

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)1119/17-18  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 15 January 2018, at 2:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)  
Hon Holden CHOW Ho-ding (Deputy Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Dr Hon CHIANG Lai-wan, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Hon LAM Cheuk-ting  
Hon Wilson OR Chong-shing, MH  
Hon Tanya CHAN  
Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon LAU Kwok-fan, MH  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai

**Member attending** : Dr Hon KWOK Ka-ki

**Members absent** : Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Dennis KWOK Wing-hang  
Dr Hon Fernando CHEUNG Chiu-hung

**Public Officers attending** : Item III

Mr Patrick NIP Tak-kuen  
Secretary for Constitutional and Mainland Affairs

Ms Cordelia LAM Wai-ki  
Acting Deputy Secretary for Constitutional and  
Mainland Affairs

Mrs HONG CHAN Tsui-wah  
Deputy Secretary for Education

Mr Eric CHAN Sui-wai  
Deputy Secretary for the Civil Service

Mr Patrick LI Pak-chuen  
Deputy Secretary for Home Affairs

Item IV

Ms Kitty CHOI  
Director of Administration

Mr Zachary LO Siu-on  
Government Records Service Director

Miss Jessica LAU Sin-kwan  
Archivist (Public Records) 1  
Government Records Service

**Clerk in attendance** : Ms Joanne MAK  
Chief Council Secretary (2) 3

**Staff in attendance** : Mr Kelvin LEE  
Senior Assistant Legal Adviser 3

Mr Dennis HO  
Senior Council Secretary (2) 3

Mrs Fanny TSANG  
Legislative Assistant (2) 3

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**I. Information paper(s) issued since the last meeting**

Members noted that no information paper was issued after the last meeting.

**II. Items for discussion at the next meeting**

[LC Paper Nos. CB(2)661/17-18(01) and (02)]

2. Members agreed to discuss the following items proposed by the Administration at the next meeting on 14 February 2018 at 10:45 am:

- (a) briefing by the Privacy Commissioner for Personal Data; and
- (b) briefing by the Chairperson of the Equal Opportunities Commission.

**III. Promotion of the Basic Law**

[LC Paper Nos. CB(2)661/17-18(03) and (04)]

3. The Secretary for Constitutional and Mainland Affairs ("SCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)661/17-18(03)].

Discussion

*Basic Law education for students*

4. Referring to media reports that there were pro-independence groups attempting to promote "Hong Kong independence" on school campuses, Mr Kenneth LAU and Dr CHIANG Lai-wan expressed concern as to whether the Administration's efforts in promoting the Basic Law for students and cultivating in them a sense of national identity were adequate.

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Mr Christopher CHEUNG also expressed concern about the effectiveness of the Administration's efforts in promoting the Basic Law. He asked about the funding resources devoted to this area of work and whether the Education Bureau ("EDB") would adopt a tougher stance in handling the promotion of "Hong Kong independence" on school campuses in future.

5. SCMA said that the Constitutional and Mainland Affairs Bureau ("CMAB") had been actively promoting the Basic Law through different channels to enable the public to have a more comprehensive and thorough understanding of "one country, two systems" and the Basic Law. Among the different sectors, the Government especially attached importance to the education and promotion work on the Basic Law for students/young people and public officers. Moreover, CMAB strived to tailor the promotion efforts in new and innovative ways, such that the promotional messages would easily be conveyed to, and understood by, the target audience. SCMA further said that CMAB had earmarked \$17 million in the 2017-2018 financial year to promote the Basic Law to different sectors, which exceeded the amount earmarked in the 2004-2005 financial year by five times.

6. The Deputy Secretary for Education ("DSED") said that the existing policies of Basic Law education implemented by EDB aimed at setting out clear goals for promoting Basic Law education through a systematic, multi-pronged and co-ordinated approach, so that all primary school and secondary school students understood related concepts of the Basic Law and the principle of "one country, two systems". She further said that learning contents relating to the Basic Law were inherent in relevant Key Learning Areas and subjects. Besides, through various learning activities, schools further facilitated students in learning the Basic Law. DSED pointed out that the school sector was very supportive of Basic Law education and the rates of participants of various learning activities had been on the rise. Nevertheless, she considered that the effectiveness of Basic Law education could be affected by the social atmosphere. She stressed that actions promoting "Hong Kong independence" contravened the Basic Law. EDB's stance all along was that any proposals or activities advocating "Hong Kong independence" should not be allowed in schools. EDB had also elucidated its stance to all schools in Hong Kong. Meanwhile, she noted that each university had put in place a mechanism for handling any such activities on its campus.

7. With reference to paragraph 12 of the Administration's paper [LC Paper No. CB(2)661/17-18(03)], the Chairman enquired why there were only

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500 teachers who had completed the Basic Law Knowledge Enrichment Online Course for Secondary School Teachers since its launch in June 2017 while there were 28 853 secondary school teachers in the 2016-2017 school year, and asked if EDB would provide more support to teachers for professional development in relation to the Basic Law. DSED said that the above online course, which allowed teachers' participation at their convenience, was only one of the many avenues for secondary school teachers to enhance their knowledge and understanding of the Basic Law. It was offered to provide one convenient channel for teachers' self-learning. She advised that eight sessions of the online course were conducted each year, with each session providing a quota of 400 apart from the initial two trial sessions. She further said that other training efforts were targeted at principals and teachers, including new and incumbent principals, as well as teachers of Liberal Studies at the secondary level and General Studies at the primary level. Besides, experts were invited to conduct Basic Law training on the staff development day of government schools. School sponsoring bodies were also encouraged to arrange relevant training for their teaching staff. In view of the busy schedules of teachers and the availability of different learning opportunities on the Basic Law, the enrolment rate for the online course so far was considered satisfactory.

8. Mr HUI Chi-fung expressed concern as to whether students would be "brainwashed" with biased information through Basic Law education. DSED said that the curriculum and learning and teaching resources for the purpose of Basic Law education were carefully and prudently designed in consultation with the legal sector, CMAB and the Department of Justice. The relevant materials were impartial and had been uploaded onto the Internet for public viewing. EDB would not accept any ungrounded criticisms on the curriculum and learning and teaching resources.

*Promotion of the Basic Law among the public*

9. The Deputy Chairman pointed out that the Hong Kong Special Administrative Region ("HKSAR") was established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China ("the Constitution"). He stressed that the Constitution and the Basic Law formed the constitutional basis of HKSAR. The Deputy Chairman, Ms Starry LEE and Mr CHEUNG Kwok-kwan requested the Administration to step up efforts to promote understanding of the Constitution and the Basic Law. They took the view that some people in Hong Kong emphasized only the "two systems" and neglected the "one country" principle. They

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considered that the Administration should not only promote the relevant provisions of the Basic Law which safeguarded human rights and various kinds of freedom of Hong Kong people but neglected their obligations and responsibilities. They called on the Administration to promote understanding of the relationship between the Central Authorities and the HKSAR Government. Dr Priscilla LEUNG also expressed a strong view that the HKSAR Government had the responsibility to promote better understanding of the Constitution and the Basic Law as well as the legal effect of the decisions and interpretations adopted by the Standing Committee of the National People's Congress ("NPCSC"). SCMA echoed members' view that the Constitution and the Basic Law formed the constitutional basis of the HKSAR and provided the strongest safeguard for the long-term prosperity and stability of Hong Kong. He said that the Administration would make sustained efforts to promote to the general public a comprehensive understanding of the Constitution and the Basic Law.

*Basic Law training for civil servants*

10. With reference to paragraph 22 of the Administration's paper [LC Paper No. CB(2)661/17-18(03)], Mr Alvin YEUNG asked about details of the "more advanced Basic Law training" provided to civil servants at the managerial level. SCMA replied that it included the national studies programmes co-organized with renowned institutions and universities in the Mainland, e.g. the Chinese Academy of Governance.

*Co-location arrangement and the role of the Liaison Office of the Central People's Government*

11. Ms Claudia MO, Dr KWOK Ka-ki, Ms Tanya CHAN, Mr Alvin YEUNG and Dr Helena WONG considered that the co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link was not consistent with the "one country, two systems" principle and contravened Article 18 of the Basic Law ("BL 18"). They opined that the Administration failed to explain clearly the legal basis of the Decision adopted by NPCSC on the implementation of the co-location arrangement ("the Decision"). They disagreed with the remarks by Mr ZHANG Rongshun, the Vice-Chairperson of the Legislative Affairs Commission of NPCSC cum Vice-Chairperson of the HKSAR Basic Law Committee, that the Decision should be regarded as an "act of state" under BL 19. Moreover, they criticized the remarks by Mr WANG Zhimin, the Director of the Liaison Office of Central People's Government in HKSAR

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("LOCPG"), on the previous day, i.e., LOCPG and the HKSAR Government should "walk together" to foster a closer relationship, were in violation of BL 22.

12. Mr LAM Cheuk-ting expressed concern that Mrs Rita FAN, the former Legislative Council ("LegCo") President, had reportedly said that LOCPG had lobbied LegCo Members to vote during motion debates in favour of the HKSAR Government and asked whether such acts were in violation of BL 22. Mr IP Kin-yuen also sought the Administration's views on the matter.

13. SCMA said that on the basis of respecting the Constitution, the Basic Law and "one country, two systems", the HKSAR Government and the Mainland had adopted the "Three-step Process" in taking forward the co-location arrangement. SCMA stressed that the Decision had a sound legal basis as it was made entirely pursuant to the Constitution and related procedures. SCMA further said that LOCPG was an office set up by the Central People's Government in HKSAR. It had been implementing its duties in strict accordance with the Basic Law and the laws of HKSAR. He gave an account of the major functions of LOCPG, which included liaising with various sectors of the community in Hong Kong to enhance exchanges between the Mainland and Hong Kong. In response to members' concerns about the remarks by Mr WANG Zhimin on the previous day, SCMA affirmed that the HKSAR Government was responsible for governing Hong Kong in accordance with the Basic Law. He added that it was also in the interest of Hong Kong to work for closer ties as well as more economic and regional co-operation between Hong Kong and the Mainland. Dr CHIANG Lai-wan and Ms Starry LEE considered that for the long-term benefit of Hong Kong, the HKSAR Government was obliged to strengthen communication with the Mainland and foster closer cooperation with Mainland provinces and municipalities in various policy areas.

**IV. Management of government records**

[LC Paper Nos. CB(2)661/17-18(05) and (06)]

14. The Director of Administration ("DoA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)661/17-18(05)].

Discussion

*Existing records management regime*

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15. Mr LAM Cheuk-ting considered that the existing records management regime was inadequate in ensuring compliance. He expressed concern that certain bureaux and departments ("B/Ds") had neglected records management duties, citing the example that the Administration had failed to take minutes of the first seven inter-departmental meetings between the Housing Department and the Water Supplies Department on handling the incident of excessive lead found in drinking water.

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16. DoA said that the management of government records was subject to stringent requirements, such as the procedures for disposing time-expired records as set out in paragraph 17 of the Administration's paper [LC Paper No. CB(2)661/17-18(05)]. Besides, under the Public Records (Access) Rules 1996 ("the Rules"), public access would, in general, be allowed to archival records which had been in existence for not less than 30 years or the contents of which had at any time been published or wholly disclosed to the public. At Dr Helena WONG's request, DoA agreed to relay to relevant B/Ds that the government records pertaining to the incident of excessive lead found in drinking water (including tests on drinking water samples and blood tests) should be duly kept for future perusal.

17. Dr Helena WONG further enquired whether it was the Government Records Service ("GRS") or the B/D concerned to decide whether to create and collect records on a subject matter, and which authority was responsible in monitoring B/Ds' compliance with the records management requirements.

18. DoA replied that, in accordance with their business functions and activities, the divisions/sections in each B/D promulgated their respective business rules on records creation and collection as part of daily operation. According to the Government's Records Management Manual, examples of what records should be created and kept included minutes and other records of meetings, consultations and deliberations pertinent to the decision-making process, formulation of policies and procedures or transaction of business; and individual exercise of discretionary judgement which had a major effect on the functions and activities of the organization. DoA further said that B/Ds were required to review their records management practices regularly. This self-assessment approach was also deployed in overseas countries, such as Australia and the United Kingdom ("UK"), to monitor the compliance of government agencies. In addition, GRS conducted in-depth departmental records management reviews for individual B/Ds. Through these reviews, it was found that B/Ds had generally complied with the records management



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requirements (e.g. the print-and-file requirement of relevant official email correspondences).

19. Mr HUI Chi-fung queried if the self-assessment approach and the Rules were adequate in ensuring proper management of government records and public access to archival records in modern-day circumstances. DoA replied that, even in other jurisdictions with archival legislation, the records management requirements (including the conduct of self-assessments by government agencies) were embedded in administrative frameworks, instead of expressly stated in the legislation. Besides, under the Rules, the GRS Director might, at his discretion and in accordance with the general instructions given to him by the Chief Secretary for Administration, permit any person to inspect closed records held in GRS. In exercising his discretion, the GRS Director would have regard to the factors set out in paragraph 21 (i) to (iii) of the Administration's paper [LC Paper No. CB(2)661/17-18(05)].

20. Dr CHIANG Lai-wan considered it important to keep archival records of major historical events such as the 1967 riots and the "Occupy Movement" in 2014. In reply to Dr CHIANG's enquiry, DoA clarified that requests for disposal of records were usually initiated by the relevant divisions/sections in the B/D concerned. In practice, the officer responsible for considering and endorsing in writing such requests would usually be the officer at the rank of Senior Executive Officer or above in charge of the General Registry of the B/D concerned. In addition, for time-expired records having no archival value, while the GRS Director's agreement would be required prior to their physical destruction, the staff of GRS were authorized to consider as to whether to provide such agreement.

21. With reference to paragraph 20 of the Administration's paper [LC Paper No. CB(2)661/17-18(05)], the Deputy Chairman enquired about the justifications for the 11 approved requests for deferring transfer of time-expired records from B/Ds to GRS received between March 2014 and the end of 2017. DoA advised that among the 11 deferral requests, four involved the Security Bureau which was conducting a policy review and therefore the records concerned had to be retained for reference; and of the remaining cases, five and two requests involved the Housing Department and the Home Affairs Department respectively, because the records concerned contained information about some unresolved matters which might have financial or legal implications (e.g. contractual matters and ongoing court cases). The B/Ds concerned were normally allowed to defer the relevant transfers for two to three years.

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22. Mr Charles MOK also enquired whether the file titles of confidential records would be disclosed on the Internet to enhance transparency of such records. DoA replied that in many overseas places, such file titles would not be disclosed to the public, with the exceptions of Australia and UK, where the disclosures were partial. DoA added that the Administration would conduct a policy review on whether disclosing the file titles of confidential records would lead to premature disclosure of the existence of the confidential records concerned.

*Enacting an archives law*

23. Dr Helena WONG, Mr Charles MOK, Mr HUI Chi-fung and Mr CHU Hoi-dick expressed support for enacting an archives law. Mr CHU sought details of the difference between the existing regime and an archives legislation. DoA said that while Hong Kong had not implemented an archives law at present, the essential principles of records management adopted internationally had been implemented in Hong Kong. She explained that GRS had the sufficient authority to ensure B/Ds' compliance with the mandatory records management requirement. She further said that the Law Reforms Commission ("LRC") would conduct extensive consultation on its proposals after studying the existing records management system and the relevant experience of other jurisdictions in the near future. She also highlighted that the Chief Executive had stated in her 2017 Policy Address that she held a positive view towards the enactment of an archives law. DoA added that, according to practices in jurisdictions with archival legislation, staff involved in cases of non-compliance would not necessarily commit a criminal offence under the legislation, unless those staff were deliberately derelict in records management duties.

24. In reply to the Chairman's enquiry, DoA clarified that LRC had set up two subcommittees to conduct comprehensive comparative studies to review the existing records management and access to information regimes in Hong Kong respectively. With regard to the classification of records, DoA said that B/Ds were required to adopt the standard classification scheme promulgated by GRS for all administrative records; whereas for the programme records, B/Ds should follow the procedures set out by GRS to develop their own classification scheme.

25. Mr WONG Ting-kwong said that the Democratic Alliance for the Betterment and Progress of Hong Kong was not opposed to conducting

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studies with regard to enacting an archives law. He said that, in many other countries, confidential records relating to state affairs, such as national sovereignty, would normally be handled by, or with the consent of, central governments. He questioned whether LegCo had the jurisdiction to enact an archives legislation that covered records concerning the Central People's Government.

26. DoA said that, under the Code on Access to Information, B/Ds might refuse to disclose information, or refuse to confirm or deny the existence of information, in 16 categories, including defence and security, and external affairs. In other jurisdictions where there were archives legislation, public access to sensitive information (e.g. records relating to other governments) might be refused.

*Sanctions*

27. Noting that from 2014 to 2016, B/Ds had instituted disciplinary actions against 14 staff who were involved in 10 cases concerning loss or unauthorized destruction of records, Mr MA Fung-kwok and Dr CHENG Chung-tai enquired about the nature and details of those 10 cases. DoA advised that most of the cases involved losses of police notebooks and Fixed Penalty Notices by police officers; whereas two cases involved unauthorized inadvertent disposal of 87 documents of the New Territories Fire Command Headquarters of the Fire Services Department, and of the Tin Sum Division of the Hong Kong Police Force. Those 10 cases neither involved criminal offenses nor deliberate disposal of records as ordered by the seniors of the staff concerned. Following investigations, the disciplinary actions taken against the 14 staff included the issuance of minor offense reports (by the Police), oral and written warnings. Dr CHENG further enquired if the 10 cases involved any loss or unauthorized destruction of Police video footages. DoA replied in the negative. In response to the Deputy Chairman's enquiry, DoA advised that the disciplinary actions were imposed in accordance with the civil service disciplinary mechanism and the details of the disciplinary actions imposed would not be made public.

*Electronic records management*

28. Mr Charles MOK and Ir Dr LO Wai-kwok were of the view that the Government should speed up the implementation of the electronic recordkeeping system ("ERKS") in B/Ds. Ir Dr LO asked about the timetable of the implementation. In his view, the practice of print-and-file

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for the B/Ds which had yet to implement ERKS was primitive and created unnecessary paper waste. He also commented that the implementation of ERKS would also correspondingly allow easier public access to information.

29. DoA replied that ERKS was a complex system and the licenses of the software involved were expected to be costly. The Administration would embark on a review of six B/Ds' newly implemented ERKS. The results would enable informed decisions to be made on the long-term strategy for the full extension of ERKS across the Government by the E-government Steering Committee chaired by the Financial Secretary. The Administration currently did not have a timetable for a full implementation of ERKS across the Government.

**V. Any other business**

30. There being no other business, the meeting ended at 4:29 pm.

Council Business Division 2  
Legislative Council Secretariat  
26 March 2018