

立法會 *Legislative Council*

LC Paper No. CROP 44/13-14

Ref: CB(4)/CROP/3/82

Paper for the House Committee meeting on 28 February 2014

Committee on Rules of Procedure

Access to Council documents and records

Purpose

This paper invites the House Committee to consider the proposal to seek the Council's authorization for providing access to documents and records of the Council and its committees, and the draft amendments to the Rules of Procedure ("RoP") for implementing the arrangements for the provision of public access to such documents and records.

Background

2. The Government initiated a pilot scheme in March 1995 to introduce the Code on Access to Information ("the Code") in certain government departments to facilitate public access to government information. The Code was subsequently extended to the whole Government in 1996. Since then, other statutory and public bodies within the purview of the Ombudsman have adopted the Code or a similar guide. While the Legislative Council Secretariat ("the Secretariat") has received and dealt with access requests to information held by the Secretariat since its establishment in 1994, it has not adopted the Code or a similar guide. In 2010, the Secretariat undertook to draw up an access to information policy after it moved into the new Legislative Council ("LegCo") Complex.

3. As the Ombudsman under the Ombudsman Ordinance (Cap. 397) is only empowered to investigate complaints against the Secretariat in relation to its discharge of administrative functions but not LegCo as the Legislature, it

follows that the Secretariat only needs to open its administrative documents for public access. Nevertheless, it is considered that the access to information policy should also cover access to documents and records of the Council¹ in order to meet public expectation of accountability and transparency.

4. Documents and records of the Council and its committees may broadly be defined as open or closed. Most of them are open in nature and are already available for public access via the LegCo Website as well as at the LegCo Library and LegCo Archives. While access requests to closed documents and records of the Council and its committees 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.

5. To formalize and enhance the existing arrangements, The Legislative Council Commission ("the Commission") agreed at its meeting on 19 March 2013 that a formal access to information policy should be introduced (**Appendix I**). This 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 Commission, prepared detailed proposals in respect of these areas and conducted consultation exercises to seek the views of Members and the public.

Consultation process

6. 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. The main findings of the consultation exercise with Members (**Appendix II**) were reported to the Commission at its meeting on 21 May 2013. Members in general supported the proposals.

7. Having obtained Members' majority views, the Commission requested that a public consultation exercise on the proposed policy and related issues should be conducted. A public consultation exercise was therefore conducted between July and September 2013. Members of the public were invited to complete a questionnaire posted on the LegCo Website.

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

8. The Commission also requested that the views of the media and the academia should specifically be sought. The Secretariat wrote to 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 inviting them to give views on the proposed policy. Two briefing sessions were also 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 outcome of the public consultation exercise and the views of the media and academia attending the briefing sessions are in **Appendices III and IV**.

Study by the Committee on Rules of Procedure

9. While the Commission may 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 Commission has noted that the Council, as the Legislature, enjoys certain exclusive privileges including whether and how the documents and records of the Council are to be provided for public information². In this connection, authorization of the Council for accessing the documents and records of the Council and its committees 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 the Committee on Rules of Procedure ("CRoP") to study how the Council's authorization should be sought with a view to having the authorization put in place by April 2014. The Commission also decided to implement those proposals which did not require the Council's authorization with effect from 1 January 2014.

10. The Secretariat briefed CRoP at its meeting on 14 January 2014 on the background to the policy and reported to CRoP at its meeting on 24 February 2014 its recommendations on how the Council's authorization should be sought and the outcome on its study of the related issues. CRoP noted the outcome of the study and agreed to the proposals as set out in the ensuing paragraphs.

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 February 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.

Types of documents and records to be covered by the authorization

11. 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 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 V**.

Maximum records closure periods and declassification review

12. Under the existing access arrangement, 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. Having considered the practices of Parliaments and other archival institutions in overseas jurisdictions³, the Secretariat has proposed the adoption of maximum closure periods for closed documents and records of the Council and its committees, as follows:

- (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 VI**. 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.

³ Reference has been made to the practices of the Parliaments and national archives in the UK, the United States, Canada, Australia, Germany, Singapore and New Zealand.

Exempted categories

13. In the course of drawing up the policy, the Secretariat has proposed a list of exempted categories of documents and records by which an access request may be refused. This list of exempted categories of documents and records has been put to consultation with Members and the public and received general support from Members and respondents of the public consultation exercise.

14. Having considered the views of Members and the public, the Secretariat has proposed that the person to be authorized to conduct the review and determine access to the closed documents and records should perform the tasks so delegated in accordance with the list of exempted categories of documents and records as agreed to by Members and the public.

Delegation of Council's authority

15. 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. A further study has been conducted on whether the Commission may make such decision under delegated authority. The outcome of the study and the advice of the Legal Service Division are that the Commission is a body incorporated under The Legislative Council Commission Ordinance (Cap. 443) to carry out the principal function of providing administrative support and services to the Council. Such function does not embrace the making of decisions on access to documents and records of the Council. The proper way to enable the Commission to perform such additional function is by way of legislative amendment to Cap. 443.

16. The Secretariat 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 Speaker⁴ or the Clerk⁵, as both are entrusted by the Parliaments or Congress with responsibilities to ensure the orderly conduct of the business of the House.

⁴ 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.

⁵ 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.

17. The Secretariat has considered whether the work may be delegated to the President or the Clerk to LegCo, as under the existing 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 Council for public access.⁶

18. 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 Council or committees. 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.

19. 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

20. 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.

21. Modelling the membership of the proposed Committee (**Appendix VII**) 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. The President has been briefed on the proposal.

⁶ 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.

22. The proposed Committee should have the following functions:
- (a) to determine that the documents or records of the Council 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 Council by the Clerk to LegCo; and
 - (d) to consider any other matter relating to or arising from the said policy.

23. 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 VIII**.

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

- (a) adopting the exempted categories in Appendix VI as appropriate for conducting declassification reviews of classified documents and records (paragraph 12(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 12(b) above refers).

25. 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

26. 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 records closure periods and periodic declassification reviews, details of which are set out in paragraph 12 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.
27. The wording of the proposed resolution is set out in **Appendix IX**.

Advice sought

28. Members are invited to consider the proposals set out in paragraphs 20 to 27 above, as well as to consider the proposed amendments to RoP set out in Appendix IX.
29. Subject to Members' views, the proposed resolution may be moved by the Chairman of CRoP at the Council meeting of 19 March 2014.

Access to information policy

Introduction

The Legislative Council ("LegCo") is the legislature of the Hong Kong Special Administrative Region. The Legislative Council Commission ("the Commission") provides administrative support and services for LegCo through the LegCo Secretariat ("the Secretariat").

2. The Commission recognizes the importance of informing the public about the work of LegCo and promoting openness and public confidence in its decisions and activities. Such information is released to the public through the Secretariat according to the established procedures given in this Access to Information Policy ("this Policy").

3. This Policy defines the scope of information which is made available to the public and sets out how the information will be disclosed either by routine publication or in response to request. It authorizes the Secretariat to provide wide information access for members of the public unless the requested information falls under the exempted categories of information and records specified in paragraph 14 below. Where circumstances warrant, information under the exempted categories may be made available if public interest outweighs the harm and prejudice that could result unless the disclosure is prohibited by law.

4. The procedures for making a request for information are kept as simple as practicable and all requests received will be handled promptly.

5. This Policy also provides the procedures for review and appeal if any applicant is not satisfied with the decision of the Secretariat and considers that the provisions of this Policy have not been applied properly to his or her request for information.

Scope of application

6. This Policy applies to the information or records in existence and kept by the Secretariat. This Policy does not oblige the Secretariat to acquire information not in its custody or create a document or a record not in existence. Vexatious requests will not be entertained.

7. This Policy does not affect any legal rights of access to information, nor does it affect any legal restrictions on access to information whether they are prohibitions or obligations arising from statute law or under common law.

Information and records available routinely for public access

8. A list of information and records available routinely for public access is published on the LegCo Website. The list will be updated periodically. Such information and records are also available at the LegCo Library or the LegCo Archives. Some of the official publications of LegCo are available for sale at the LegCo's Souvenir Shop in the LegCo Complex. Video footages of open meetings and official media briefings of LegCo and its committees are also available for reproduction at a dubbing fee.

Information and records which may be provided on request

9. Unclassified or classified information and records relating to LegCo and its committees held by the Secretariat may be provided on request. A list of such information and records is published on the LegCo Website. The list is also updated periodically.

10. Anyone who wishes to request access to the unclassified or classified information and records may contact the Access to Information Officer in person or by:

- (a) phone at 3919 3627;
- (b) mail to Public Information Division, Legislative Council Secretariat, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong;
- (c) fax at 2537 1851; or
- (d) email at infoaccess@legco.gov.hk.

11. An Application Form for Access to Information can be downloaded from the LegCo Website and may be used to make an access request. In processing an access request, consideration will be given to the purpose of the request, the age of the requested information or records in affecting the possible impact of their disclosure and the relevant donor agreement or contract if the information or records are donated or acquired from private sources.

Response time to request for access to information

12. Upon receipt of a request for access to information:
- (a) an interim reply will be sent to the applicant within seven working days;
 - (b) a detailed reply will normally be provided within 21 working days; and
 - (c) where the information or record requested cannot be provided within 21 working days because it is not readily available or further details need to be obtained from the applicant to facilitate the processing of his or her request, or for other reasons, the applicant will be so informed within 21 working days and be advised of the estimated time required for answering his or her request.
13. Where a request cannot be adequately met by an oral answer or published materials on the LegCo Website, the applicant may be invited to consult the requested records at the LegCo Library or the LegCo Archives or the Secretariat may provide a paid copy of the record if requested by the applicant. Details of the relevant charges are set out in paragraphs 18 to 20 below.

Information or records which may be refused

14. The Secretariat may refuse to disclose information or records, or to confirm or deny the existence of information or records which fall under the exempted categories of information and records given below. References made to "harm" and "prejudice" include both actual harm and prejudice and the risk or reasonable expectation of harm and prejudice.
- (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; and
- (i) information or records the access to which would be detrimental to their preservation.

15. If an access to information request is refused, the applicant will be informed in writing of the reasons for refusal within the time-frame set out in paragraph 12 above.

16. A full list of access refusal cases will be published on the LegCo Website and the list will be updated on a regular basis.

Partial disclosure

17. Where disclosure of information in part of a record is refused if it falls under one or more of the exempted categories above, access may be granted to the remaining part of the record to which the exempted categories do not apply. Disclosure may take the form of extract, summary or redaction

as practicable, provided it will not distort the meaning of the record as understood by the Access to Information Officer.

Fees and charges

18. As processing requests for access to information involves resources, other than those publications issued free of charge or at a cost already specified, the fees and charges set out below are applicable to copies made of the information or records requested by the applicant and are subject to revision from time to time. The format of the copy will be determined by the Secretariat.

Black and white photocopy on A4 size paper (single-sided)	\$1 per page
Black and white photocopy on A3 size paper (single-sided)	\$1.5 per page
Coloured photocopy on A4 size paper (single-sided)	\$4 per page
Coloured photocopy on A3 size paper (single-sided)	\$6 per page
Audio/video record (per meeting)	\$50 per CD-ROM \$67 per DVD-ROM

19. Postage will be added if the applicant requests to have the copy delivered by post. The applicant will be notified of the charges, and the copy will be provided after the requisite payment is made.

20. Where no suitable equipment or technology is available in the Secretariat to process, view or copy the requested records, applicants may be charged the expenses incurred in providing access to or copy of these records which are otherwise unavailable.

Review and complaints mechanism

21. Any applicant who does not accept the decision to his or her request for access to information may write to the Secretary General of the Secretariat for a review.

22. Any applicant who is not satisfied with the review decision and believes that the provisions of this Policy have not been properly applied to his or her request for access to information may lodge a written appeal to the Commission.

Policy review

23. This policy will be subject to review to ensure its usefulness and to meet new needs and requirements.

Enquiries

24. Any enquiries on this Policy should be directed to the Access to Information Officer either by phone at 3919 3627, by fax at 2537 1851, or by email at <infoaccess@legco.gov.hk>.

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) 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.	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) Other views, if any, on the proposed access to information policy

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%)	

<u>(5) 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.
<u>(6) 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.

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 V

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;
- (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; and
- (i) 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. These exemptions have been incorporated into the Access to Information Policy (**Appendix I**) launched by The Legislative Council Commission on 1 January 2014.

**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 VIII

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.

**Draft Resolution on
Access to the Legislature's Documents and Records**

Proposed amendments to the Rules of Procedure

1. Rule 4 amended (Election of President)

Rule 4(1) –

Delete

“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. New rule added (Rule 74A Committee on Access to the Legislature's Documents and Records)

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); 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 the Rules of Procedure, the practice and procedure of the committee shall be determined by the committee.”.

4. Schedule renumbered

The Schedule—

Renumber as "Schedule 1".

5. Schedule 2 added

After Schedule 1—

Add

“

Schedule 2

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 (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.”.