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Transport and  
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15 January 2019

Ms Shirley Chan  
Clerk to Panel on Economic Development  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Chan,

**Panel on Economic Development (“ED Panel”)**

**Follow-up to meeting on 19 December 2018**

Thank you for your letter of 20 December 2018, relaying to us a request for providing the reasons for not disclosing 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”) to the public. Our response is set out below.

After the vessel collision incident near Lamma Island on 1 October 2012 and pursuant to some of the findings in the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 (“CoI”), an Investigation Team (“the Team”) was set up in the Transport and Housing Bureau in June 2013 to conduct investigation into staff conduct in the Marine Department (“MD”). The Team was tasked to identify any shortfall or deficiency on the part of MD officers when carrying out their duties in respect of the Lamma IV in the past as revealed by the CoI. After the investigation was completed, the Team made recommendations to the Civil Service Bureau in April 2014

for consideration on disciplinary actions to be taken against the officers who were alleged to have misconducted themselves. For matters involving suspected criminal offences, the Team had reported to law enforcement agencies for necessary follow-up investigation and actions.

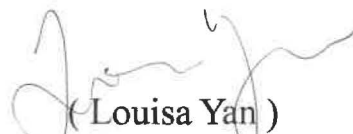
We are aware that there has been public expectation for the Report to be published. At the same time, the Government has to take into account of and strike a balance among various considerations for public disclosure of any content of the Report. In particular, we are mindful that the Report contains substantial personal data of persons involved in the investigation and information provided to the Government in confidence. Our legal advice has confirmed that since the intended use of the personal data collated during the course of the investigation is for the purpose of the investigation, the Government is bound by the mandatory requirements in the Personal Data (Privacy) Ordinance (Cap. 486) (“the PDPO”), including not to use the personal data collated for the purpose of investigation for a new purpose, such as disclosure to the public. Apart from the mandatory restrictions under the PDPO, the Government, being the holder of the confidential information contained in the Report, has the duty of confidentiality and the legal obligation to guard against unauthorised disclosure of such information. If the Government were to make public the Report, rather substantial parts of the Report (including but not limited to parts containing personal data and confidential information obtained during the investigation) would have to be redacted in order for the Government to fully comply with the aforesaid legal obligations. The excision of these materials will leave behind a Report which makes very little coherent sense, rendering it difficult to comprehend and/or giving rise to potential misunderstanding.

As a practical alternative, and having taken into account the Government’s duty of confidentiality and the legal obligation to protect the personal data in the Report, a summary of the Report was published in 2014 to provide the gist of the facts and a lucid account of the work done by the Team as well as its overall findings and recommendations. The summary of the Report, submitted to the ED Panel (vide Paper No. CB(1)1295/13-14(03)) and discussed by the ED Panel on 28 April 2014, is accessible by Legislative Council Members (“Members”) and the public at <<https://www.legco.gov.hk/yr13-14/english/panels/edev/papers/edev0428cb1-1295-3-e.pdf>>.

Furthermore, having regard to Members' role in monitoring the work of the Government, in consultation with the Department of Justice, we have made available a redacted version the Report for Members' perusal on the condition that they have signed a confidentiality undertaking. To this end, during the two periods from June to August 2015 and from April to May 2017, THB positively responded to the request of Members and made available the redacted version of the Report for perusal at designated venues by Members who have signed the confidentiality undertaking ("the Undertaking"). The Undertaking is necessary to allow the Government to fulfil our legal obligations while at the same time to enable Members to discharge their duty in monitoring the work of the Government.

The Government has endeavoured to strike a balance among various considerations, including public interest, requests for public disclosure of the Report as well as the legal obligations to protect data privacy and confidential information. Given that the contents of the Report remain as in 2014 with no further update, and that a summary of the Report is already accessible by the public to obtain an understanding of the overall findings, it is our view that focusing our efforts on strengthening the Government's regulatory regime on local vessels is the appropriate approach to enhance safety at sea. This is in fact a view expressed by many Members of the ED Panel before. We truly believe that such forward-looking approach is the most effective and productive way for us to work together towards enhancing the long-term marine safety in Hong Kong.

Yours sincerely,



(Louisa Yan)  
for Secretary for Transport and Housing