

Legislative Council Panel on Constitutional Affairs

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

Purpose

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

The Code on Access to Information

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

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

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

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

State of Compliance

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

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

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

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

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

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

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

Promotion and training within the Government

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

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

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

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

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

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

Monitoring of Compliance

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

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

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

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

Publicity

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

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

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

Other measures

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

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

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

Management of and Access to Public Records²

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

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

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

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

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

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

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

months.

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

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



公開資料守則

CODE ON ACCESS TO INFORMATION

公開政府所持有的資料，有助增強對：

- 政策及決定的**了解**
- 決定及行動的**責任承擔**
- 公共服務的**認識**
- 公共事務的**參與**
- 香港行政管理的**信心**

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引言

政府應該運用可供使用的資源，為市民提供優質服務。為達致此目的，政府明白到市民是需要充分認識政府及其提供的服務，以及對個人和整個社會均有影響的政策和決定的依據。

本守則界定擬提供資料的範疇，列出按慣例或因應要求提供資料的方式，並訂明盡快發放資料的程序。

本守則授權和規定公務員除有特別理由外，按慣例或因應要求提供資料。這些理由載列於第2部。若拒絕任何索取資料的要求，通常會提述這些理由。

任何索取資料的要求均會盡快及妥善地處理，如有需要，有關人員會協助市民闡明其要求，或把要求轉介至最適當的部門處理。有關的程序會盡量精簡。

本守則亦載列有關要求覆檢或投訴的程序，以便市民在認為守則的規定未獲適當執行時知所遵循。

本守則已上載於互聯網，作為「香港政府一站通」的一部分。載錄守則的網址為 <http://www.access.gov.hk>。

第1部

適用範圍

政府部門

1.1 本守則適用於附件A所載列的所有政府部門¹。

法庭、審裁處及調查小組

1.2 本守則不適用於法庭、審裁處或調查小組所持有的資料。就法庭、審裁處和調查小組所進行的聆訊而言，本守則對現時有關披露資料的法規並無影響。

1.3 然而，本守則適用於司法機構政務長轄下所有法院與審裁處的登記處及行政辦事處，以及其他審裁處及調查小組的秘書處和行政辦事處所持有的其他資料（即上文第1.2段所提述以外的資料）。

提供資料

按慣例公布或供查閱的資料

1.4 各部門每年均會公布：

- 其組織結構的詳情
- 所提供服務的資料
- 其服務表現承諾及履行各項承諾的情況

1 “部門”一詞包括任何部門、局、隊、服務、組、秘書處或其他政府機構。

此外，各部門亦會公布下述資料，或在適當地點提供這些資料以供查閱：

- 按類別劃分的部門紀錄²一覽表
- 已公布或以其他方式提供的資料一覽表，不論是免費或付費後才提供
- 查閱非按慣例公布的資料的程序及收費

1.5 每當政府首次推出或更改某項公共服務時，負責的部門會公布足夠的資料，說明新增服務的性質或服務有何改變，以及哪些人會受影響。

應要求提供的資料

1.6 各部門亦會應要求就其政策、服務、決定及職責範圍以內的其他事宜，提供額外資料。不過，若要求提供的資料屬第2部所載列的範疇，則可予以拒絕。

法定義務及限制

1.7 本守則對市民查閱資料的既有法定權利並無影響。同樣，守則亦不會影響有關公開資料方面的既有法定限制，不論這些限制是法定禁令或任何根據普通法或適用於香港的國際協議所引起的義務。

程序

公開資料主任

1.8 各部門會指派一名人員擔任公開資料主任，負責促進和監督守則的執行。

² “紀錄”一詞的定義，載列於本守則附件B。

索取資料的要求

- 1.9 索取資料的要求可以口頭或書面方式提出。
- 1.10 如索取的資料可以即時和簡單地回應，例如口頭作答、提供單張或標準表格，則通常以口頭方式提出便可。不過，在有需要或適當的情況下，公務員可要求市民以書面確認他們的口頭要求。
- 1.11 書面要求可以書函或附件C所載的申請表格提出，並應寄交有關部門的公開資料主任。

回應索取資料的要求

- 1.12 當局會盡快回應索取資料的要求。
- 1.13 倘若口頭答覆或提供標準單張、表格等方式均不能完全滿足要求(不論是以書面或口頭提出)，則可透過下列方式提供資料：
- 提供有關紀錄或其部分的副本
 - 提供有關紀錄或其部分的抄本
 - 給予合理機會查閱、聆聽或查看有關紀錄或其部分，或
 - 提供有關紀錄或其部分的摘要

資料會盡量以原來的形式提供。紀錄內若有些資料不可以披露，其餘部分通常仍可公開。

- 1.14 本守則不會強制部門：
- 提供該部門沒擁有的資料
 - 編製從來沒有存在的紀錄

- 應要求提供已公布的資料(不論是免費或付費後才提供)，或
- 提供可透過收費服務獲得的資料。

在這些情況下，會盡量向申請人指出適當的資料來源處。

- 1.15 不過，某部門若接獲索取資料的書面要求，而資料是由另一部門所持有，則會代為轉介，並通知申請人有關情況。

作出回應的預定時間

- 1.16 在可能範圍內，會在接獲書面要求後的10日³內提供有關資料。如情況不許可，亦會在接獲要求的10日內給予申請人初步答覆，而作出回應的預定時間則會是接獲要求起計的21日。
- 1.17 如要求不獲接納，則會在上文第1.16段所述的時限內通知申請人。
- 1.18 只有在特殊情況下方可延至超過21日後才作出回應，但應向申請人解釋有關情況，而再延長的期限通常不得超過30日。
- 1.19 為配合第1.20-1.23段所述有關索取第三者資料的程序，或如申請人未有按照第1.24段所述支付所徵收的費用，這些預定時間在有需要時可予延長。

第三者資料

程序及時間表

- 1.20 如索取的資料是為第三者持有或由第三者提供，並從第三者明確知道或獲得暗示不會進一步披露，而有關公務員認為，為了公眾利益或須披露這些資料，則有關人員會告知該第三者，請他表示同意或就反對披露這些資料作出陳述，並會要求他在

³ “日”一詞在本守則內是指“曆日”。

30日內作出回應，或應要求給予他一段較長而合理的時間以作出回應。

- 1.21 經該第三者同意後便可披露有關資料。
- 1.22 假如該第三者就反對披露作出陳述，或未有在規定時間內作出回應，有關人員會以披露資料的公眾利益超過可能造成的傷害或損害為理由，決定應否披露資料，並會通知該第三者有關的決定。
- 1.23 如決定有關資料應予披露，便會通知該第三者，表示會在通知日期起計的30日後披露這些資料。

收費

- 1.24 處理索取資料的要求需要使用資源，因此各部門可能會按照提供所需資料的成本，向使用這項服務的人士收取費用，而有關資料會在所需的費用繳清後才發放。

覆檢

- 1.25 任何人如認為某部門未有遵行守則的規定，可要求該部門覆檢有關情況。上文第1.16至1.19段所載作出回應的預定時間，也適用於各項覆檢的要求。
- 1.26 任何人如認為某部門未有適當執行守則的規定，亦可向申訴專員投訴。申訴專員的地址如下：

香港干諾道中168-200號
信德中心招商局大廈30樓

電話號碼：2629 0555
傳真號碼：2882 8149

第2部

可拒絕披露的資料

- 2.1 部門可拒絕披露下列類別的資料，或拒絕證實或否認是否有該等資料；而在拒絕提供資料時，通常會提述下文所述的理由。
- 2.2 凡本部提及的“傷害”或“損害”，包括實際造成的傷害及損害，以及可能或有理由預期會造成的傷害及損害。在這些情況下，有關部門會考慮披露資料的公眾利益是否超過可能造成的傷害或損害。

防務及保安

- 2.3 (a) 資料如披露會令本港的防務受到傷害或損害。
- (b) 資料如披露會令本港的保安受到傷害或損害。

對外事務

- 2.4 (a) 資料如披露會令對外事務或與其他政府或國際組織的關係受到傷害或損害。
- (b) 資料是在保密情況下從其他政府、其他司法管轄區的法庭及國際組織取得，或在保密情況下送交這些政府、法庭及國際組織的。

國籍、出入境及領事事宜

- 2.5 (a) 與出入境或國籍事宜有關的資料。
- (b) 資料如披露會令國籍、人事登記、出入境或領事事宜的行政管理或代表其他政府執行的領事工作受到傷害或損害。

執法、法律訴訟程序及公眾安全

- 2.6 (a) 資料如披露會令司法(包括進行審訊和執行或施行法律的工作)受到傷害或損害。
- (b) 資料如披露會令法律訴訟程序或任何曾經或可能會在審裁處或調查小組進行的程序或其公正裁決受到傷害或損害,而不論這些調查是否公開進行或這些資料是否曾經或可能會在上述程序中考慮予以披露。
- (c) 資料是與已審結、終止或延緩的法律訴訟程序,或與引致或已可能引致法律訴訟程序(無論是刑事或民事訴訟程序)的調查有關。
- (d) 因法律專業特權而獲免在法律訴訟程序中提交的資料。
- (e) 資料如披露會令防止、調查和偵查罪案及罪行,以及逮捕或檢控罪犯的工作,或任何羈留設施或監獄的保安受到傷害或損害。
- (f) 資料如披露會令維持安寧、公眾安全或秩序、或保障財物的工作受到傷害或損害。
- (g) 資料如披露可能會危害他人(無論該人是否在香港)的生命或人身安全,或可能會透露為保安目的或為執行或施行法律而在保密情況下提供的資料或協助的來源。

對環境的損害

- 2.7 資料如披露會令環境、稀有或瀕臨絕種生物及其生長的自然環境受到損害的可能性增加。

經濟的管理

- 2.8 資料如披露會令貨幣政策的推行、維持金融市場穩定的工作,或政府管理經濟的能力受到傷害或損害。

公務的管理和執行

- 2.9 (a) 資料如披露會令部門的談判、商業或合約活動，或批准酌情補助金或特惠補助金的工作受到傷害或損害。
- (b) 資料如披露會令政府的競爭條件或財政狀況或物業利益受到傷害或損害。
- (c) 資料如披露會令部門妥善而有效率的運作受到傷害或損害。
- (d) 資料要透過不合理地使用部門的資源才能提供。

內部討論及意見

- 2.10 (a) 為行政會議擬備的文件，以及行政會議的會議和審議工作紀錄。
- (b) 資料如披露會妨礙政府內部的坦率討論，以及給予政府的意見。這些資料可包括：
- (i) 任何政府內部會議或政府諮詢組織的會議紀錄；
- (ii) 政府官員或顧問向政府提出的看法、意見和建議，以及為政府所作的諮詢和審議。

公務人員的聘任及公職人員的委任

- 2.11 對公務人員的管理工作會造成傷害或損害的資料。

不當地獲得利益或好處

- 2.12 資料如披露可能會導致不當地獲得利益或好處。

研究、統計和分析

- 2.13 (a) 如披露與不完整或未完成的分析、研究或統計有關的資料，可能會令人產生誤解，或剝奪有關部門或任何其他人士發布資料的優先權或商業利益。
- (b) 只為編製統計數字或進行研究而持有與個人、公司或產品有關資料，而這些資料並不會在研究報告或公布的統計數字中提述。

第三者資料

- 2.14 (a) 資料是為第三者持有或由第三者提供，並從第三者明確知道或獲得暗示不會進一步披露。但如第三者同意或披露資料的公眾利益超過可能造成的傷害或損害，則可予以披露。
- (b) 資料是由第三者私下提供，如向資料所述的當事人披露，會傷害當事人或任何其他個人的身體或精神健康，或只應由合適的第三者向當事人披露。

個人私隱

- 2.15 與任何人(包括已故人士)有關的資料(除了向資料所述的當事人或其他合適人士披露外)，除非：
- (a) 披露這些資料符合蒐集資料的目的，或
- (b) 資料所述的當事人或其他合適人士已同意披露資料，或
- (c) 法例許可披露資料，或
- (d) 披露資料的公眾利益超過可能造成的傷害或損害。

商務

2.16 資料（包括商業、金融、科學或技術機密、貿易秘密或知識產權等方面的資料）如披露會令任何人的競爭條件或財政狀況受到傷害。

過早要求索取資料

2.17 即將公布或因已預定公布或發表而不宜提前披露的資料。

法定限制

2.18 資料如披露會：

- (a) 牴觸任何適用於香港的法律，或
- (b) 違反任何根據普通法或適用於香港的國際協議所引起的義務。

本守則適用於下述政府部門

漁農自然護理署
司法機構政務長轄下所有法院與
 審裁處的登記處及行政辦事處
建築署
審計署
醫療輔助隊(部門)
屋宇署
政府統計處
民眾安全服務處(部門)
民航處
土木工程拓展署
公務員事務局
商務及經濟發展局
公司註冊處
政制及內地事務局
懲教署
香港海關
衛生署
律政司
發展局
渠務署
教育局
機電工程署
環境局
環境保護署
財經事務及庫務局
消防處
食物環境衛生署
食物及衛生局
行政長官辦公室總務室
政府飛行服務隊
政府化驗所
政府物流服務署
政府產業署
路政署
民政事務局
民政事務總署
香港輔助警察隊
香港金融管理局
香港天文台

香港警務處
房屋署
入境事務處
廉政公署
政府新聞處
稅務局
創新科技署
知識產權署
投資推廣署
公務及司法人員薪俸及服務條件
 諮詢委員會聯合秘書處
勞工處
勞工及福利局
土地註冊處
地政總署
法律援助署
康樂及文化事務署
海事處
保險業監理處
電訊管理局
政務司司長及財政司司長辦公室
破產管理署
規劃署
郵政署
香港電台
差餉物業估價署
選舉事務處
截取通訊及監察事務專員秘書處
公務員敘用委員會秘書處
保安局
社會福利署
學生資助辦事處
影視及娛樂事務管理處
工業貿易署
運輸及房屋局
運輸署
庫務署
大學教育資助委員會秘書處
水務署

紀錄的定義

紀錄主要包括書面形式的文件，以及：

- (a) 任何書籍、地圖、圖則、圖表或圖樣；
- (b) 任何照片；
- (c) 任何標籤、記號或其他文字，用以識別或描述任何物件，且為該物件的構成部分，或以任何方法附連於該物件者；
- (d) 任何收錄聲音或其他資料(視像除外)的磁碟、磁帶、聲帶或其他裝置，並能(借助或毋須借助其他設備)予以重播者；
- (e) 任何收錄一個或多個視像的軟片、底片、磁帶、縮微膠卷、縮微膠片、唯讀光碟或其他裝置，並能(借助或毋須借助其他設備)予以重播者；以及
- (f) 凡標上任何文字、數字、字母或符號的物件，且能向熟悉該等文字、數字、字母或符號的人士傳達明確意義者。

APPLICATION FOR ACCESS TO INFORMATION**索取資料申請表格***(This form can be completed either in English or Chinese. Please read the notes below before completion.)*

這份表格可用英文或中文填寫，填寫前請細閱表格下面的備註

Applicant's Particulars 申請人個人資料

Name 姓名	* Mr 先生 Ms 女士	# HK I/D No. 香港身份證號碼	()
Correspondence Address 通訊地址			
Tel. No. 電話號碼		Email address 電郵地址	Fax No. 傳真號碼

* Please delete as appropriate
請刪去不適用者# Complete only if the applicant's personal data are required
如索取的資料屬申請人的個人資料方需填寫**Information Requested 要求索取的資料**

To : Access to Information Officer 致 : 公開資料主任
_____ (Name of department) 部門名稱
Details of information requested (Please be as specific as possible. It will help us understand clearly the information you are seeking. Use a separate sheet if necessary.) 所需資料的詳情 (請盡量具體說明，以便我們清楚知道你需要的是甚麼資料。如有需要，請另頁書寫。)

Signature _____ Date _____
簽署 日期**Notes
備註**

- A charge reflecting the cost of reproducing the records concerned may be levied. The department will advise you in advance of any such charge.
有關部門會按照複印紀錄所需的成本收取費用，並預先告知你所需繳付的費用。
- You may be asked to provide additional information to help us meet your request. The department may not be able to process your application if you do not provide sufficient information.
你或需提供更多資料，以協助我們回應你的申請。如你未能提供足夠資料，有關部門可能無法處理你的申請。
- The information provided will be used for processing your application for access to information. It may be divulged to other departments/agencies for the same purpose.
你所提供的資料，將用於處理有關你申請索取資料的事宜上。有關資料可能會向其他部門／機構透露，作同樣用途。
- For correction of or access to personal data contained in this application, please contact the Access to Information Officer of the department concerned.
如欲更改或索取載列在本表格的個人資料，請與有關部門的公開資料主任聯絡。

Public access to information held by the Government develops -

- **understanding** of policies and decisions
- **accountability** for decisions and actions
- **awareness** of public services
- **participation** in public service issues
- **confidence** in the administration of Hong Kong

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*I***NTRODUCTION**

The Government exists to serve the community well within available resources. To this end, it recognises the need for the community to be well informed about the Government, the services it provides and the basis for policies and decisions that affect individuals and the community as a whole.

This Code defines the scope of information that will be provided, sets out how the information will be made available either routinely or in response to a request, and lays down procedures governing its prompt release.

The Code authorises and requires civil servants, routinely or on request, to provide information unless there are specific reasons for not doing so. These reasons are set out in Part 2 and will normally be referred to if a request for information is refused.

Requests for information will be handled as promptly and helpfully as possible and if necessary, members of the public may be approached to clarify their requests or the requests may be directed to the most appropriate department. Procedures will be kept as simple as possible.

The Code also sets out procedures for review or complaint if a member of the public considers that the provisions of the Code have not been properly applied.

The Code is available on the Internet as a component of the GovHK. It can be accessed at <http://www.access.gov.hk>.



PART 1

SCOPE

GOVERNMENT DEPARTMENTS

1.1 The Code applies to all government departments¹ as listed at Annex A.

COURTS, TRIBUNALS AND INQUIRIES

1.2 The Code does not apply to information held by courts, tribunals or inquiries. The existing legal rules governing disclosure of information in the context of proceedings before courts, tribunals and inquiries are not affected by the Code.

1.3 The Code does, however, apply to information other than that stated in paragraph 1.2 which is held by all registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility, and secretariats and similar offices of other tribunals and inquiries.

PROVISION OF INFORMATION

INFORMATION TO BE PUBLISHED OR MADE AVAILABLE ROUTINELY

1.4 Each year departments will publish -

- details of their organisation
- information on the services they provide
- their performance pledges and the extent to which they have been met.

They will also publish, or make available for inspection at appropriate locations -

- a list of their records² by category
- a list of information either published or otherwise made available, whether free or on payment

¹ The term “department” includes any department, bureau, force, service, unit, secretariat, or other agency of the Government.

² The term “record” is defined at Annex B to this Code.

- the procedures and any charges for access to information not routinely published.

1.5 Whenever a service for the public is introduced or changed, the department responsible will publish sufficient information to explain the nature of the new service or change, and who will be affected by it.

INFORMATION TO BE PROVIDED ON REQUEST

1.6 Each department will also, on request, provide additional information relating to its policies, services, decisions and other matters falling within its area of responsibility, except that requests for information in the areas listed in Part 2 may be refused.

LEGAL OBLIGATIONS AND RESTRICTIONS

1.7 The Code does not affect statutory rights of access to information. Equally the Code does not affect legal restrictions on access to information whether these are statutory prohibitions, or obligations arising under common law or international agreements which apply to Hong Kong.

PROCEDURES

ACCESS TO INFORMATION OFFICER

1.8 Each department will designate an Access to Information Officer who will be responsible for promoting and overseeing the application of the Code.

REQUESTS FOR INFORMATION

1.9 Requests for information may be made orally or in writing.

1.10 Oral requests will usually suffice where the information sought can be provided readily and simply, for example by oral replies or provision of leaflets or standard forms. Civil servants may, however, ask for an oral request to be confirmed in writing where necessary or appropriate.

1.11 Written requests may be made by letter or by the application form at Annex C, and should be addressed to the Access to Information Officer of the department concerned.

RESPONSES TO REQUESTS FOR INFORMATION

1.12 Responses to requests for information will be given as quickly as possible.

1.13 Where a request, whether written or oral, cannot adequately be met by an oral reply or provision of a standard leaflet, form, etc., the information may be given by -

- providing a copy of the relevant record or part thereof
- providing a transcript of the relevant record or part thereof
- affording a reasonable opportunity to inspect, hear or view the relevant record or part thereof, or
- providing a summary of the relevant record or part thereof.

So far as possible, information will be provided in the form in which it exists. Where disclosure of certain information in a record is to be refused, access will normally be provided to the remaining part of the record.

1.14 The Code does not oblige departments to -

- acquire information not in their possession
- create a record which does not exist
- provide on request information which is already published, either free or at a charge, or
- provide information available through an existing charged service.

In these circumstances, an applicant for information will, where possible, be directed to the appropriate source of the information.

1.15 However, if a department receives a written request for information which is held by another department, it will transfer the request to that department and so advise the applicant.

TARGET RESPONSE TIMES

1.16 Where possible, information will be made available within ten days³ of receipt of a written request. If that is not possible, the applicant will be so advised by an interim reply within ten days of receipt of the request. The target response time will then be twenty-one days from receipt of the request.

³ Whenever the term “days” is used in the Code, this means “calendar days”.

- 1.17 If a request is to be refused, the applicant will be so informed within the timeframe set out in paragraph 1.16 above.
- 1.18 Response may be deferred beyond twenty-one days only in exceptional circumstances, which should be explained to the applicant. Any deferral should not normally exceed a further thirty days.
- 1.19 These targets may be extended if necessary to accommodate the third party procedures set out in paragraphs 1.20 - 1.23, or where the applicant fails to pay any charges levied in accordance with paragraph 1.24.

THIRD PARTY INFORMATION

PROCEDURES AND TIMEFRAME

- 1.20 Where information requested is held for, or was provided by, a third party under an explicit or implicit understanding that it would not be further disclosed, but a civil servant considers that the public interest may require disclosure, he will so advise the third party and invite the latter to consent to, or make representations against disclosure. The third party will be asked to respond within thirty days or such reasonable longer period as he may be granted on request.
- 1.21 On receipt of consent from the third party, the information may be disclosed.
- 1.22 If the third party makes representations against disclosure, or fails to respond within the stipulated time, a decision will be taken as to whether the information should be disclosed on the ground that the public interest in disclosure outweighs any harm or prejudice that would result. The third party will be advised of the decision.
- 1.23 If the decision is that the information should be disclosed, the third party will be notified that disclosure will be made at the expiry of thirty days from the date of the notification.

CHARGES

- 1.24 Processing requests for information uses resources and departments may therefore require payment for this service. Any charges levied will reflect the cost of providing the information, and the information will not be released until the requisite payment has been made.

REVIEW

- 1.25 Any person who believes that a department has failed to comply with any provision of the Code may ask the department to review the situation. The target response times set out in paragraphs 1.16 to 1.19 above also apply to requests for review.
- 1.26 Any person who believes that a department has failed to properly apply any provision of the Code may also complain to The Ombudsman. The Ombudsman's address is -

30/F, China Merchants Tower
Shun Tak Centre
168-200 Connaught Road Central
Hong Kong

Telephone : 2629 0555
Fax : 2882 8149



PART 2

INFORMATION WHICH MAY BE REFUSED

- 2.1 A department may refuse to disclose information, or may refuse to confirm or deny the existence of information, in the categories and for the reasons set out below, which will normally be referred to if a request is refused.
- 2.2 References in this Part to “harm” and “prejudice” include both actual harm and prejudice and the risk or reasonable expectation of harm and prejudice. In such cases, the department will consider whether the public interest in disclosure of the information outweighs any harm or prejudice that could result.

DEFENCE AND SECURITY

- 2.3 (a) Information the disclosure of which would harm or prejudice Hong Kong’s defence.
- (b) Information the disclosure of which would harm or prejudice Hong Kong’s security.

EXTERNAL AFFAIRS

- 2.4 (a) Information the disclosure of which would harm or prejudice the conduct of external affairs, or relations with other governments or with international organisations.
- (b) Information received in confidence from and conveyed in confidence to other governments, courts in other jurisdictions, and international organisations.

NATIONALITY, IMMIGRATION AND CONSULAR MATTERS

- 2.5 (a) Information relating to immigration or nationality cases.
- (b) Information the disclosure of which would harm or prejudice the administration of nationality, registration of persons, immigration or consular matters, or the performance of consular functions as an agent for other governments.

LAW ENFORCEMENT, LEGAL PROCEEDINGS AND PUBLIC SAFETY

- 2.6 (a) Information the disclosure of which would harm or prejudice the administration of justice, including the conduct of any trial and the enforcement or administration of the law.
- (b) Information the disclosure of which would harm or prejudice the conduct or impartial adjudication of legal proceedings or any proceedings conducted or likely to be conducted by a tribunal or inquiry, whether or not such inquiry is public or the disclosure of the information has been or may be considered in any such proceedings.
- (c) Information which relates to proceedings which have been completed, terminated or stayed, or which relates to investigations which resulted in or may have resulted in proceedings, whether any such proceedings are criminal or civil.
- (d) Information which would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (e) Information the disclosure of which would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders, or the security of any detention facility or prison.
- (f) Information the disclosure of which would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property.
- (g) Information the disclosure of which might endanger the life or physical safety of any person (whether or not such person is in Hong Kong), or identify the source of information or assistance given in confidence for security purposes, or for the enforcement or administration of the law.

DAMAGE TO THE ENVIRONMENT

- 2.7 Information the disclosure of which would increase the likelihood of damage to the environment or to rare or endangered species and their habitats.

MANAGEMENT OF THE ECONOMY

- 2.8 Information the disclosure of which would harm or prejudice the conduct of monetary policy, the maintenance of stability in financial markets, or the ability of the Government to manage the economy.

MANAGEMENT AND OPERATION OF THE PUBLIC SERVICE

- 2.9 (a) Information the disclosure of which would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by a department.
- (b) Information the disclosure of which would harm or prejudice the competitive or financial position or the property interests of the Government.
- (c) Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department.
- (d) Information which could only be made available by unreasonable diversion of a department's resources.

INTERNAL DISCUSSION AND ADVICE

- 2.10 (a) Papers prepared for, and records of meetings and deliberations of the Executive Council.
- (b) Information the disclosure of which would inhibit the frankness and candour of discussion within the Government, and advice given to the Government. Such information may include -
- (i) records of discussion at any internal government meeting, or at any meeting of a government advisory body;
- (ii) opinions, advice, recommendations, consultations and deliberations by government officials or advisers to the Government.

PUBLIC EMPLOYMENT AND PUBLIC APPOINTMENTS

- 2.11 Information which would harm or prejudice the management of the public service.

IMPROPER GAIN OR ADVANTAGE

- 2.12 Information the disclosure of which could lead to improper gain or advantage.

RESEARCH, STATISTICS AND ANALYSIS

- 2.13 (a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication or commercial value.
- (b) Information held only for preparing statistics or carrying out research, and which relates to individuals, companies or products which will not be identified in reports of that research, or in published statistics.

THIRD PARTY INFORMATION

- 2.14 (a) Information held for, or provided by, a third party under an explicit or implicit understanding that it would not be further disclosed. However, such information may be disclosed with the third party's consent, or if the public interest in disclosure outweighs any harm or prejudice that would result.
- (b) Information provided in confidence by a third party if disclosure to the subject of the information would harm the physical or mental health of the subject or any other individual, or disclosure should only be made to the subject by an appropriate third party.

PRIVACY OF THE INDIVIDUAL

- 2.15 Information about any person (including a deceased person) other than to the subject of the information, or other appropriate person, unless -
- (a) such disclosure is consistent with the purposes for which the information was collected, or
- (b) the subject of the information, or other appropriate person, has given consent to its disclosure, or
- (c) disclosure is authorised by law, or
- (d) the public interest in disclosure outweighs any harm or prejudice that would result.

BUSINESS AFFAIRS

2.16 Information including commercial, financial, scientific or technical confidences, trade secrets or intellectual property the disclosure of which would harm the competitive or financial position of any person.

PREMATURE REQUESTS

2.17 Information which will soon be published, or the disclosure of which would be premature in relation to a planned announcement or publication.

LEGAL RESTRICTIONS

2.18 Information the disclosure of which would constitute -

- (a) a contravention of any law which applies in Hong Kong, or
- (b) a breach of any obligation arising under common law or under any international agreement which applies to Hong Kong.



DEPARTMENTS TO WHICH THE CODE APPLIES

Agriculture, Fisheries and Conservation 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 and Development Department
Civil Service Bureau
Commerce and Economic Development Bureau
Companies Registry
Constitutional and Mainland Affairs Bureau
Correctional Services Department
Customs and Excise Department
Department of Health
Department of Justice
Development Bureau
Drainage Services Department
Education Bureau
Electrical and Mechanical Services Department
Environment Bureau
Environmental Protection Department
Financial Services and the Treasury Bureau
Fire Services Department
Food and Environmental Hygiene Department
Food and Health Bureau
General Office of the Chief Executive's Office
Government Flying Service
Government Laboratory
Government Logistics Department
Government Property Agency
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 Department
Immigration Department
Independent Commission Against Corruption
Information Services Department
Inland Revenue Department
Innovation and Technology Commission
Intellectual Property Department
Invest Hong Kong
Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service
Labour Department
Labour and Welfare Bureau
Land Registry
Lands Department
Legal Aid Department
Leisure and Cultural Services Department
Marine Department
Office of the Commissioner of Insurance
Office of the Telecommunications Authority
Offices of the Chief Secretary for Administration and the Financial Secretary
Official Receiver's Office
Planning Department
Post Office
Radio Television Hong Kong
Rating and Valuation Department
Registration and Electoral Office
Secretariat, Commissioner on Interception of Communications and Surveillance
Secretariat of the Public Service Commission
Security Bureau
Social Welfare Department
Student Financial Assistance Agency
Television and Entertainment Licensing Authority
Trade and Industry Department
Transport and Housing Bureau
Transport Department
Treasury
University Grants Committee, Secretariat
Water Supplies Department

DEFINITION OF RECORD

Record may include a document in writing and -

- (a) any book, map, plan, graph or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever;
- (d) any diskette, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film, negative, tape, microfilm, microfiche, CD-ROM or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (f) anything whatsoever on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them.

APPLICATION FOR ACCESS TO INFORMATION**索取資料申請表格***(This form can be completed either in English or Chinese. Please read the notes below before completion)*

這份表格可用英文或中文填寫，填寫前請細閱表格下面的備註

Applicant's Particulars 申請人個人資料

Name 姓名	* Mr 先生 Ms 女士	# HK I/D No. 香港身份證號碼	()
Correspondence Address 通訊地址			
Tel. No. 電話號碼		Email address 電郵地址	Fax No. 傳真號碼

* Please delete as appropriate
請刪去不適用者# Complete only if the applicant's personal data are required
如索取的資料屬申請人的個人資料方需填寫**Information Requested 要求索取的資料**

To : Access to Information Officer 致 : 公開資料主任
_____ (Name of department) 部門名稱
Details of information requested (Please be as specific as possible. It will help us understand clearly the information you are seeking. Use a separate sheet if necessary.) 所需資料的詳情 (請盡量具體說明，以便我們清楚知道你需要的是甚麼資料。如有需要，請另頁書寫。)

Signature _____ **Date** _____
簽署 日期

**Notes
備註**

- A charge reflecting the cost of reproducing the records concerned may be levied. The department will advise you in advance of any such charge.
有關部門會按照複印紀錄所需的成本收取費用，並預先告知你所需繳付的費用。
- You may be asked to provide additional information to help us meet your request. The department may not be able to process your application if you do not provide sufficient information.
你或需提供更多資料，以協助我們回應你的申請。如果你未能提供足夠資料，有關部門可能無法處理你的申請。
- The information provided will be used for processing your application for access to information. It may be divulged to other departments/agencies for the same purpose.
你所提供的資料，將用於處理有關你申請索取資料的事宜上。有關資料可能會向其他部門／機構透露，作同樣用途。
- For correction of or access to personal data contained in this application, please contact the Access to Information Officer of the department concerned.
如欲更改或索取載列在本表格的個人資料，請與有關部門的公開資料主任聯絡。

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二〇〇九年二月
February 2009

**Progress of actions in relation to the recommendations in The Ombudsman's Direct Investigation Report on
Administration of Code on Access to Information**

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

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

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

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

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

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