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Clerk to Panel
Panel on Economic Development
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn.: Ms Shirley CHAN)

16 March 2016

Dear Ms CHAN,

**Panel on Economic Development
Meeting on 22 February 2016**

Hon James TO Kun-sun's Letter

At the meeting of the Panel on Economic Development (“ED Panel”) on 22 February 2016, the Panel Chairman instructed that the Government’s response be sought to the letter from Hon James TO Kun-sun dated 1 February 2016 proposing the ED Panel to discuss issues relating to the Report of the Transport and Housing Bureau’s Investigation into Staff Conduct in the Marine Department in relation to the Vessel Collision Incident near Lamma Island on 1 October 2012 (“the Report”). We also note Hon TO’s views expressed at the meeting about the arrangements made for Legislative Council (“LegCo”) Members to peruse the redacted

Report in 2015. To facilitate the Panel's consideration of the matter, the Government is also requested to advise whether another time slot can be arranged for LegCo Members to peruse the Report. We are writing to provide the response of the Transport and Housing Bureau ("THB") as follows.

**Hon James TO's letter dated 1 February 2016 to the Panel Chairman
(LC Paper No. CB(4)574/15-16(01))**

2. Hon TO said in his letter that the terms and conditions of the confidentiality undertaking ("the Undertaking") are too harsh. Members are not permitted to bring any document into the designated venue when perusing the Report, thus hindering Members from understanding the contents of the Report. In addition, Members are required to seek written determination by the Government before disclosing information of the Report to another person even though the contents of the Report are already known to this person.

3. On 12 June 2015, THB wrote to all LegCo Members informing them that after signing the Undertaking, they could peruse the redacted Report at the designated venue from 15 June 2015 to 14 July 2015. Subsequently, in response to the views of some Members expressed in their letter to THB in late June 2015, the Government agreed to revise some terms of the Undertaking in July whereby Members were allowed to take notes with papers provided by the Government when perusing the Report at the designated venue.

4. THB explained again in the reply that the Government has a legal obligation to ensure that the confidential information of the Report will not be disclosed. The terms of the Undertaking were prepared on the premise of safeguarding the contents of the Report from being disclosed. Therefore, Clause 6.4 of the Undertaking stipulates that no articles for recording be permitted into the designated venue.

5. Save for the exceptions specified in the Undertaking, Members should not disclose any contents of the Report to any person. The exceptions include the disclosure of information already known to the recipient other than as a result of unauthorised disclosure by the Member in breach of the confidentiality obligation. If Members seek to invoke or rely on the exceptions, they must seek the written determination by the Government. THB has already explained the reasons in clear terms: the Government, as the owner of the confidential information in the Report,

knows well the different extent of information disclosed to different parties having regard to different circumstances and legal considerations underlying such disclosure. As such, by requiring a Member to seek written determination by the Government before disclosure of any information, which he/she believes that the recipient has already known, mistaken disclosure of the confidential information of the Report and unnecessary legal dispute can be avoided. The Government would determine in good faith whether the related information falls in the exception as stipulated in the relevant clauses.

6. In his letter of 1 February 2016 to the ED Panel, Hon TO mentioned that he wrote to the Secretary for Transport and Housing on 29 October and 14 December 2015 seeking the Government's written determination, under the provision in Clause 2.3 of the Undertaking signed by him, for him to rely on the exception set out in Clause 2.2(b) thereof to disclose the information he had read from the Report to a member of a bereaved family, who has obtained a copy of the redacted Report by way of a court order, so as to facilitate discussion. Having taken full account of Hon TO's request and the related circumstances, THB provided a reply to Hon TO on 5 February 2016.

7. It is worth noting that the Government has separately provided a redacted version of the Report to the legal representative of a bereaved family pursuant to a court order. In view of the relevant background and the laws applicable, the Report so provided is solely for consideration of whether to make a civil claim but not for other purposes, and the contents have to be kept confidential. As the background and legal basis for provision of the Report to LegCo Members and the bereaved family are different, the extent of the confidential information that should be redacted is hence not the same. In other words, the information made available to Members and the bereaved family is different. In fact, the contents of the Report made available to LegCo Members contain more information than that provided to the bereaved family. The main reason is that the Report provided to the bereaved family as ordered by the court is solely for consideration of whether to make a civil claim. According to the professional advice of an independent outside Senior Counsel, information not related to the civil claim should be redacted.

8. THB will process any requests from Members for written determination to disclose contents of the Report to any person as soon as practicable. Before making the determination, we must duly consider the

circumstances of the request, and if necessary, would seek legal advice from independent outside counsel.

9. Hon TO also proposed in his letter that a Panel meeting be held to discuss arrangements to enable discussions of the Report at meetings under the principle of confidentiality. Members may wish to note that Clause 2.6 of the Undertaking stipulates that Members who have signed the Undertaking may discuss the contents of the Report at any meetings of the LegCo and / or any panels or committees which are conducted in camera and not open to the public, and which are attended only by Members who have signed the Undertaking. Members may also discuss the Report at any other meetings attended only by Members who have signed the Undertaking and in such circumstances as will ensure that the confidential information will not be disclosed to any person other than those Members who take part in such meetings. Under such arrangements, LegCo Members are able to fulfill their duties subject to the premise that confidential information will not be disclosed.

LegCo Members' perusal of the Report

10. In your letter of 23 February 2016, it is said that Hon TO is dissatisfied that "the perusal period for LegCo Members to read the Report was relatively short and too close to the session break in the summer of 2015".

11. We wish to clarify the circumstances leading to the timing of the perusal arrangements made. In THB's letter to the then Clerk to ED Panel back on 16 May 2014 (LC Paper No. CB(1)1443/13-14(01)), we explained that in the interest of fairness, LegCo Members would have access to the Report (with certain redactions) at about the same time when legal representatives of the bereaved families were given access to the Report in the context of civil proceedings.

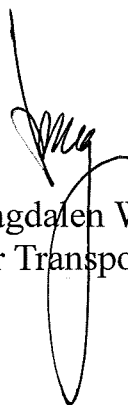
12. On 12 June 2015, the legal representative of a bereaved family was provided with a redacted version of the Report pursuant to a court order. We informed all LegCo Members on the same day that the Government would make available the Report (with certain redactions) for their perusal, after signing the Undertaking, at the designated venue from 15 June 2015 to 14 July 2015. We also reiterated that the Report made available for Members' perusal contains certain redactions which are made in order to comply with the mandatory requirements in the

Personal Data (Privacy) Ordinance and such other legal requirements as may be necessary.

13. Subsequently, some LegCo Members wrote to THB in late June 2015 on their views on the terms and conditions of the Undertaking and requested for revision of some terms. Having considered their views and with regard to legal advice, THB wrote to all LegCo Members on 15 July 2015 informing them that they may take notes while perusing the Report at the designated venue, a revised Undertaking was attached and the designated perusal period was extended for another month, up to 14 August 2015 inclusive. In other words, the perusal period for LegCo Members eventually ran for two months from 15 June to 14 August 2015. According to our record, one LegCo Member signed the Undertaking at the time and perused the Report at the designated venue.

14. If it is the consensus view of the Panel that there are a reasonable number of LegCo Members who wish to, upon signing of the Undertaking (i.e. the version issued to Members on 15 July 2015), peruse the Report, and that arrangements should be made by the Government to again make available the Report (with certain redactions) for Members' perusal, the Government will duly consider the Panel's view and explore the related arrangements.

Yours sincerely,



(Mrs Magdalen WONG)
for Secretary for Transport and Housing

c.c. LegCo ED Panel Chairman, Hon James TIEN Pei-chun, GBS, JP
(Fax: 2368 5292)