaux/departments</u>
<i>Ref.</i> <u>(41) in HAB/II/16/1/1 II</u>	<i>(Attn.:</i> _____ <i>)</i>
<i>Tel. No.</i> <u>2835 1383</u>	<i>Your Ref.</i> _____ <i>in</i> _____
<i>Fax No.</i> <u>2591 6002</u>	<i>Dated</i> _____ <i>Fax No.</i> _____
<i>Date</i> <u>12 July 1999</u>	<i>Total Pages</i> _____

Release of information Concerning members of advisory and statutory bodies

The purpose of this circular memorandum is to advise bureaux/departments to disclose to the public, on request, certain information concerning individual members of advisory and statutory bodies. The information in question includes a member's:-

- (a) attendance records;
- (b) years of service on the particular body;
- (c) occupation/profession by broad categories (e.g. doctors, lawyers and company directors); and
- (d) membership of other advisory and statutory bodies.

Background

2. At a recent meeting of the LegCo's Panel on Home Affairs, a LegCo Member alleged that some public sector organisations had refused to disclose information concerning members of advisory and statutory bodies on the ground that except with the members' consents, the disclosure might contravene the Personal Data (Privacy) Ordinance. According to the Member, the information in question related to the members' attendance records and membership of other advisory and statutory bodies.

Personal Data (Privacy) Ordinance (“PDPO”)

3. The legal position under the PDPO is as follows:-
- (a) the information referred to in para. 1 above amounts to “personal data” and therefore, its disclosure is regulated under the PDPO;
 - (b) the disclosure would not constitute a contravention of the PDPO if the purpose, or one of the purposes, of collecting the personal data is for them to be released to the public; and
 - (c) however, if the release is not related to the purposes of collection, Principle 3 of Schedule 1 of the PDPO applies, which provides that personal data shall not be used, without the data subject’s voluntary and express consent, for any purpose unrelated to the original purpose of collection. Yet, an exemption provision is available here. It would not contravene Principle 3 to release the data, without obtaining the data subject’s consent, if the recipient is a news organisation and the disclosure is made by a person who has reasonable ground to believe (and reasonably believes) that the publishing or broadcasting of the data is in the public interest.

Code on Access to Information (“Code”)

4. The PDPO does not *require* a bureau/department to release the attendance records and other information referred to above. However, the Code does. Under the Code, a bureau/department should entertain a request for information unless to do so would be harmful to the public interest. Given the nature of the information in question, it does not appear that the disclosure will cause any harm. Or, even if it will, it is likely that the harm thus caused will be outweighed by the public interest in disclosure. This is in line with our commitment to the policy of an open and accountable government and our commitment to adopt transparency measures as far as practicable in respect of appointments to government advisory and statutory bodies.

Arrangements to be adopted

5. In anticipation of requests for the information referred to in para. 1 above, it is suggested that bureaux and departments should adopt the following arrangement in respect of advisory and statutory bodies within their purview :-

- (a) they should keep updated records of individual members' attendance and length of service for the purpose of answering such requests and inform the members that the data will be disclosed to the public. As the purpose - or one of the purposes - of keeping such records is to release them to the public, it is not necessary to obtain the members' consents prior to the release; and
- (b) if a requestor seeks also information on members' occupations/professions and membership of other advisory or statutory bodies, the bureau/department concerned may obtain such information from the Personality Index Section of HAB either in writing or by contacting Mr. Lewes Leung (tel.: 2835 1575). One of the purposes of HAB collecting the information is to release it to the public. Furthermore, when collecting it from the individuals concerned, HAB has already obtained their consents to such disclosure.

6. While it is not necessary, for reasons explained in the preceding paragraph, to obtain the members' consents to the disclosure of the information referred to in para. 1 above, it would be courteous - and would avoid misunderstanding - to inform them that such information will be released to the public on request. It is suggested that bureaux/departments should adopt the following arrangements:-

- (a) the existing members of advisory and statutory bodies, - and any new members upon their appointment - should be informed that the relevant secretariat will keep records on the matters mentioned in para. 1 above and that in the interests of transparency, such records will be disclosed to the public on request;
- (b) in the unlikely event that any member objects to the public disclosure of such information, the bureau/department should consider whether the reason for the objection is valid. HAB will be glad to offer any advice which may be required;
- (c) unless there is a valid objection under (b) above, the information referred to should be disclosed to the public on request. Though there is no need for further consultation with the members concerned, it would be a good practice to inform them of the disclosure as soon as practicable in order to avoid them being caught by surprise when reporters approach them for comments; and

- (d) in the unlikely event that a bureau/department considers there is a valid objection under (b) above, it should consult HAB before refusing to disclose the information referred to in para. 1 above.

7. Bureaux/departments are also reminded that where they collect any personal data from the members, they should take practicable steps to inform members of the matters stated in paragraph 3 of Principle 1 in Schedule 1 of the PDPO - copy at Annex for ease of reference. In particular, please note that minutes of meeting attributing views to individual members also amount to “personal data” of the members concerned. Therefore, if such minutes may be released to the public upon request, the bureaux/department concerned must take all practicable steps to explicitly inform the members concerned, before recording their views, that the minutes may be released to the public. Unless the members have been so informed, their voluntary and express consents are required for the release.

Enquiries

8. The arrangement suggested in paras. 5 and 6 above are intended to apply to requests for information referred to in para. 1 above. If bureaux/departments receive any request for other information relating to members of advisory and statutory bodies, they should consider the requests having regard to the PDPO (please see para. 3 above) and the Code on Access to Information. If in doubt, they should seek legal advice and copy their memos to HAB.

9. If you have any question on the above, please feel free to contact the undersigned, Mr. David Ho (tel.: 2835 1556) or Miss Fio Wu (tel.: 2835 1213).

(NG Hon-wah)
for Secretary for Home Affairs

SCHEDULE 1
DATA PROTECTION PRINCIPLES

[s. 2(1) & (6)]

1. Principle 1—purpose and manner of collection of personal data

(3) Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that—

- (a) he is explicitly or implicitly informed, on or before collecting the data, of—
 - (i) whether it is obligatory or voluntary for him to supply the data; and
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and

- (b) he is explicitly informed—
 - (i) on or before collecting the data, of—
 - (A) the purpose (in general or specific terms) for which the data are to be used; and
 - (B) the classes of persons to whom the data may be transferred; and
 - (ii) on or before first use of the data for the purpose for which they were collected, of—
 - (A) his rights to request access to and to request the correction of the data; and
 - (B) the name and address of the individual to whom any such request may be made,

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data are exempt from the provisions of data protection principle 6.

Distribution

For the attention of

- (a) all Bureau/Departmental Access to Information Officers; and**
- (b) all Bureau/Departmental Data Controlling Officers and staff responsible for coordinating compliance with the Personal Data (Privacy) Ordinance**

Agriculture and Fisheries Department

All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility

Architectural Services Department

Audit Commission

Auxiliary Medical Service (department)

Buildings Department

Census and Statistics Department

Civil Aid Service (department)

Civil Aviation Department

Civil Engineering Department

Civil Service Bureau

Civil Service Training and Development Institute

Companies Registry

Constitutional Affairs Bureau

Correctional Services Department

Customs and Excise Department

Department of health

Department of Justice

Drainage Services Department

Economic Services Bureau

Education and Manpower Bureau

Education Department

Electrical and Mechanical Services Department

Environmental Protection Department

Finance Bureau

Financial Services Bureau

Fire Services Department

General Office of the Chief Executive's Office

Government Flying Service

Government Laboratory

Government Land Transport Agency

Government Property Agency

Government Supplies Department

Health and Welfare Bureau

Highways Department

Home Affairs Bureau
Home Affairs Department
Hong Kong Auxiliary Police Force
Hong Kong Monetary Authority
Hong Kong Observatory
Hong Kong Police Force
Housing Bureau
Housing Department
Immigration Department
Independent Commission Against Corruption
Industry Department
Information Services Department
Information Technology and Broadcasting Bureau
Information Technology Services Department
Inland Revenue Department
Intellectual Property Department
Judiciary
Labour Department
Land Registry
Lands Department
Legal Aid Department
Management Services Agency
Mandatory Provident Fund Office, FSB
Marine Department
Office of the Commissioner of Insurance & the Registrar of Occupational Retirement Schemes, FSB
Office of the Ombudsman
Office of the Telecommunications Authority
Offices of the Chief Secretary for Administration and the Financial Secretary
Official Languages Agency
Official Receiver's Office
Planning Department
Planning, Environment and Lands Bureau
Post Office
Printing Department
Radio Television Hong Kong
Rating and Valuation Department
Regional Services Department
Registration and Electoral Office
Secretariat of the Independent Police Complaints Council
Secretariat of the Public Service Commission
Secretariat of the Standing Commission on Civil Service Salaries and Conditions of Service
Secretariat of the Standing Committee on Disciplined Services Salaries and Conditions of Service

Security Bureau
Social Welfare Department
Student Financial Assistance Agency
Television and Entertainment Licensing Authority
Territory Development Department
Trade and Industry Bureau
Trade Department
Transport Bureau
Transport Department
Treasury
University Grants Committee, Secretariat
Urban Services Department
Water Supplies Department
Works Bureau

Internal

PAS(4)
Ms Betty Chan, SEO(A)
HAB/AI/30/94 (95) II
HAB/CR/7/22/23

c.c. D of J (Attn: Mr Benedict Lai)

Office of the Privacy Commissioner for Personal Data
(Attn: DPC/PCO,
ES/PCO,
SPDO(P)/PCO)