

# **立法會**

## ***Legislative Council***

LC Paper No. CB(4)546/18-19 (02)

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### **Panel on Administration of Justice and Legal Services**

**Meeting on 25 February 2019**

#### **Background brief on management of government records and access to government information**

#### **Purpose**

This paper provides background information on the current regime relating to the management of government records, and that relating to access to information held by the Government ("access to information regime"). The paper also summarizes the major views and concerns expressed by Members of the Legislative Council ("LegCo") regarding the above and related subjects.

#### **Background**

##### Management of government records

2. According to the Administration, the importance of records management in enhancing openness, accountability, efficiency and effectiveness is fully recognized and it is committed to identifying and preserving government records having archival values. While Hong Kong has not yet implemented an archives law, the essential principles of records management adopted internationally are implemented through an administrative framework underpinned by a set of mandatory records management requirements. These principles include designation of obligations and responsibilities of government agencies, promulgation of recordkeeping standards and requirements covering the whole life cycle of records management from creation and collection, classification, scheduling and final disposal of records, to records transfer; and public access to archival records.

3. The responsibilities for proper management of government records are shared between the Government Records Service ("GRS"), the central records management service agency established under the Administration Wing of the Chief Secretary for Administration's Office, and government bureaux and departments ("B/Ds") which create and collect records. GRS is responsible for formulating and monitoring government records management policy and requirements, while B/Ds are required to institute and implement a comprehensive records management programme in accordance with the policy and requirements, taking their unique operational and records management needs into account.

4. GRS is also responsible for appraising government records to determine which records possess archival value and should be permanently retained. B/Ds are required to transfer time-expired records appraised as having archival value to GRS for permanent retention according to the General Administrative Records Disposal Schedules ("GARDS") developed by GRS.

#### Access to information held by the Government

5. Access to archival records kept by GRS is managed through the Public Records (Access) Rules 1996. In general, public access will be allowed to archival records which have been in existence for not less than 30 years or the contents of which have at any time been published or wholly disclosed to the public. The GRS Director may, in his discretion and in accordance with general instructions given to him by the Chief Secretary for Administration, permit any person to inspect closed records held in GRS.

6. On the other hand, access to government information kept by B/Ds is provided through the Code on Access to Information ("the Code")<sup>1</sup>. The Code defines the scope of information which B/Ds 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 B/Ds 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. After its implementation on a trial basis in March 1995, the Code was extended progressively to the whole Government in December 1996.

#### Reports published by The Ombudsman and the Director of Audit

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<sup>1</sup> Bilingual version of the Code is available from the government website through the following link: <https://www.access.gov.hk/filemanager/content/codeonacctoinfo/code.pdf>

7. The management of government records regime and access to information regime have been subject to scrutiny by various bodies over the years, including The Ombudsman who released three direct investigation reports on, namely, Effectiveness of Administration of Code on Access to Information<sup>2</sup> in January 2010, Public Records Management in Hong Kong<sup>3</sup> in March 2014 and The Access to Information Regime in Hong Kong<sup>4</sup> also in March 2014. In October 2011, the Director of Audit issued the Report No. 57 with a chapter on GRS' records management work.<sup>5</sup>

### Studies conducted by the Law Reform Commission of Hong Kong

8. In 2013, the Law Reform Commission of Hong Kong ("LRC") set up two subcommittees to study two topics referred to it by the Secretary for Justice and the Chief Justice. The Archives Law Sub-committee ("AL Sub-committee") is tasked to review the current regime relating to management and preservation of, and access to government or public records for the purposes of considering whether reform is needed and if so, to make such recommendations for reform as appropriate. The Access to Information Sub-committee ("ATI Sub-committee") is tasked to review the current regime relating to access by the public to information held by the government or public authorities for the purposes of considering whether reform is needed and if so, to make such recommendations for reform as appropriate.

9. AL Sub-committee and ATI Sub-committee ("the two Sub-committees") have had discussions about the division of work and are working in tandem. ATI Sub-committee is concerned with the right to access whereas AL Sub-committee is concerned with the management of physical access. The two Sub-committees therefore work under a clear division of labour, separately but alongside each other, with the goal that in the end, a single, universal, and consistent set of rules should apply.

### **Major views and concerns of Members**

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<sup>2</sup> <https://ofomb.ombudsman.hk/abc/files/DI189.pdf>

<sup>3</sup> [http://ofomb.ombudsman.hk/abc/files/DI246\\_full\\_E-20\\_3\\_2014\\_with\\_Appendix\\_1.pdf](http://ofomb.ombudsman.hk/abc/files/DI246_full_E-20_3_2014_with_Appendix_1.pdf)

<sup>4</sup> [https://ofomb.ombudsman.hk/abc/files/DI238\\_full\\_E-20\\_3\\_2014\\_with\\_Appendix\\_1.pdf](https://ofomb.ombudsman.hk/abc/files/DI238_full_E-20_3_2014_with_Appendix_1.pdf)

<sup>5</sup> [https://www.aud.gov.hk/pdf\\_e/e57ch10.pdf](https://www.aud.gov.hk/pdf_e/e57ch10.pdf)

10. Over the years, LegCo Members have been raising various concerns regarding the management of government records and access to information regime (particularly the Code) at meetings of the Council and committees. In particular, the Panel on Administration of Justice and Legal Services ("AJLS Panel") expressed concerns about the progress of work of the two Sub-committees at its meetings on 20 December 2017 and 25 June 2018, while the Panel on Constitutional Affairs ("CA Panel") discussed the subjects at its meetings on 17 May 2010, 15 December 2014, 16 October 2017 and 15 January 2018. About 20 Council questions relating to the management of public records and/or the access to information regime had also been raised since the 2006-2007 legislative session. The major views and concerns expressed by Members are summarized below.

#### On the management of government records

##### *Monitoring of compliance*

11. Some Members expressed concern as to whether GRS had the power to ensure proper management of government records by B/Ds and considered that the existing records management regime was inadequate to ensure compliance by B/Ds. They suggested setting up an independent body to monitor the administration of public records.

12. The Administration advised that GRS had adequate authority and autonomy to perform its functions effectively. With the introduction of mandatory record management requirements in April 2009, each B/D was required to regularly transfer archival records to GRS. Further, each B/D was required to designate a directorate officer to review its records management programme regularly and report to GRS. These provided GRS with the authority and opportunity to review records management of B/Ds both on a regular and an ad hoc basis. Any government employee failing to comply with the mandatory records management requirements would be liable to disciplinary action.

13. Members noted that a two-pronged approach was being implemented by the Administration to review the records management practices of B/Ds, which comprised self-assessment conducted by B/Ds and departmental records management reviews conducted by GRS. Some Members questioned if the self-assessment approach implemented by B/Ds could effectively ensure proper management of government records. The Administration advised that the approach was also deployed in overseas countries, such as Australia and the United Kingdom, to monitor the compliance of government agencies.

14. As regards the suggestion of setting up an independent body to monitor the administration of public records, the Administration advised that through in-depth reviews conducted by GRS, it was satisfied that B/Ds had generally complied with the records management requirements. It 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.

*Professional capacity of the Government Records Service*

15. Some Members were concerned if GRS had the professional capacity to effectively perform its role, such as in appraising the archival value of government records. The Administration advised that GRS had on its establishment staff from the executive, curator and archivist grades at officer level. While the executive grade staff members were responsible mainly for the administration of GRS and implementing policies for the management of public records, duties on the management of archival records were undertaken by the archivist grade and those on the conservation and preservation of archival records were shared by the curator grade and archivist grade. The Administration also 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.

*Retention period of government records and destruction of records*

16. From time to time, Members raised concerns over the retention period of government records and destruction of records, in particular whether some records had been destroyed by mistake.

17. According to the Administration, disposal of time-expired records, including the destruction of records and transfer of records having archival value to GRS for permanent retention, was an indispensable part of the life cycle of records and also an essential component in B/Ds' records management. Regular disposal of records facilitated easy retrieval of records in active use, and minimized costs for maintaining and storing records.

18. The Administration further advised that the requirements for the disposal of administrative records were different from those for programme records.

For administrative records, GRS had developed GARDS setting out the retention periods and the disposal actions of records in different subject groups. For example, policy-related administrative records appraised by GRS as having enduring value would be preserved as archival records whereas day-to-day administrative records pertaining to procurement or recruitment matters would be destroyed after the prescribed retention periods up to 13 years. For programme records, B/Ds should, in consultation with GRS, develop their own records disposal schedule having regard to the administrative, operational, fiscal and legal requirements and archival values of the records. Furthermore, in the interests of proper internal control, disposal of records, including destruction of records, should be considered and endorsed in writing by an officer not below the rank of Senior Executive Officer or equivalent.

#### *Implementation of the electronic recordkeeping system*

19. Some Members urged the Administration to speed up the implementation of the electronic recordkeeping system ("ERKS") in B/Ds in order to minimize paper consumption and facilitate access to information.

20. The Administration advised that ERKS was a complex system and the licenses of the software involved were expected to be costly. GRS would first embark on a review of six B/Ds' newly implemented ERKS in 2018, the outcome of which would enable informed decisions to be made by the E-government Steering Committee on the long-term strategy for the full extension of ERKS across the Government.

#### On access to information held by the Government

##### *Reasons for refusing access to information by the public*

21. Some Members considered that the existing framework for the public to seek access to the information held by the Government was ineffective. In particular, the scope of information to which public access might be refused was too broad and should be reviewed.

22. The Administration explained that the Code authorized and required B/Ds 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. The Administration had also issued detailed guidelines on the interpretation and application of the Code to assist B/Ds in

implementing the Code. Since the implementation of the Code, the percentage of requests where information was provided had consistently exceeded 95%.

23. The Administration further advised that if B/Ds decided to refuse the provision of information requested in full or in part, they must inform the requestors of the reasons for refusal quoting the relevant paragraph(s) in Part 2 of the Code on which the refusal was based with appropriate elaboration to justify invoking the relevant paragraph(s).

#### *Enhancing the Code on Access to Information*

24. Some Members enquired whether, in order to enhance the credibility of the access to government information regime and avoid wrongful application of the Code by B/Ds, the Administration would update the Code by formulating more detailed criteria for vetting and approving such requests, requiring B/Ds to provide detailed grounds when declining the requests, setting out the penalties for contravening the Code by government officers, improving the mechanism for applicants to lodge appeals against declination of their requests, etc.

25. According to the Administration, if a person who had requested a B/D to provide information considers that the B/D had failed to comply with any provision of the Code, he/she might ask the B/D concerned to review the decision. The review mechanism was further underpinned by a complaint channel. An applicant who considered that a B/D had failed to properly apply any provision of the Code might lodge a complaint with The Ombudsman, who was independent from the Administration.

26. As regards the penalties for non-compliance with the Code by government officers, the Administration advised that depending on the circumstances and seriousness of the non-compliance, punishment ranging from verbal or written warnings, reprimand, severe reprimand, demotion, compulsory retirement to dismissal might be imposed on the officers concerned.

27. Some Members considered that there should be an independent mechanism to monitor the compliance with the Code by B/Ds. In response, 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 and the Administration would ensure that appropriate actions were 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.

*Management of records of statutory bodies and access to such records*

28. At the Council meetings of 8 November 2006 and 5 June 2013, Members raised questions about the management of records of statutory bodies as well as access to such records. Among other things, the Administration was enquired whether there was any mechanism for ensuring that the records of statutory bodies were properly managed for accountability and public access and whether they were selected for transfer to the government archives for preservation and public access. The Administration was also enquired whether it would require all public organizations to adopt the Code.

29. In response, the Administration advised that all statutory bodies had to operate within the confines imposed by relevant legislation and had to be accountable for their own proper management. While they were not obliged to transfer their records to GRS, the Administration did encourage statutory bodies to adopt appropriate measures to enhance their transparency and accountability to the public. The Administration further advised that many of the statutory bodies had made available for public inspection papers and minutes of meetings, statistical reports, human resources information and statistics, and other documents and papers. As at June 2013, of the 22 public bodies under the jurisdiction of The Ombudsman, 21 had voluntarily adopted the Code or a similar guide on access to information.

Enacting an archives law and a freedom of information law

30. Some Members considered that the Administration should enact an archives law and a freedom of information law to ensure proper management of government records and their availability for public access. They expressed concern that Hong Kong was lagging behind other Asian places in legislation in these areas, and considered that the introduction of such legislation was necessary so that information and decisions of public offices would be properly documented and preserved for public access.

31. In the direct investigation report released by The Ombudsman on "The Access to Information Regime in Hong Kong" in March 2014, Members noted that it was one of the recommendations therein that consideration be given to introducing legislation to underpin the right of access to information, covering information held by the Government and public organizations, to be overseen by an independent body with enforcement powers.

32. Noting that LRC had established the two Sub-committees in May 2013, Members closely monitored the work progress of the two Sub-committees at meetings of the Council and AJLS Panel. In particular, Council questions were

raised to enquire about the expected completion dates of their studies, whether the findings of the studies would be published and whether the Administration had drawn up a timetable for enacting the legislation on archives law and freedom of information.

33. According to the Administration, the two Sub-committees had been meeting on a regular basis and were studying Hong Kong's existing system and the laws and systems of other jurisdictions. The two Sub-committees also planned to publish consultation papers as soon as possible in 2018 so as to consult the general public on the issues involved.

34. At the meeting of CA Panel on 16 October 2017, the Administration advised that the existing administrative records management regime had captured the essential elements of archives law in other jurisdictions and it largely followed international standards and best practices. These included a comprehensive range of administrative measures governing the creation and collection, classification, scheduling and disposal of records, records transfer and public access to archival records.

35. The Administration further informed CA Panel that pending the report to be received from LRC regarding its study on archives law and as an on-going effort, the Administration would continue to enhance the records management work as and when appropriate. In this connection, it had implemented the following major initiatives:

- (a) review B/Ds' records retention and disposal schedules;
- (b) promote electronic records management in B/Ds;
- (c) set up a digital archive for the long-term preservation of electronic records;
- (d) review the three-year records management training plan and develop a new online training platform; and
- (e) develop a new Integrated Information Access System for archival records.<sup>6</sup>

36. In her 2018 Policy Address, the Chief Executive indicated that the current-term Government attached importance to the integrity of government records and held a positive view towards the enactment of an archives law.

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<sup>6</sup> Members may refer to paragraph 8(a)-(e) of the paper provided by the Chief Secretary for Administration's Office in October 2017 [LC Paper No. CB(2)28/17-18(02)] for details of the major initiatives.

## **Relevant motions passed and questions raised at the Legislative Council meetings**

37. At the Council meetings of 28 January 2005 and 5 June 2013, a motion on "Enacting legislation on freedom of information" and that on "Safeguarding freedom of information, of the press and of the Internet" were carried.<sup>7</sup> The wording of the two motions is in **Appendices I and II respectively**.

38. Since the 2006-2007 legislative session, Members have raised a total of 20 questions relating to the management of public records and/or the access to information regime. The hyperlinks to these questions and the Administration's response, together with other relevant papers, are given in **Appendix III**.

## **Recent developments**

39. On 6 December 2018, the two Sub-committees published their respective consultation papers.<sup>8</sup> The consultation period will end on 5 March 2019. LRC plans to brief AJLS Panel on the two consultation papers at the Panel meeting to be held on 25 February 2019.

40. According to the Administration, the two Sub-committees will consider the views collected from the public consultation and finalize the reform proposals. After considering the draft reports submitted by the two Sub-committees, LRC will publish the final reports.

Council Business Division 4  
Legislative Council Secretariat  
20 February 2019

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<sup>7</sup> [https://www.legco.gov.hk/yr04-05/english/legco\\_rpt/1\\_rpt\\_0129.htm#m\\_3](https://www.legco.gov.hk/yr04-05/english/legco_rpt/1_rpt_0129.htm#m_3)

<sup>8</sup> The consultation papers and the executive summaries can be accessed on the website of LRC at [www.hkreform.gov.hk](http://www.hkreform.gov.hk).

**Wording of the motion passed  
at the Council meeting of 28 January 2005**

*Motion on "Enacting legislation on freedom of information", moved by Hon James TO Kun-sun as amended by Hon Jasper TSANG Yok-sing and further amended by Hon Margaret NG*

"That this Council urges the HKSAR Government to enact legislation on freedom of information, on the premise of fully consulting various sectors of the community and having regard for the public's right to know and their social responsibilities, so as to safeguard Hong Kong's freedom of the press and information, enhance the transparency and accountability of the HKSAR Government, safeguard the public interests of the Hong Kong community, and consolidate the core values of Hong Kong as well as facilitate public participation in assessing and proposing public policies; and the relevant legislation should provide for:

- (a) the public's right of access to information held by public authorities;
- (b) clearly defined categories of information the disclosure of which may be refused; and
- (c) the mechanisms for enforcing the right and for appeal."

(Translation)

**Motion on**  
**“Safeguarding freedom of information, of the press and of the Internet”**  
**Moved by Hon Charles Peter MOK**  
**at the Council meeting of 5 June 2013**

That, as the free flow of information is an important cornerstone of Hong Kong’s economic and social development, this Council urges the Government to safeguard freedom of information, freedom of the press and freedom of the Internet, so as to uphold the core values cherished by the public and Hong Kong’s economic development advantages.

**Relevant papers on management of government records and  
access to government information**

**A. Relevant papers**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
House Committee	2 January 2009	<a href="#"><u>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</u></a>
Public Accounts Committee	15 February 2012	<a href="#"><u>Public Accounts Committee Report No. 57 (Chapter 2 of Part 7 on "Records management work of the Government Records Service")</u></a>
Panel on Constitutional Affairs	17 May 2010 (Item III)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a> <a href="#"><u>Follow up paper</u></a>
	15 December 2014 (Item V)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	16 October 2017 (Item III)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	15 January 2018 (Item IV)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
Panel on Administration of Justice and Legal Services	20 December 2017 (Item III)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	25 June 2018 (Item IV)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>

## B. Motions passed and questions raised at Council meetings

Date of meeting	Motion/Question
28 January 2005	<a href="#"><u>Motion on "Enacting legislation on freedom of information", moved by Hon James TO Kun-sun as amended by Hon Jasper TSANG Yok-sing and further amended by Hon Margaret NG</u></a>
25 October 2006	<a href="#"><u>Administration's reply to a question raised by Hon Margaret NG (Question 2)</u></a>
8 November 2006	<a href="#"><u>Administration's reply to a question raised by Hon Margaret NG (Question 12)</u></a>
18 April 2007	<a href="#"><u>Administration's reply to a question raised by Hon LEE Wing-tat (Question 5)</u></a>
20 June 2007	<a href="#"><u>Administration's reply to a question raised by Dr Hon Fernando CHEUNG (Question 6)</u></a>
9 April 2008	<a href="#"><u>Administration's reply to a question raised by Hon Audrey EU (Question 15)</u></a>
25 November 2009	<a href="#"><u>Administration's reply to a question raised by Hon Emily LAU (Question 15)</u></a>
3 December 2008	<a href="#"><u>Administration's reply to a question raised by Hon Cyd HO Sau-lan (Question 10)</u></a>
19 May 2010	<a href="#"><u>Administration's reply to a question raised by Hon David LI Kwok-po (Question 14)</u></a>
26 January 2011	<a href="#"><u>Administration's reply to a question raised by Hon Emily LAU Wai-hing (Question 17)</u></a>
13 July 2011	<a href="#"><u>Administration's reply to a question raised by Hon Miriam LAU Kin-yee (Question 19)</u></a>
19 October 2011	<a href="#"><u>Administration's reply to a question raised by Hon Emily LAU Wai-hing (Question 18)</u></a>

21 December 2011	<a href="#"><u>Administration's reply to a question raised by Hon Cyd HO Sau-lan (Question 17)</u></a>
23 January 2013	<a href="#"><u>Administration's reply to a question raised by Hon Cyd HO Sau-lan (Question 9)</u></a>
5 June 2013	<a href="#"><u>Administration's reply to a question raised by Hon Charles Peter MOK (Question 16)</u></a>
5 June 2013	<a href="#"><u>Motion on "Safeguarding freedom of information, of the press and of the Internet" moved by Hon Charles Peter MOK</u></a>  <a href="#"><u>Progress report</u></a>
18 December 2013	<a href="#"><u>Administration's reply to a question raised by Hon WU Chi-wai (Question 22)</u></a>
16 April 2014	<a href="#"><u>Administration's reply to a question raised by Hon Emily LAU Wai-hing (Question 2)</u></a>
4 June 2014	<a href="#"><u>Administration's reply to a question raised by Hon Charles Peter MOK (Question 6)</u></a>
23 November 2016	<a href="#"><u>Administration's reply to a question raised by Hon Charles Peter MOK (Question 4)</u></a>
18 October 2017	<a href="#"><u>Administration's reply to a question raised by Hon Charles Peter MOK (Question 6)</u></a>