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Panel on Constitutional Affairs

**Background brief prepared by Legislative Council Secretariat
for the meeting on 15 December 2014**

**Access to information: follow-up actions to the recommendations of
The Ombudsman's direct investigation report**

Purpose

This paper gives an account of the past discussion of the Panel on Constitutional Affairs ("the Panel") on the actions taken by the Administration to follow up The Ombudsman's direct investigation report on the access to information regime in Hong Kong ("the Report") released in January 2010 and related issues.

Background

The Code on Access to Information ("the Code")

2. 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. According to the Administration, the Code 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 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. A copy of the Code (Annex 1 to LC Paper No. CB(2)1517/09-10(03)) was provided by the Administration to the Panel in May 2010.

4. Under the Code, if a person who had requested a bureau or department to provide information considers that the bureau or department has failed to comply with any provision of the Code, he/she may ask the bureau or 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.

The Report released by The Ombudsman in January 2010

5. The Ombudsman released the Report in January 2010. The Report observed that some access to information cases had not been handled satisfactorily and contained a number of recommendations for more effective administration of the Code. In response to the observations and recommendations in the Report, the Administration had requested bureaux and departments to ensure appropriate follow up actions to be taken. The major recommendations in the Report and the progress of the Administration's follow-up actions are set out in **Appendix I**.

Management of and Access to Public Records¹

6. While each individual bureau and 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.

7. Amongst other measures, 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 Administration keeps the current administrative arrangements for records management under review and will improve them where appropriate. For instance, the Administration 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.

¹ For record management purposes, "public records" means records from legislative, judicial or executive transactions transferred to or acquired by GRS for permanent preservation.

8. It is the Administration's 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. 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.

9. Access to archival records transferred to 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 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.

Panel's discussion on the Administration's follow-up actions to the Report and related issues

10. The Administration briefed the Panel on 17 May 2010 on the follow-up actions taken in response to the observations and recommendations in the Report. At the meeting, the Panel also received views from deputations on the Code and the management of public records. Details of the Administration's responses to the views expressed by deputations are set out in Annex to LC Paper No. CB(2)159/10-11(01). The major views and concerns expressed by Panel members are summarized below.

Access to information regime

11. Some members were of the view that the existing framework for the public to seek access to the information held by the Government was ineffective. In particular, they considered that the scope of information to which public access might be refused was too broad and should be reviewed. They also considered that there should be an independent mechanism to monitor the compliance with the Code by bureaux and departments.

12. The Administration explained that the Code authorized and required bureaux and departments to provide the public with information requested, unless there were valid reasons to withhold disclosure under circumstances as specified in Part 2 of the Code. The Administration advised that the categories

of information to be withheld, such as those concerning defence and security, external affairs, nationality, immigration and consular matters, etc., were similar to those adopted in overseas jurisdictions. To assist bureaux and departments in implementing the Code, the Administration had issued detailed guidelines on the interpretation and application of the Code.

13. On the suggestion of setting up an independent body to monitor compliance with the Code, the Administration advised that the implementation of the Code was monitored by the Constitutional and Mainland Affairs Bureau and complaints could be lodged with The Ombudsman. Between March 1995 and December 2009, 125 complaints were filed with the Ombudsman, of which 111 cases had been completed as at 31 December 2009. Of these 111 completed cases, 11 were substantiated and 11 were partially substantiated. The Administration advised that it would ensure appropriate actions to be taken to follow up The Ombudsman's recommendations. The Administration considered that experience so far demonstrated that the Code had generally provided an effective framework for the public to seek access to a wide range of information held by the Government. The Administration would regularly review the Code and its implementation.

Need for archival legislation and freedom of information legislation

14. Some members shared the strong view expressed by deputations that the Administration should enact archival and freedom of information legislation to ensure proper management of records and their availability for public access. They expressed concern that Hong Kong was lagging behind other Asian places in legislation in these areas.

15. The Administration advised that the basic principles for records management enshrined in archival legislation as adopted in overseas jurisdictions were already embedded in the administrative framework set by GRS. These principles included, among others, setting out records keeping standards, obligations and responsibilities of government bodies relating to keeping, maintenance and protecting public records, requirement to seek prior authorization for disposal of records, and the right of the public to seek access to public records. It was the Administration's policy to identify and preserve records of archival value for the people of Hong Kong, and bureaux and departments were required to seek the prior consent of the GRS Director for any destruction of their records. The Administration kept the administrative arrangements for records management under review and would improve them where appropriate. For instance, a set of mandatory records management requirements was introduced in April 2009 for compliance by bureaux and departments.

Management of public records

16. Some members expressed concern as to whether GRS had the power to ensure proper management of public records by bureaux and departments or had the professional capacity to effectively perform its role (e.g. in appraising the archival value of government records). They also suggested setting up an independent body to monitor the administration of public records.

17. The Administration advised that GRS was keen to listen to the views of users of archival records and members of the public, and would take into account their views in appraising the archival value of government records. While duties on the management of archival records were undertaken by the Archivist Grade, those on the conservation and preservation of archival records were shared by the Curator Grade and Archivist Grade. The Administration considered that the current records management system was functioning effectively and did not consider it necessary to set up another body to monitor the administration of public records.

Recent development

18. In March 2014, The Ombudsman released the direct investigation report on "The Access to Information Regime in Hong Kong". The Administration will brief the Panel on its follow-up actions to the recommendations put forward in the report at the next meeting on 15 December 2014.

Relevant motions/questions and papers

19. Details of Legislative Council ("LegCo") questions and motions relating to the Code and management of public records raised/moved at Council meetings in the last and current terms, as well as relevant papers available on the LegCo website (<http://www.legco.gov.hk>) are in **Appendix II**.

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.
<p>Monitoring of Departmental Guidelines</p> <p>(i) to provide advice to B/Ds to ensure that their guidelines are clear, correct and up-to-date;</p>	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 data-bbox="181 448 607 483">Monitoring of Compliance</p> <p data-bbox="181 523 1106 600">(j) to keep the format of the quarterly returns under regular review; and</p>	<p data-bbox="1151 523 2007 687">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 data-bbox="181 788 607 823">Extension to Public Bodies</p> <p data-bbox="181 863 1106 986">(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 data-bbox="1151 863 2007 943">The following six public bodies were mentioned in the Report as not yet adopted the Code or a similar guide :</p> <ol data-bbox="1151 967 2007 1278" style="list-style-type: none"> <li data-bbox="1151 967 1765 1002">(1) Employee Retraining Board (ERB); <li data-bbox="1151 1026 1839 1061">(2) Legislative Council (LegCo) Secretariat; <li data-bbox="1151 1085 1778 1120">(3) Vocational Training Council (VTC); <li data-bbox="1151 1144 1771 1179">(4) Financial Reporting Council (FRC); <li data-bbox="1151 1203 2007 1278">(5) Kowloon-Canton Railway Corporation (KCRC); <p data-bbox="1227 1251 1285 1278">and</p>

(6) West Kowloon Cultural District Authority (WKCDA).

ERB, KCRC and FRC adopted a similar guide in September 2009, January and February 2010 respectively.

VTC will issue a similar code in June/July 2010.

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.

We are continuing following up with LegCo Secretariat and WKCDA.

Appendix II

Code on Access to Information and management of public records

Relevant documents

Committee	Date of meeting	Paper
Legislative Council	3 December 2008	Official Record of Proceedings Pages 72 - 75 (Written question raised by Hon Cyd HO)
House Committee	2 January 2009	Administration's supplementary reply to a Member's written question concerning Government records with historical value raised at the Council meeting on 3 December 2008
Legislative Council	25 November 2009	Official Record of Proceedings Pages 86 – 90 (Written question raised by Hon Emily LAU)
Panel on Constitutional Affairs	17 May 2010 (Item III)	Agenda Minutes LC Paper No. CB(2)159/10-11(01)
Legislative Council	19 May 2010	Official Record of Proceedings Pages 113 – 116 (Written question raised by Dr Hon David LI)
	26 January 2011	Official Record of Proceedings Pages 111 – 113 (Written question raised by Hon Emily LAU)
	13 July 2011	Official Record of Proceedings Pages 177 – 181 (Written question raised by Hon Miriam LAU)
	19 October 2011	Official Record of Proceedings Pages 121 – 125 (Written question raised by Hon Emily LAU)

Committee	Date of meeting	Paper
	16 November 2011	Official Record of Proceedings Pages 204 – 276 (Motion moved by Dr Hon Margaret NG)
	15 February 2012	Public Accounts Committee Report No. 57 (Chapter 2 of Part 7 on "Records management work of the Government Records Service")
	23 January 2013	Official Record of Proceedings Pages 6 – 18 (Oral question raised by Dr Hon CHAN Ka-lok)
		Official Record of Proceedings Pages 85 – 90 (Written question raised by Hon Cyd HO)
	5 June 2013	Official Record of Proceedings Pages 119 – 123 (Written question raised by Hon Charles Peter MOK)
	6 June 2013	Official Record of Proceedings Pages 6 – 96 (Motion moved by Hon Charles Peter MOK)
		Progress report provided by the Administration
	16 April 2014	Official Record of Proceedings Pages 11 – 16 (Written question raised by Hon Emily LAU)
	4 June 2014	Official Record of Proceedings Pages 28 – 30 (Written question raised by Hon Charles Peter MOK)