

**Correctional Services Department refused to provide information about
sale of its manufactured masks to non-governmental organisations
between 2017 and 2019
(Related to Code on Access to Information)**

Investigation Report

In February 2020, Ms A complained to this Office against the Correctional Services Department (“CSD”).

The Complaint

2. According to Ms A, she made a request to CSD under the Code on Access to Information (“the Code”) for the quantity of CSD-manufactured masks (commonly known as “CSI masks”) sold in each of the previous three years (i.e. 2017 to 2019) to non-governmental organisations (“NGOs”) and the list of NGOs to which CSD sold the CSI masks every year, with the quantity of CSI masks sold to each of them.

3. CSD gave a written reply to Ms A, stating that in 2019 it sold around 120,000 pieces of CSI masks to NGOs in aggregate. However, since the information involved third parties, it would not disclose to her the list of NGOs to which CSI masks were sold and their quantities.

4. Ms A was dissatisfied with CSD’s reply. She asserted that the information requested was pertinent to whether CSI masks had been used for proper purposes. The information was not sensitive, nor would it reveal any personal data that could be used to identify any individuals. Disclosing such information, therefore, was in the public interest without any harm caused to the parties concerned.

Our Findings

5. Upon examining the information and explanation from CSD, we completed this investigation in August 2020. Our findings are as follows.

Relevant Parts of the Code

6. Government departments are required to make available as much Government-held information as possible for the public to adequately understand the Government and its services, unless the information falls into the categories which can be withheld under Part 2 of the Code, including its paragraph 2.14(a): information held for, or provided by, a third party under an explicit or implicit understanding that it would not be further disclosed. However, such information may be disclosed with the third party's consent, or if the public interest in disclosure outweighs any harm or prejudice that would result.

Response from CSD

7. CSD explained that it had refused to disclose to Ms A such information as the list of NGOs to which CSI masks were sold and their quantities on the following grounds:

- (1) Such information was third party information.
- (2) CSD was approached by one of the NGOs ("NGO X") which had been supplied with CSI masks. NGO X verbally objected to disclosure of its having been supplied with CSI masks and their quantities. It pointed out to CSD that there was a tight supply of surgical masks at that time, while the society was still engulfed in an atmosphere of violence. Some media outlets continued to run frequent reports on misuse of CSI masks. Against this backdrop, NGO X was concerned that disclosure of such information would result in damage to its reputation or various forms of nuisance, for instance, the identity of its service users might be exposed, or the organisation might be subject to malicious smears or even assaults.
- (3) Regarding the media coverage on misuse of CSI masks, there was no solid evidence so far that the CSI masks available on the market came from NGOs. In CSD's view, disclosure of such information might lead to misinterpretation by the public and NGOs being wrongly targeted.
- (4) Between 2017 and 2019, the quantity of CSI masks supplied by CSD to NGOs accounted for just 1% of its total output of masks yearly. As the percentage was relatively small, disclosing such information would only allow the public to get to grips with the circulation of 1% of its CSI mask output. CSD considered it more useful for ascertaining the truth to

investigate and clarify any misuse of the 99% of CSI masks supplied to Government departments than to focus on the information about 1% of its output. As such, CSD found no significant public interest in disclosing information about the sale of CSI masks to NGOs.

- (5) In view of the concerns expressed by NGO X, development of the pandemic situation and acute shortage of surgical masks at that time, CSD had grounds to expect that disclosure of such information would result in harm to the NGOs concerned. Moreover, the harm caused by disclosure would outweigh the public interest that might achieve.

8. CSD admitted that before refusing Ms A's request for information, it had not consulted any other third parties (i.e. all the NGOs which had been supplied with CSI masks by CSD except NGO X) to seek their views on disclosure of such information.

Our Comments

9. We agree with CSD that the information involves third parties (see **para. 7(1)**). Such information involves individual NGOs and the quantities of CSI masks supplied to them by CSD in the previous three years. The issue as to whether such information falls within the scope of sensitive information of the NGOs, and thus must be kept confidential, hinges on any confidentiality agreement between CSD and each NGO upon contract formation, and the reply of the NGOs when they are consulted by CSD about their stance on disclosure of information.

10. Pursuant to paragraph 2.14(a) of the Code (see **para. 6**), CSD, before deciding whether to provide Ms A with such information, was required to consider whether such information was from "a third party under an explicit or implicit understanding that it would not be further disclosed". Since CSD had never released such information externally, it was understandable that CSD highly respected the relevant NGO's wish that the information would not be disclosed without consulting it. However, CSD had not conducted comprehensive consultation with all the NGOs concerned (see **para. 8**). It merely relied on the verbal opinions of NGO X (see **para. 7(2)**) to presume that the other NGOs also objected to disclosure of information. The process of the decision and the decision itself were unsound.

11. CSD also contended that the quantity of CSI masks supplied by CSD to NGOs accounted for just 1% of its yearly output of masks. As the percentage was relatively

small, there was no significant public interest in such information (see **para. 7(4)**). We would not rule it out as a criteria that CSD could use, but “quantity” is only one of the criteria in the assessment of public interest.

12. In fact, the manufacture of CSI masks involves the use of public resources. Ms A’s request for the information coincided with an acute shortage in the supply of surgical masks, and the media coverage about alleged misuse of CSI masks. It had not only caused wide concerns and even scepticism in the community, but also cast doubt on the public image and reputation of relevant Government departments and NGOs. We accept that CSD should take into account the reluctance of some of the NGOs to have their names disclosed. Nevertheless, we reckon that in the absence of timely clarification, the public would be left to continue with their speculation. Worse still, any false rumours, when allowed to brew and go awry through various channels, might conversely cause unfairness to CSD and the NGOs which were supplied with its surgical masks. Consequently, it was advisable for CSD to proactively explain to the complainant the relevant NGO’s concerns, and consider disclosing as far as possible the quantities of CSI masks supplied to the NGOs without naming them. We believe that CSD should make available as much information as possible to allay public concerns by adhering to the principle of openness and transparency, as well as taking into account the wishes and interests of the NGOs. This would be helpful for refuting false rumours and restoring public confidence.

Conclusion and Recommendation

13. In the light of the analysis in **paragraphs 9 to 12**, The Ombudsman considers CSD to have not complied with the Code in its decision-making process when refusing Ms A’s request for information about the sale of CSI masks to NGOs. This complaint, therefore, is **substantiated**.

14. Based on the above, The Ombudsman recommends that CSD review Ms A’s request for information and proceed to consult the wishes of other NGOs which have yet to give their reply regarding Ms A’s request, so as to assess whether and how it can make available to Ms A as much information as possible without disclosing the names of all or some of the NGOs.

Office of The Ombudsman
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