

Investigation Report

CSD failed to provide Mr A with various items of information related to his complaints against CSD in a timely manner

In June 2018, Mr A complained to this Office against the Correctional Services Department (“CSD”).

The Complaint

2. Mr A alleged that he had completed a form requesting the Complaints Investigation Unit (“CIU”) of CSD to provide him with information related to the complaints he had lodged during a certain period with the CIU. However, the CIU replied to Mr A that the information could not be provided because of “problems in internal tidying up of documents”.

Our Findings

3. Having examined the information and explanation provided by CSD, we completed our investigation in December 2018. Our findings are as follows.

Sequence of Events

4. In mid-2018, Mr A submitted to CSD a “Personal Data (Privacy) Ordinance Data Access Request Form” (“the Form”) to make a request for all documents related to the complaints he had lodged during a certain period with the CIU.

5. After receiving the Form, CIU staff met with Mr A twice. During the meetings, Mr A stated that he wanted to obtain information related to the complaints he had lodged with the CIU, including records of interviews, statements by relevant staff, investigation reports, and records of correspondence between himself and the CIU. The staff asked him what other information he would require apart from the four items stated. He made no further comments. Subsequently, the CIU replied to Mr A that his request was too vague. The CIU asked him to provide further details so that it could follow up on his request.

6. Upon receiving our referral of this complaint, the CIU wrote to Mr A and met with him, asking him what other information he would require apart from the four items mentioned above. However, Mr A made no further comments.

7. CSD explained that the CIU was only asking Mr A what other information he would require, rather than rejecting his request. CSD also denied that it had told Mr A that the information could not be provided to him because of “problems in internal tidying up of documents”.

Our Preliminary Comments

8. We issued our draft investigation report with the following comments for CSD’s response.

9. We had scrutinised the Form and the records of interviews between CSD and Mr A. We considered Mr A to have clearly specified the documents he required, including records of interviews, statements by relevant staff, investigation reports, and records of correspondence between himself and the CIU. As such, it was not impossible for CSD to process the request. In fact, after our intervention, CSD replied to Mr A that it could provide the records of interviews and correspondence between Mr A and the CIU, and that the other two items of information could not be provided because they did not exist. Apparently, CSD was not unaware of what information Mr A had wanted to obtain. That its staff just repeatedly asked Mr A what information he would require other than the four items he had clearly specified (see **paras. 5 and 6**), but did not provide him with the said four items could only give the impression that CSD was unwilling to provide the information.

10. As regards whether CSD had, in rejecting Mr A’s data access request, indicated that it was due to “problems in internal tidying up of documents” (see **paras. 2 and 7**), we were unable to comment without independent evidence. Anyway, the crux of this case was: CSD had refused to provide the information requested by Mr A without any valid reasons set out in Part 2 of the Code on Access to Information.

11. Based on the above analysis, The Ombudsman considered Mr A’s complaint against CSD substantiated.

CSD's Response to Our Preliminary Comments

12. CSD responded to our draft investigation report stating, in essence, the following:

- Mr A indicated, either in the Form or during the meetings with CIU staff, that he wanted to obtain “all complaint-related documents” about him held by the CIU. Regarding what he meant by “all complaint-related documents”, Mr A only stated that those documents included records of interviews, statements by relevant staff, investigation reports, and records of correspondence between himself and the CIU. He did not specify what other relevant documents he would require apart from those four items of information.
- Pursuant to the Personal Data (Privacy) Ordinance (“PDPO”), CSD may charge a fee for complying with a data access request, including administration fees for the manpower used for searching and photocopying information. In other words, if Mr A did not make a complete request for the information he wanted, CSD would need to deploy manpower for searching information and charge administration fees when he made data access requests again. Since Mr A had indicated that he wanted to obtain “all complaint-related documents”, CSD considered that he should first clarify what other documents he would require apart from the four items of information specified. Otherwise, Mr A might complain about being charged extra administration fees in the future.
- Its records of interviews showed that its staff had asked Mr A whether he had anything to add, delete or supplement regarding what was discussed in the interviews, and Mr A replied in the negative. CSD clarified that this description meant that Mr A did not want to make any amendments to the interview records rather than that Mr A confirmed that he only wanted to obtain those four items of information.
- As the CIU could not ascertain what information Mr A was requesting, pursuant to the PDPO, it informed Mr A within 40 days after receiving the Form by notice in writing that it was unable to comply with his data access request. And CIU had asked him to provide further details. During the whole process, CSD never refused to provide Mr A with the information

he requested.

- The latest development of the matter was that the CIU confirmed with Mr A in writing that the information he wanted to obtain was “all complaints documents held by CSD’s Complaints Investigation Unit”, namely the four items of information stated in paragraph 5 above. CSD did not hold the second and third items of information, while the other two items of information were ready for collection, pending his payment of a fee. Yet, Mr A did not pay the fee. He had also made enquiries about the second and third items of information.
- In any event, CSD has reminded its staff that when meeting with a person who makes a data access request, they should clarify with the requester and immediately confirm what kind of information he/she wants to obtain. Moreover, CSD has also reminded its staff that when informing the requester, pursuant to the PDPO, that CSD is unable to comply with his/her data access request within 40 days, they should state clearly they are not refusing to provide information.

Our Comments

13. We must point out that Mr A had already clearly stated that his request was to obtain information related to the complaints he had lodged with the CIU, including records of interviews, statements by relevant staff, investigation reports, and records of correspondence between himself and the CIU.

14. We find CSD’s argument unacceptable that the reason for the CIU having repeatedly asked Mr A to clarify what other documents he would require in addition to the four items of information specified was to help Mr A avoid having to pay extra administration fees in the future. We consider that to help Mr A avoid having to pay administration fees again for making further data access requests, CSD should explain to him the merits of making a request at one go for all information, and let him decide whether he would want other information apart from the four items he had specified.

15. While CSD contended that it had not refused to provide information, the Department had indeed failed to properly follow up on Mr A’s data access request. As a result, it failed to inform Mr A in a timely manner that two items of information were in fact available and could be provided to him.

16. Furthermore, although CSD stressed that it had complied with the PDPO, it was also required to comply with the Code on Access to Information. Compliance with both is not in conflict.

17. The Ombudsman, therefore, maintains the conclusion that Mr A's complaint against CSD is substantiated.

Recommendation

18. We recommend that CSD use this case as an example and provide training to its staff on the application of the Code on Access to Information, so as to prevent recurrence of similar incidents.

**Office of The Ombudsman
December 2018**