

Department/Organisation: Social Welfare Department (“SWD”)

Case concluded in: April 2018

SWD refused to provide Mr C with the manual on its Comprehensive Social Security Assistance (“CSSA”) Scheme (“CSSA Manual”) and had delay in responding to his information request

The Event

In September 2017, Mr C expressly requested from SWD under the Code a copy of the CSSA Manual. In November and December 2017, SWD wrote to seek legal advice. In January 2018, SWD refused to provide the document, quoting paragraph 2.9(a) (“information the disclosure of which would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by a department”) and paragraph 2.9(c) (“information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department”) as reasons.

SWD explained that the CSSA Manual sets out in great detail the techniques for assessing a CSSA application and the investigation strategies to prevent fraud. Such information, if made known to members of the public, in particular CSSA applicants, may induce them to withhold or distort certain facts in their CSSA applications or to take advantage of certain gaps or grey areas, thereby prejudicing the fair and effective operation of the CSSA Scheme. Furthermore, if members of the public only read the CSSA Manual and take it at face value without a complete understanding of how the principles are to be applied by the Department in practice, unmeritorious challenges from CSSA applicants or recipients can be foreseen, which will hamper the proper and efficient operation of the CSSA Scheme.

Our Findings

We doubt whether paragraph 2.9(a) of the Code was a valid reason for SWD’s refusal to provide information. Surely, CSSA applications are assessed on the basis of specific eligibility criteria and calculated according to stipulated formulae, not so much by “negotiation” or “discretion”. It is difficult to argue that disclosing these criteria and formulae would prejudice the fair and effective operation of the CSSA Scheme.

We agree that SWD has a duty to uphold the integrity of its investigation work so as to prevent abuse and fraud and to safeguard the proper use of funds under the CSSA Scheme. Hence, paragraph 2.9(c) of the Code is to some extent applicable to this case. However, conceivably, there are some parts of the CSSA Manual the disclosure of which would not affect the Department's investigation work. Such parts should be disclosed in accordance with paragraph 1.13 of the Code ("Where disclosure of certain information in a record is to be refused, access will normally be provided to the remaining part of the record").

We note that the Code allows Government departments to defer their response beyond the target response time in exceptional circumstances, such as for seeking legal advice. However, we doubt SWD's need to seek legal advice in this case, as the Department is well positioned to assess for itself whether disclosure of the contents of the CSSA Manual would affect its operations. Even if the Department wanted to play safe and therefore sought legal advice, it should have done so as soon as possible. The time taken by SWD to respond to Mr C's request far exceeded the target response time stipulated in the Code.

Outcome

On our recommendation, SWD agreed to provide Mr C with a copy of the CSSA Manual, obliterating only those parts that would affect its investigative work.