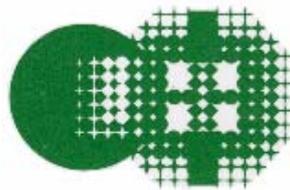


**DIRECT INVESTIGATION REPORT**

**THE ACCESS TO INFORMATION REGIME  
IN HONG KONG**

**March 2014**



**Office of The Ombudsman  
Hong Kong**

## EXECUTIVE SUMMARY

### Direct Investigation The Access to Information Regime in Hong Kong

#### Background

Freedom of information (“FOI”) or access to information (“ATI”) is a fundamental right of Hong Kong citizens, as provided under Article 16 of the Bill of Rights Ordinance Cap.383, which mirrors Article 19 of the International Covenant on Civil and Political Rights, and Article 39 of the Basic Law.

2. Hong Kong, however, does not have specific laws governing FOI or ATI. Government’s Code on Access to Information (“the Code”) is not legally based. Launched in 1995 and modelled on the then administrative code of practice of the United Kingdom (“UK”), the Code requires Government bureaux and departments (“B/Ds”) to make available Government-held information to the public unless there is a reason specified by the Code to withhold it (“exemption provision”). The Code is currently under the charge of the Constitutional and Mainland Affairs Bureau (“CMAB”).

3. Despite CMAB’s noticeable efforts in recent years to improve the administration of the Code, complaint cases handled by our Office show that some B/Ds still do not fully understand the Code and do not properly apply its provisions. Besides, major developments have been taking place in many other jurisdictions to keep up with the public’s need and expectations for open and accountable government. Hence, The Ombudsman initiated this direct investigation to:

- (1) further identify inadequacies and problems in Hong Kong’s ATI regime, standards and practices;
- (2) assess the effectiveness of the Code, in particular the sufficiency of protection and the sanctions if any under the Code vis-à-vis those in other jurisdictions; and

- (3) having regard to the systems and practices of other jurisdictions, identify improvements that can be made to the ATI regime in Hong Kong.

## **Our Findings**

4. We have found the following inadequacies in Hong Kong's ATI regime.

### ***I. Lack of legal backing***

5. FOI legislation as found in the jurisdictions we studied signifies the government's reassurance to the people of its commitment to accountability, transparency and openness. Its key components include power of enforcement, coverage of public organisations, disclosure of information except for certain specified reasons, proactive disclosure, regular reporting of FOI enforcement and compliance, advocacy for FOI, right of appeal, binding decisions by the adjudicating body, and sanctions for non-compliance.

6. We find that in Hong Kong's purely administrative regime, some of such key components are completely absent, in particular, binding decisions by adjudicating body and sanctions for non-compliance. Many of the other key components are also not adequately manifested, for example, coverage of public organisations, proactive disclosure, regular reporting and advocacy.

7. While The Ombudsman has a specific mandate to handle Code-related complaints, he can only make persuasive recommendations to B/Ds upon conclusion of his investigations/inquiries. They are not really statutorily binding decisions.

### ***II. Limited coverage of the Code***

8. The Code covers only a small number of public organisations (only two), with all other public organisations being free to choose whether to adopt the Code. And even if they decide to do so, they will still be outside the formal coverage of the Code and CMAB's oversight. Many of these public organisations are publicly funded and carry out major public functions, and should, therefore, be subject to public scrutiny. As more and more of the public functions that used to be performed by Government are hived off to public organisations, and new public organisations are set

up instead of Government departments to take on new public functions, we consider it necessary to strictly subject public organisations to the same regulatory regime that governs access to Government information.

### ***III. Restrictive scope of monitoring***

9. CMAB monitors B/Ds' compliance with the Code by asking for their quarterly statistics. However, such statistics merely cover public requests for information using the specified Code request form or making explicit reference to the Code, whereas the Code in fact stipulates that all requests for information, irrespective of whether they are made in the name of the Code, be dealt with in the spirit of the Code. Hence, there are conceivably a large number of information requests, B/Ds' handling of which is not monitored by CMAB. To suitably enlarge its scope of monitoring B/Ds' compliance with the Code, CMAB should take reference from the working definitions of "information request" adopted in other jurisdictions.

10. Furthermore, CMAB's monitoring does not involve systematic analysis of complaints and enquiries, which could help the Bureau to identify any systemic problems or ambiguities in the Code and its application.

### ***IV. Lack of understanding and inconsistent/erroneous application of the exemption provisions***

11. Our observations in complaint cases show that B/Ds still do not fully understand the spirit and letter of the Code, as a result of which the exemption provisions are applied or not applied by B/Ds according to their own interpretations. For example, there are inconsistencies among B/Ds in deciding whether to disclose "third party information" in the public interest, particularly in cases where the B/Ds have to respond to public complaints about their inaction or ineffective action on third parties' violation of the law. Some B/Ds fail to consult the third parties before making a decision.

12. There are inadequate guidelines governing the circumstances under which the exemption provisions should be used. CMAB does not proactively provide much advice to help B/Ds with interpretation and application of the Code. No effective mechanism is in place to ensure consistent application of the exemption provisions by B/Ds.

13. Personal data (i.e. privacy) protection is another exemption provision often used by B/Ds as a reason for refusing to release information. While protection of personal data is underpinned by law in Hong Kong, the provisions of the Code have no legal backing. The result is that when it comes to consideration of information requests that appear to relate to personal data, bureaucrats easily become biased towards non-disclosure and overly cautious for fear of violating the law. In some cases, B/Ds refuse information requests, without having weighed the public interest in or tried to seek the consent of the personal data subjects for disclosure of the information as stipulated in with the Code. Most B/Ds are not even sure whether the information requested constitutes “personal data” and whether the question of “personal data protection” really needs to be considered at all. CMAB has, however, not done much to address these problems, let alone giving useful advice to B/Ds.

14. In Hong Kong, the Privacy Commissioner for Personal Data is the authority on personal data protection, but he does not have a statutory function to give advice to B/Ds. Government should explore ways and means by which B/Ds can have access to authoritative advice and clear guidelines on handling specific information requests that appear to involve personal data.

#### ***V. Lack of Review***

15. The Code has not been comprehensively reviewed since its implementation in 1995. Government’s occasional revisions of the Guidelines were piecemeal and of a minor nature.

16. Unlike the exemption provisions in the FOI laws in many other jurisdictions, those in the Code do not have a specified term of validity. There is also no built-in mechanism for regular review of the exemption provisions in the Code, while other jurisdictions continually review and refine their categories of exemptions, to the effect of narrowing them down and reducing their term of validity for enhancing the public’s ATI.

17. We consider it necessary for CMAB, as the bureau overall in charge of the administration of the Code, to proactively and comprehensively review the Code and the Guidelines at regular intervals in the light of societal and technological changes and in particular public complaints, to ensure that they are kept up-to-date, unequivocal, user-friendly and in line with modern standards of open and accountable government.

18. CMAB does not have an established channel for consulting other experts and opinion leaders on its work relating to ATI. Setting up an independent advisory body on ATI, like the one we find in Australia, would bring about public engagement in CMAB's work and motivate regular reviews of the relevant policy and procedures to keep up with the community's expectations.

#### ***VI. Inadequacies in proactive disclosure and regular reporting***

19. Hong Kong compares unfavourably with other jurisdictions in terms of transparency and thoroughness of dissemination of information to the public. The information routinely provided to the public under Hong Kong's proactive disclosure initiative is general in nature, and does not include administrative manuals, guidelines and instructions and other documents which have a bearing on B/Ds' decisions that affect the public. In other jurisdictions, proactive disclosure of such kinds of documents is required by law.

20. It is an essential feature in the FOI laws of other jurisdictions that the government and responsible authorities are required to publish quarterly or annual reports with not only statistical data but also analyses and commentaries on trends and distribution of cases, and even review decisions and case notes. Some jurisdictions, e.g. the United Kingdom ("UK") and Australia, even publish disclosure logs setting out the information requests received and the authorities' responses.

21. There are no such requirements in Hong Kong. The quarterly press releases issued by CMAB contain scanty statistical data and do not include the types of information sought from B/Ds by the public, the grounds for refusal of requests and the remedies taken by CMAB and/or B/Ds in response to The Ombudsman's investigation on complaint cases. The information provided by CMAB is not useful for the public's understanding of the Code and scrutiny of B/Ds' compliance with the Code.

#### ***VII. Inadequate promotion and public education***

22. CMAB operates a website on the Code [www.access.gov.hk](http://www.access.gov.hk) for public viewing. However, the information provided there is meagre. There is no sharing of practical information about the use of the Code or application of the exemption provisions. It is also not clear whether there is a channel for the public to seek advice.

Hong Kong's ATI website stands in stark contrast to those of other jurisdictions, e.g. UK, which contains guidance on various aspects of FOI, precedent cases to explain the FOI law and the exemption provisions and the channels for the public to seek advice.

23. We also find that CMAB's Announcements in the Public Interest, though appearing on radio/television not infrequently, merely give rudimentary messages, without highlighting the underlying principles of the Code such as openness and transparency.

24. The fact that CMAB is a policy bureau of Government and is itself an interested party in the use of the Code cast doubts on whether the Bureau is in the best position to act as promoter and advocate for ATI.

### **Our Recommendations**

25. In light of the above, The Ombudsman recommends that Government consider introducing a law to underpin citizens' right of ATI, covering information held by both B/Ds and public organisations, to be overseen by an independent body with enforcement powers.

26. Before such a law is passed, Government should, *inter alia*:

- (1) draw up and implement a phased programme of subjecting public organisations to the Code and to CMAB's oversight;
- (2) review its definition of "information request" for the purpose of monitoring B/Ds' compliance with the Code, so as to cover those requests made without citing the Code;
- (3) provide advice and support to B/Ds to help them with interpretation and application of the Code, particularly for those exemption provisions in the Code that are subject to frequent queries and complaints from the public;
- (4) devise and maintain a compendium of cases on specific topics relating to the administration of the Code and the application of the exemption provisions;

- (5) explore ways and means by which B/Ds can have access to authoritative expert advice and clear guidelines on handling specific information requests that appear to involve personal data;
- (6) establish a mechanism for regularly reviewing the Code to keep up with the times, in particular its exemption provisions to ensure that they are not excessive and are clearly defined, and that their term of validity is specified where possible;
- (7) set up an independent body to advise CMAB on matters relating to ATI;
- (8) make more information available to the public and consider introducing disclosure logs so as to facilitate the public's understanding and scrutiny of B/Ds' performance; and
- (9) enhance publicity to promote the available channels for the public to seek advice on matters relating to the Code.

**Office of The Ombudsman**  
**March 2014**

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# *1*

## *INTRODUCTION*

### **BACKGROUND**

**1.1** Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”) provides that everyone shall have the right to freedom of expression, including freedom to seek, receive and impart information; it may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security, public order, public health or morals. In Hong Kong, Article 16 of Section 8 of the Bill of Rights Ordinance (Cap.383) mirrors Article 19 of the ICCPR. Article 39 of the Basic Law also stipulates that the provisions of the ICCPR shall remain in force and be implemented through the laws of Hong Kong.

**1.2** Freedom of information (“FOI”) or access to information (“ATI”) is, therefore, a fundamental right of Hong Kong citizens.

**1.3** However, Hong Kong does not have specific laws governing FOI or ATI. Government’s Code on Access to Information (“the Code”) is not legally based. Launched in 1995, and currently under the charge of the Constitutional and Mainland Affairs Bureau (“CMAB”), the Code requires Government bureaux and departments (“B/Ds”) to make available Government-held information to the public unless there is a reason specified by the Code to withhold it. The Code was modelled on the then administrative code of practice of the United Kingdom (“UK”).

**1.4** The Code has remained essentially unchanged since 1995. No major review has been carried out. Government has all along maintained that the Code provides an effective framework for the public to access a wide range of information held by Government.

**1.5** In 2010, this Office conducted a direct investigation on how Government administered the Code. We found inadequacies in staff training, dissemination of information within Government and publicity to promote public awareness of the Code. There was also insufficient control over the practices of B/Ds, and monitoring of their compliance was rather lax. We made a number of recommendations for improvement, which Government has taken on board (**Annex A**).

**1.6** Since CMAB took over oversight of ATI in 2007, it has indeed made noticeable efforts to strengthen training for staff and promote the Code. However, complaint cases handled by our Office show that some B/Ds still do not fully understand the Code and do not properly apply its provisions. Besides, major developments have been taking place in many other jurisdictions in recent years to keep up with the public's need and expectations for open and accountable government. We, therefore, consider it time to conduct a comprehensive review of the ATI regime in Hong Kong.

**1.7** Against this background, The Ombudsman initiated this direct investigation to:

- (1) further identify inadequacies and problems in Hong Kong's ATI regime, standards and practices;
- (2) assess the effectiveness of the Code, in particular the sufficiency of protection and the sanctions, if any, under the Code vis-à-vis those in other jurisdictions; and
- (3) having regard to the systems and practices of other jurisdictions, identify improvements that can be made to the ATI regime in Hong Kong.

**1.8** A related subject is Hong Kong's public records management regime, as proper keeping of records has a bearing on ATI. A direct investigation on that subject was, therefore, conducted in parallel, the report on which will form the sequel to this one.

## **INVESTIGATION PROCESS**

**1.9** Our investigation involved the following:

- (1) inquiry of CMAB on its policy and practices relating to ATI;
- (2) reference to complaint cases handled by our Office;
- (3) study of Legislative Council (“LegCo”) documents, Government reports and information on official websites;
- (4) study of relevant policies and literature review of policies in Hong Kong and in other jurisdictions;
- (5) enquiries of the authorities in other jurisdictions concerning their regimes and practices on FOI; and
- (6) consideration of 39 sets of views and information received from members of the public, some of which concern both the topics of public records management and the ATI regime in Hong Kong.

**1.10** Having considered the comments from the Administration on our findings, we finalised this investigation report on 17 March 2014.

# 2

## *ACCESS TO INFORMATION REGIME IN HONG KONG*

### ADMINISTRATIVE APPROACH VS LEGISLATION

#### Administrative Nature of the Code

**2.1** In Hong Kong, citizens' right to access Government-held information is not underpinned by law.

**2.2** The Code, supplemented by a set of Guidelines on Interpretation and Application ("the Guidelines")<sup>1</sup>, requires B/Ds to release information to the public unless they have one or more of the 16 reasons specified by the Code for withholding the information. The reasons, or **exemption provisions**, are listed in **Annex B**. The Code requires B/Ds to respond to requests for information within 10 days as far as possible, and in any event, not later than 51 days after receipt of the request. The Code does not provide for penalty for non-compliance with its provisions.

**2.3** Under the Code, if a request is refused, the requestor may seek a review by the B/D and/or complain to The Ombudsman. The number of information requests received by B/Ds has increased from 2,181 in 2010 to 3,096 in 2012. The number of complaints received by The Ombudsman has also increased from 45 in 2010 to 80 in 2013.

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<sup>1</sup> Both the Code and the Guidelines are available on the Access to Information website [www.access.gov.hk](http://www.access.gov.hk).

**Table 1: Number of information requests received by B/Ds**

Year	
2010	2,181
2011	2,330
2012	3,096
2013 (Jan-Sep)	3,353

Source: CMAB

**Table 2: Number of Code-related complaints received by The Ombudsman**

Year	
2010	45
2011	41
2012	49
2013	80

## Practices in Other Jurisdictions

**2.4** We have studied the practices in other jurisdictions, including UK, New Zealand, Australia, the United States of America (“USA”), the People’s Republic of China (“PRC”), the United Nations Human Rights Council and the Council of Europe. A table setting out the major features of their FOI regimes is at **Annex C**.

**2.5** In most jurisdictions, the people’s right to access information is underpinned by laws<sup>2</sup>. As at September 2012, 93 national Freedom of Information Acts (“FOIAs”), 180 sub-national FOIAs and 3 international FOIAs have been passed.

**2.6** The key components of FOI laws include power of enforcement, presumption of disclosure<sup>3</sup>, proactive disclosure, reporting obligations<sup>4</sup>, advocacy, right of appeal, adjudicator of complaints and power to enforce decisions of the adjudicating body, and sanctions for non-compliance.

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<sup>2</sup> *The first FOI law was passed in Sweden in 1766. That was followed by Finland (1953), USA (1966) and Norway (1970). The next wave of passage of FOI laws encompassed France (1978), the Netherlands (1978), Australia (1982), New Zealand (1982), Canada (1982), Columbia and Denmark (1985), Greece (1986), Austria (1987), Italy (1990) and UK (2000). Between 1992 and 2006, 27 countries in Central and Eastern Europe and the former Soviet Union passed FOI laws. As at February 2010, there were 19 countries in Asia and the Pacific that have FOI laws. These include India (2005), PRC (2008) and Indonesia (2008).*

<sup>3</sup> *“Presumption of disclosure” means that disclosure is granted by default in respect of information requests unless there are specific reasons for non-disclosure.*

<sup>4</sup> *“Reporting obligations” refer to the requirements for agencies to report at specified time intervals on aspects of FOI enforcement and compliance.*

**2.7** All the five jurisdictions listed below have passed FOI laws, some of which contain provisions for penalty for non-compliance. Some of these jurisdictions have undergone comprehensive reforms in the 2000s and 2010s to further relax the restrictions on information access.

**2.8** In **UK**, an FOIA was enacted in 2000 and took effect in 2005<sup>5</sup>. The Ministry of Justice is the lead department responsible for enforcing the FOIA<sup>6</sup>. The FOIA empowers the Information Commissioner to make binding decisions on public agencies and for the court to inquire into failures to comply with the Information Commissioner's instructions issued under the FOIA.

**2.9** **Australia's** first FOIA was enacted in 1982. Pursuant to a sweeping open government reform, the Information Commissioner Act 2010 and Freedom of Information Amendment (Reform) Act 2010 took effect from 1 November 2010, with the aim of liberating FOI. A person commits an offence if he/she does not appear before the Information Commissioner as required to answer questions on FOIA compliance. Such an offence is punishable with 6 months' imprisonment.

**2.10** **New Zealand** passed its first Official Information Act ("OIA") in 1982. A comprehensive reform was conducted, with measures taking effect in 2003. The Ministry of Justice helps the public to obtain information and exercise their right. The Ombudsman is empowered under the OIA to make binding recommendations, with which government agencies have to comply within 21 days.

**2.11** The first FOIA of **USA** was enacted in 1966 and took effect from 1967. The Ministry of Justice oversees the implementation and enforcement of the FOIA. The FOIA stipulates for disciplinary actions to be imposed on officers who withhold information in violation of the law. Reforms carried out in 2007 and 2009 culminated in the Openness Promotes Effectiveness in Our National Government Act of 2007 and the OPEN Freedom of Information Act of 2009.

**2.12** The first FOI legislation of **PRC** entitled Regulations of the People's Republic of China on Open Government Information (中華人民共和國政府信息公開條例) was adopted by the State Council on 5 April 2007 and took effect on 1 May

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<sup>5</sup> Information requests concerning the environment are governed by a separate law entitled the Environmental Information Regulations 2004. The Department for Environment, Food and Rural Affairs is the lead department for the Regulations.

<sup>6</sup> Before November 2011, the lead department was the Department for Constitutional Affairs.

2008.<sup>7</sup> The General Office of the State Council (國務院辦公廳) is responsible for promoting, guiding, coordinating and supervising work relating to open government information throughout the country.

## **Our Observations**

### ***No provisions for binding recommendations or penalty***

**2.13** *FOI legislation signifies the government's reassurance to the people of its commitment to accountability, transparency and openness. The FOI laws in other jurisdictions provide formal frameworks for their FOI regimes which set the FOI standard for compliance across the board in the public sector, and include an oversight body vested with the duties and powers of advocating, promoting and enforcing the right of the public to access information, and penalty provisions for non-compliance. Hong Kong's ATI regime lacks both legal backing and penalty for non-compliance. CMAB, the current oversight body of the administrative Code, is not legally empowered to enforce the Code on B/Ds. Neither is The Ombudsman's adjudication on complaints legally binding on the B/Ds. He can only make persuasive recommendations. If his recommendations are not adequately acted upon by the B/Ds, he can at best submit reports to the Chief Executive under The Ombudsman Ordinance (Cap.397), so that such reports will be laid before the Legislative Council. The Ombudsman's recommendations are, therefore, not really statutorily binding decisions for strict compliance by B/Ds. These points will be elaborated in subsequent chapters.*

### ***No reason to be complacent***

**2.14** *CMAB believes that Government's performance under the current administrative ATI regime is on par with that of jurisdictions having FOI laws, if not better, in terms of the rate of information requests met in full or in part (97.6%, or 34,305, out of the 35,131 requests received during the 18 odd years of implementation of the Code from March 1995 to end September 2013). We do not consider that CMAB should be complacent since the number of per capita information requests made by Hong Kong people is small compared with other jurisdictions (**Table 3**), possible reasons being:*

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<sup>7</sup> Disclosure of information related to the environment is governed by a separate legislation.

- (1) CMAB has not adequately promoted and educated citizens on the public's right to access information (**paras 3.6 – 3.15**);
- (2) the number of information requests stated by CMAB includes only those requests using the specified request form or citing the Code and excludes all other requests for information (**para. 3.17**); and
- (3) the scope of coverage of the Code is narrow, covering only the B/Ds and two public organisations to the exclusion of hundreds of other public organisations which are publicly funded and carry out public functions in various fields (**para. 2.15**).

**Table 3: Comparison of the number of information requests per capita in 2012**

	Population	Date	Number of information requests received in 2012*	Number of requests per capita
Hong Kong	7,177,900	end 2012	3,096	0.0004
UK	63,705,000	1 Jul 2012	110,202	0.0017
USA	315,085,365	end 2012	651,254	0.0021
Australia	22,680,000	end 2012	24,944#	0.0011

\* Official statistics of the jurisdictions. The definition used for counting information requests might be different for different jurisdictions.

# Australia's FOI statistics are from 1 April 2012 to 31 March 2013, while those of the other jurisdictions adopt calendar year.

## **ORGANISATIONS COVERED**

### **Coverage of the Code**

**2.15** The Code is applicable to all B/Ds and only two public organisations – the Independent Commission Against Corruption and the Hong Kong Monetary Authority. It does not cover the other public organisations, hundreds in number, which are publicly funded, and carry out public functions in various fields e.g. medical services, education and transport, and may have a significant bearing on the well-being of the public or the socio-economic development of Hong Kong. The Code does not provide for public access to the information they hold.

## **Voluntary Adoption of the Code**

**2.16** Government has been encouraging public organisations to voluntarily adopt the Code or a similar guide. As at 1 December 2013, 22 public organisations have voluntarily adopted the Code, with adaptations to suit individual circumstances (**Annex D**).

**2.17** There are no standard requirements or procedures governing how a public organisation should apply the provisions of the Code. CMAB has simply requested B/Ds to share information on administration of the Code, including the Frequently Asked Questions and precedent cases, with the public organisations within their respective purview.

**2.18** Even though some of the public organisations have voluntarily adopted the Code, they have no reporting obligations to Government. They are not required to submit regular returns on their application of the Code. CMAB and the relevant B/Ds do not maintain statistics on complaints against those public organisations in relation to access to information.

## **Practices in Other Jurisdictions**

**2.19** The **UN Human Rights Council** stipulates that FOI laws and regulations should be made applicable to all branches of the State (executive, legislative and judicial) and other public or governmental authorities at national, regional or local levels that carry out public functions. They should also apply to acts of semi-State entities under some circumstances and entities carrying out public functions.

**2.20** In **UK**, the FOIA covers about 100,000 public authorities, including the central and local governments, the Parliament, the National Assembly for Wales, the armed forces, the police, hospitals, doctors and dentists, schools, universities, publicly funded museums, publicly owned companies and designated bodies performing public functions.

**2.21** In **New Zealand**, the FOI law covers government ministries and agencies/departments, hospitals, universities, schools, the Security Intelligence Service, and even state-owned enterprises (such as New Zealand Post, New Zealand Railways).

**2.22** In **Australia**, all “ministers, departments and public authorities” of the Commonwealth are covered by its FOIA.

**2.23** In **USA**, the FOIA covers the executive office of the President, executive departments, military departments, government corporations, government-controlled corporations, independent regulatory agencies and other establishments in the executive branch of the government. Applicability of FOIA to organisations is frequently subject to court determination.

**2.24** As a new initiative, US government announced on 22 February 2013 that it would further liberate access to publicly funded research by making access open and free one year after the publication of the research. This enlarges the coverage of US open access policy.

**2.25** In **PRC**, the FOI law covers all government agencies, organisations that exercise administrative powers and provide public service, and public corporations and institutions. Article 37 thereof states that the law applies to information relating to public services by public enterprises and institutions that are closely related to the people’s interests such as education, medical care, family planning, water supply, electricity supply, gas supply, heating, environmental protection and public transportation.

## **Our Observations**

**2.26** *Compared with other jurisdictions, Hong Kong’s Code covers only a small number of public organisations (only two), with all other public organisations being allowed to choose whether to adopt the Code. And even if they decide to do so, they will still be outside the formal coverage of the Code and CMAB’s oversight (paras. 2.17-2.18).*

**2.27** *The limited coverage of the Code restricts its ability to facilitate public access to information relating to the operations of public organisations, which, in most cases, have a significant impact on society and should, therefore, be subject to public scrutiny.*

**2.28** *It is a trend that more and more of the public functions that used to be performed by Government are hived off to public organisations, and new public organisations are set up instead of Government departments to take on new public functions. To ensure public access to information held by public organisations,*

*Government should strictly subject all of them to the same regulatory regime which governs access to Government information.*

**2.29** *As The Ombudsman has a specific mandate to handle Code-related complaints, any public organisations thus subjected to the Code will accordingly have to be added to The Ombudsman's schedule<sup>8</sup> in respect of code-related complaints.*

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<sup>8</sup> *The four organisations currently on the schedule are the Independent Commission Against Corruption, the Hong Kong Auxilliary Police Force, the Hong Kong Police Force and the Secretariat of the Public Service Commission.*

# 3

## *ADMINISTRATION OF THE CODE*

### **OVERVIEW**

**3.1** CMAB is the authority in Government responsible for overseeing the administration of the Code. According to CMAB, it currently performs the following work in respect of the Code:

- (1) giving advice to B/Ds on administering the Code;
- (2) publicising and promoting the Code;
- (3) enhancing B/Ds' understanding of and compliance with the Code;
- (4) collating statistics and other information relating to the Code; and
- (5) monitoring the overall compliance of the Code.

**3.2** CMAB requires every B/D to designate an Access to Information Officer ("AIO") to handle matters relating to the application of the Code at the B/D level.

### **ADVICE, PUBLICITY AND PROMOTION**

#### **CMAB's Efforts**

**3.3** According to the records of 2010-2012, CMAB advises B/Ds on the interpretation of the exemption provisions and other matters related to the Code (**Table 4**). This mainly comprises verbal advice to B/Ds in response to the latter's enquiries. CMAB shares the Frequently Asked Questions and precedent cases with B/Ds through Government's internal website, which is not accessible to the public.

**Table 4: Advice given by CMAB to B/Ds**

Contents	2010	2011	2012
Interpretation of the exemption provisions	54	55	37
Procedures	47	45	37
Charges	16	16	9
Third party information	8	8	10
TOTAL	125	124	93

**3.4** CMAB also provides general advice to B/Ds on Code-related matters through circulars. It updates the General Circular on the Code from time to time and reminds B/Ds to re-circulate it on an annual basis to all officers concerned. The latest update was made on 12 May 2010, highlighting salient features of the Code. Aspects of the Guidelines are reviewed occasionally to incorporate incidental and consequential changes. The last update was made in October 2012, *inter alia*, in response to The Ombudsman’s recommendation that B/Ds should provide information in different formats to take into account technological changes. The precedent cases for sharing with B/Ds have been updated twice, in 2010 and 2013.

**3.5** As part of its promotion within Government, CMAB arranges experience-sharing workshops from time to time for AIOs and other officers of B/Ds, as well as induction briefings for new AIOs. To further staff training, starting from 2010, B/Ds are required to conduct in-house training sessions for their own staff. Between 2010 and 2012, a total of 2,758 training sessions were organised by 64 B/Ds for over 50,000 officers.

**3.6** For the public, CMAB operates a website on the Code [www.access.gov.hk](http://www.access.gov.hk). The website contains the text of the Code and the Guidelines, a list of the public organisations which have voluntarily adopted the Code and a link to CMAB’s Announcements in the Public Interest (“APIs”). There is no sharing with the public practical information on the use of the Code or cases demonstrating the administration of the Code, application of the exemptions or ready information about the procedures and channels for making information requests and the availability of a complaint channel. An email address and a fax number are set out on the website for visitors if they have any comments or suggestions on the home page<sup>9</sup>. It is not clear

<sup>9</sup> *The website, as viewed on 28 February 2014, stated that “Welcome to the Access to Government Information home page of the Hong Kong Special Administrative Region. If you have any comments or suggestions on this home page, please let us know at [access@cmab.gov.hk](mailto:access@cmab.gov.hk), or by fax at (852)25230565.”*

from the presentation or messages on the website whether the public could use these channels to consult CMAB on the use of the Code to make information requests.

**3.7** Since January 2013, the number of CMAB’s APIs on radio/television has drastically increased (**Table 5**). The number of television spots, which was 2,714 in 2010 and 1,942 in 2012, shot up to 1,024 in the first four months of 2013 alone. The number of radio spots, which was 1,259 in 2010 and 819 in 2012, also rose to 722 in the first four months of 2013 alone.

**Table 5: TV and Radio APIs on the Code**

Period	No. of months	No. of spots on TV	No. of spots on Radio
2009 (18 Sep– 31 Dec)	3.5	1,075	421
2010	12	2,714	1,259
2011	12	2,167	929
2012	12	1,942	819
2013 (1 Jan– 28 Apr)	4	1,024	722
Total		8,922	4,150

**3.8** However, the contents of the APIs launched by CMAB have so far been rudimentary at best. Eighteen years into the implementation of the Code, the APIs still merely gave messages that the public may seek basic information from B/Ds (such as that on public activities presented by the Leisure and Cultural Services Department) under the Code. There was no highlighting of the underlying principles of the Code such as openness and transparency. In other words, little has been done to educate the public on their right of ATI *per se*.

### **Practices in Other Jurisdictions**

**3.9** The designated authorities overseeing FOI in other jurisdictions provide comprehensive guidance to the public as well as government agencies and public organisations on the application of exemptions and matters relating to specific issues that are of concern. They maintain a compendium of all guidance on their websites for sharing. In **UK**, for example, the Information Commissioner’s Office (“ICO”), which also serves as the nation’s independent advocate of FOI, maintains a full index of its guidance on the various aspects of FOI on its website for organisations’ and the public’s ready reference. It actively gives advice to agencies on the application and interpretation of the law. Furthermore, it publishes Decision Notices to share with the public its rationale and interpretation of the FOIA. It also publishes precedent cases and its advice on the application of exemptions in specific cases.

**3.10** In **New Zealand**, the Ombudsmen have taken on a similar advocacy role, over and above that of the classical ombudsman (like that of The Ombudsman of Hong Kong) who primarily investigates cases of maladministration and recommends improvement/remedy.

### **Our Observations**

**3.11** *We note that CMAB has taken some measures to promote consistency among B/Ds in administering the Code and in applying the exemptions. However, our observations in complaint cases (examples in **Annex E**) show that B/Ds still do not fully understand the spirit and letter of the Code. Besides, the information that CMAB disseminates to B/Ds is not shared with the public as end-users of the Code. CMAB should consider devising and maintaining a compendium of cases on specific topics relating to the administration of the Code and the application of exemptions to facilitate both B/Ds' and the public's understanding.*

**3.12** *We observe that Government's occasional revisions of the Guidelines were piecemeal and of a minor nature. CMAB, as the bureau overall in charge of the administration of the Code, should proactively and comprehensively review the Code and the Guidelines at regular intervals to keep up with modern standards of open and accountable government.*

**3.13** *CMAB should also continue to enhance the quality of its training for staff. In this connection, the Bureau should consider broadening the perspective of officers by keeping them up-to-date on the implementation and best practices of FOI legislation in other jurisdictions.*

**3.14** *CMAB has been making substantial efforts to increase publicity and promotion activities in recent years. However, the purpose of the Code is to enhance the transparency and openness of Government, to facilitate the public's understanding of its operation and policies and to engage the public in such areas. CMAB should, therefore, significantly increase the amount, breadth and quality of information that it provides to the public about the Code and its application, instead of just giving basic information as in its APIs. It should also make it explicit on its website and other publicity materials that the public is welcome to contact CMAB for seeking advice on the use of the Code.*

**3.15** *The fact that as CMAB is a policy bureau of Government and is itself an interested party in the use of the Code casts doubts on whether the Bureau is in the best position to act as promoter and advocate for ATI. To this end, Government should consider setting up a dedicated independent body to promote the Code, advocate citizens' right to access information and monitor the administration of the Code.*

## **MONITORING OF COMPLIANCE**

### **CMAB's Practices**

**3.16** To monitor B/Ds' compliance with the Code, CMAB asks from them quarterly returns of statistics on compliance. Such returns include the number of information requests received, the outcomes of the requests, and the exemptions cited by the B/D concerned in refusal cases. CMAB also selectively requests B/Ds to provide details of complaint cases to ensure that the B/Ds have taken appropriate follow-up actions.

**3.17** The Code stipulates that all requests for information, whether or not the name of the Code is cited by the requestor, should be dealt with in the spirit of the Code, but the statistics kept by B/Ds and CMAB merely cover those information requests using the specified Code request form or making explicit reference to the Code. They do not include information requests in which the requestor has not mentioned the Code. Consequently, there are conceivably a large number of information requests, the handling of which is not monitored by CMAB. Furthermore, CMAB's monitoring does not involve systematic analysis of complaints and enquiries, which could help the Bureau identify any systemic problems or ambiguities in the Code and its application. CMAB does not conduct regular audits or surveys on B/Ds to gauge and monitor their compliance with the Code.

### **Practices in Other Jurisdictions**

**3.18** In contrast to Hong Kong, other jurisdictions have clear definitions of "information requests" that are subject to monitoring.

**3.19** In UK, a request for information under the FOIA is defined as any letter or email to a public authority asking for information under the Act. The request can just be a question, not necessarily a request for specific information. There is no need

for the requestor to mention or cite the Act when making the request. Clear guidelines are provided for agencies to discern information requests that should be monitored.

**3.20** In **Australia**, under the FOIA, a request for information must be made in writing.

**3.21** In some jurisdictions, the scope of monitoring of information requests is also spelled out in their FOI laws.

**3.22** In **UK**, the FOIA provides for the Ministry of Justice, which oversees the implementation of the FOIA, to publish annual statistics on the implementation and operation of the FOIA in central government, including a breakdown of the number of information requests received by each agency and a breakdown of the number of exemptions applied by each agency. Such statistics are provided in much detail, which enables public understanding of the comprehensive status of the FOIA.

**3.23** In **USA**, detailed statistics, broken down by individual agencies and aspects, and presented in an interactive mode, are provided on the FOIA website of the government. The website is designed in such a way as to enable visitors to easily find out how each agency performs in terms of requests, exemptions, appeals, processing time, fee waiver, administration, backlog and consultations.

## **Our Observations**

**3.24** *We consider CMAB to be too restrictive in its definition of “information requests” for the purpose of its monitoring (paras. 2.14(2) and 3.17). Reference can be taken from the working definitions adopted in other jurisdictions.*

**3.25** *CMAB should also regularly analyse complaints (including those made to The Ombudsman) and enquiries, with a view to identifying for rectification/improvement any systemic problems or ambiguities in the Code and its application. Moreover, the Bureau should, as far as possible, disclose details about the handling of information requests by each B/Ds, so as to facilitate the public’s scrutiny of the performance of the B/Ds.*

## REVIEW

### Lack of Review

**3.26** The Code has not been comprehensively reviewed since its adoption in 1995. Certain aspects of it may have failed to keep pace with societal changes, public expectations and technological advances.

**3.27** **Case Study 1 in Annex E** illustrates that B/Ds can be quite rigid and outdated in their handling of information requests.

### Our Observations

**3.28** *One of the basic principles of FOI is that information should be provided to the public with minimal restrictions and least inconvenience. However, in contradiction to this principle, some B/Ds take the Code and its provisions at their face value without having regard to the Code's spirit of presumption of disclosure, thereby rejecting or obstructing information requests. To counter this, Government should regularly review the Code and the Guidelines in the light of societal and technological changes and in particular public complaints, to ensure that the Code and the Guidelines are kept up-to-date, unequivocal and user-friendly.*

## PROACTIVE DISCLOSURE

**3.29** Proactive disclosure, which means offering information without requiring the public to make specific requests, is an institution that forms an integral and vital part of FOI laws in all the jurisdictions studied. Key components of proactive disclosure include routine disclosure and disclosure logs.

### Routine Disclosure

#### *Hong Kong's Practice*

**3.30** In Hong Kong, B/Ds are required to publish and/or make available for inspection at appropriate locations:

- (1) details of their organisation;
- (2) information on the services they provide;
- (3) their performance pledges and the extent to which they have been met;
- (4) a list of their records by category;

- (5) a list of information either published or otherwise made available, whether free or on payment; and
- (6) the procedures and any charges for access to information not routinely published.

**3.31** When a service for the public is introduced or changed, the department responsible will have to publish sufficient information to explain the nature of the new service or change, and who will be affected by it.

**3.32** The information that B/Ds proactively disclose at present is general in nature. It is not a must for B/Ds to make available administrative manuals, guidelines and instructions and other documents which have a bearing on B/Ds' decisions that affect the public. Some B/Ds do; most do not (an example can be found at **Case Study 5 in Annex E**).

### ***Practices in Other Jurisdictions***

**3.33** In **UK**<sup>10</sup>, **New Zealand**<sup>11</sup>, **Australia**<sup>12</sup>, **USA**<sup>13</sup> and **PRC**<sup>14</sup>, the

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<sup>10</sup> *In UK, the FOIA requires every public authority to have a model publication scheme as part of its normal business activities for approval by ICO. The publication scheme commits an authority to specify, proactively publish, review and update on a regular basis, and to produce a schedule of any fees charged in respect of, information held by the authority. Information to be published by an agency includes organisational information, locations and contacts, constitutional and legal governance, financial information and strategy performance information, policy proposals and decisions, current written protocols for delivering functions and responsibilities, and advice and guidance.*

<sup>11</sup> *In New Zealand, the Official Information Act ("OIA") requires that the Ministry of Justice produce a publication that includes specified information about each organisation including a description of all manuals, and similar types of documents which contain policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in his or her or its personal capacity. The publication must be updated at least once every two years. It should include:*

- (1) *a description of its structure, functions, and responsibilities including those of any of its statutory officers or advisory committees;*
- (2) *a general description of the categories of documents held by it;*
- (3) *a description of all manuals, and similar types of documents which contain policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in his or her or its personal capacity; and*
- (4) *a statement of any information that needs to be available to members of the public who wish to obtain official information from the department or organisation, which statement shall include particulars of the officer or officers to whom requests for official information or particular classes of information should be sent.*

<sup>12</sup> *In Australia, pursuant to the 2010 FOI reform, an Information Publication Scheme was established. Each Minister responsible for an agency is required to publish annually a statement setting out details of the functions of the agency, categories of documents held, and arrangements for access by the public to documents in the possession of the agency. Section 9 of the FOIA further requires that a statement listing documents used by the agency in making decisions that affect the public to be made available at*

proactive disclosure requirements are stipulated in their respective FOI laws, and encompass a broad range of information to be proactively disclosed, covering:

- (1) the types of information to be provided;
- (2) written protocols for delivering functions and responsibilities;
- (3) final opinions and orders in adjudication of administrative cases;
- (4) administrative staff manuals and instructions, and advice and guidance;
- (5) documents used by agencies to make decisions that affect the public;
- (6) the frequency of publication and updating of the information that is proactively released; and/or
- (7) the form and mode of information proactively disclosed.

**3.34** USA has even passed amendments to the FOIA to require that electronic records be made available to the public.<sup>15</sup>

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*National Archives of Australia offices in all capital cities. The statements are required to be updated at three-monthly intervals where practicable, and in any case within 12 months after the last statement. The documents listed in the statement are subject to inspection by the public.*

<sup>13</sup> *In USA, all federal agencies are required under the FOIA to affirmatively, continuously and routinely disclose policy statements, final opinions and orders in adjudication of administrative cases, and administrative staff manuals and instructions.*

<sup>14</sup> *Article 9 of the Regulations of the PRC on Open Government Information stipulates that administrative agencies should disclose on their own initiative government information that satisfies certain basic criteria related to the interests of the people:*

- (1) *information that involves the vital interests of citizens, legal persons or other organisations;*
- (2) *information that needs to be extensively known or participated in by the general public;*
- (3) *information that shows the structure, function and working procedures of and other matters relating to the administrative agency; and*
- (4) *other information that should be disclosed on the administrative agency's own initiative according to laws, regulations and relevant state provisions.*

<sup>15</sup> *In USA, President Obama has placed particular emphasis on achieving transparency through proactive disclosure and through the use of technology. In his FOIA Memorandum, he directed agencies to "take affirmative steps to make information public" without waiting for specific requests, and, to "use modern technology to inform citizens about what is known and done by their Government." The Electronic Freedom of Information Amendment Act was passed in 1996, which requires that records created by federal agencies on or after November 1, 1996 be made available electronically. "Electronic Reading Rooms" were set up for this purpose. Department components may also maintain paper copies of documents for inspection and copying.*

## **Disclosure Log**

### ***Practices in Hong Kong and Other Jurisdictions***

**3.35** In some jurisdictions, information about what people have requested of the agencies and the latter's replies are publicly shared in the form of disclosure logs. There is no comparable institution in Hong Kong. The public are not given any information about what information requests have been received by B/Ds and what the B/Ds have provided to the requestors in response.

**3.36** In **UK**, disclosure logs are available on the National Archive website, with personal data masked. In **Australia**, the FOIA stipulates that government agencies should keep disclosure logs publishing documents released under the FOIA in past years.

### **Our Observations**

**3.37** *Hong Kong compares unfavourably with other jurisdictions in terms of transparency and thoroughness of dissemination of information to the public. The institution of disclosure logs in other jurisdictions, notably UK and Australia, exemplifies their governments' commitment to the philosophy that public information is created and collected for the people and that the people own such information.*

**3.38** *Hong Kong Government should make more information routinely available to the public and consider the introduction of disclosure logs.*

## **REPORTING OBLIGATIONS**

**3.39** Governments and responsible authorities monitor the compliance of FOI stipulations through various means, including, in some cases, a statutory requirement for agencies to publish annual reports.

### **CMAB's Practices**

**3.40** CMAB requires B/Ds to provide information about information requests under the Code and their outcomes once every three months. CMAB compiles the information so collected in a press release for public information. However, such press releases contain very limited information.

**3.41** In the press releases, CMAB publishes quarterly statistics on usage of the Code. Such statistics cover the total number of information requests received by B/Ds under the Code during the reporting period and their breakdown by outcomes (fully met; partially met; or refused), and the number of complaint cases received by The Ombudsman and their outcomes or status.

**3.42** The quarterly press releases do not cover the types of information requested, the grounds for refusal of requests, the remedies taken by CMAB and/or B/Ds in response to The Ombudsman’s investigation on complaint cases. There is no reporting on the work of CMAB in promoting the Code and coordinating B/Ds’ handling of information requests.

**3.43** The lack of details about B/Ds’ handling of information requests makes it difficult for Government and the public to monitor their performance in administering the Code.

#### ***Practices in Other Jurisdictions***

**3.44** In many other jurisdictions, the requirement for regular reporting is specifically stipulated under their FOI laws, prescribing the frequency and contents of government agencies’ report of their work in relation to access to information.

**3.45** In **UK**, the “Statistics on Implementation in Central Government” by the Ministry of Justice are published quarterly. The statistics, which are available on the Ministry’s website, include breakdowns of information requests by government departments and public organisations, the timeliness of responses to requests, initial outcomes of requests, an analysis and commentary on trends, and the number and distribution of cases with exemptions and exceptions applied.

**3.46** In **Australia**, documents released include ministerial submissions, briefs on hot issues, correspondence and submissions. The annual reporting obligation has increased the number of media’s information requests and encouraged disclosure of information by agencies and ministers. The full text of each review decision and related case notes made by the Information Commissioner, who is empowered under the FOIA to take in FOI complaints, is available on his official website and on the Australasian Legal Information Institute website.

**3.47** The Regulations of **PRC** on Open Government Information require that all levels of government publish their annual reports on open government information work before March 31 each year. Such annual reports should include information disclosed on the agency's own initiatives, information requests denied, fees incurred, related lawsuits and the main problems encountered.

### **Our Observations**

**3.48** *Compared with other jurisdictions, Hong Kong's quarterly press releases do not provide substantive information about CMAB's and B/Ds' work in administering the Code and handling information requests from the public. There is plenty of room for improvement in this regard.*

# 4

## *EXEMPTIONS*

### THE EXEMPTIONS UNDER THE CODE

#### Hong Kong's Practice

**4.1** The Code provides that a B/D may refuse to disclose information by giving one or more of the 16 reasons (or exemption provisions) set out in the Code (**Annex B**).

**4.2** Despite the Guidelines governing the circumstances under which the exemptions are to be used, we find from complaint cases that the exemptions are often applied or not applied by individual B/Ds according to their own interpretations. Some examples of B/Ds' erroneous and/or inconsistent applications of the exemptions of the Code are set out in **Case Studies 2, 3, 4 and 6** at **Annex E**.

**4.3** The withholding of information under most provisions of the Code is subject to a "harm or prejudice test": the B/D concerned should consider whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure. If there is overriding public interest in disclosure, the B/D may disclose information notwithstanding the exemption provisions.

**4.4** However, there are inconsistencies among B/Ds and even within the same B/D in deciding whether to disclose "third party information"<sup>16</sup> in the public interest, particularly in cases where the B/Ds have to respond to public complaints about their inaction or ineffective action on third parties' violation of the law. Examples are at **Case Studies 2 and 3** in **Annex E**.

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<sup>16</sup> *Para. 2.14(a) of the Code provides that a B/D may refuse to disclose 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".*

**4.5** The Code does not specify the term of validity of the exemptions. There is no specification in the Code or in the Guidelines for B/Ds' consideration of the time when an exemption applied under the Code should cease to be applicable.

### **Practices in Other Jurisdictions**

**4.6** The FOI laws in other jurisdictions provide for specific categories of exemptions, with clearly defined tests of applicability, and specifications on the term of validity of certain exemptions, and the types of information that should not be exempted from disclosure. In **UK** and **Australia**, FOI reforms have recently been carried out to further refine the categories of exemptions, to the effect of narrowing down the exemptions and liberalising access to information by the public.

**4.7** In **UK**, the FOIA categorises its 24 exemptions into 8 absolute and 16 qualified exemptions. The "absolute" exemptions require no public interest assessment and act as absolute bars to the disclosure of information. The "qualified" exemptions require that a public interest test must be made<sup>17</sup>. Nine of the exemptions cease to apply after 30 years<sup>18</sup>. A few exemptions, such as the working of the honours system, are valid for 60 years, and documents concerned with law enforcement – the prevention or detection of crime, the operation of immigration controls, the maintenance of security and good order in prisons – are closed for 100 years. Other exemptions have no specified time limit, including those concerning national security, international relations and defence.

**4.8** The Official Information Act ("OIA") of **New Zealand** categorises the reasons for refusing information requests into five administrative reasons for refusal, five conclusive reasons for refusal, and nine other reasons for refusal.<sup>19</sup>

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<sup>17</sup> "Qualified" exemptions can be further divided into two categories: class-based exemptions (covering information in particular classes) and harm-based exemptions (covering situations where disclosure of information is liable to cause harm).

<sup>18</sup> These exemptions include: materials that could prejudice relations within UK, that might harm the effective conduct of public affairs, that is concerned with the formulation of government policy, and that relates to legal professional privilege, or to commercial interests, and also communications with the Royal Household.

<sup>19</sup> The **administrative reasons** are not considered "good reasons" for withholding information, but are simply authority for refusing a request in specific circumstances. For **conclusive reasons** for withholding official information, there is no requirement to consider whether the interest in withholding is outweighed by countervailing public interest considerations. For **other reasons** for refusal, an agency must be satisfied that disclosure of the information at issue is likely to prejudice one or more of the aspects and the interest identified in favour of withholding that information is not outweighed by other consideration which render it desirable, in the public interest, to make that information available.

**4.9** Pursuant to its FOI reforms in 2010, **Australia** introduced a new type of exemptions - “conditional exemptions”. Records falling under this exemption category will not be released if their disclosure would be contrary to public interest.<sup>20</sup> To ensure transparency and consistency, the FOIA specifically sets out certain types of records (such as reports of scientific or technical experts, reports of a body or organisation that is established within an agency and prescribed by regulations, and the record of a final decision given in the exercise of power or of an adjudicative function) not to be exempted from disclosure. In Queensland, the timescale for complete release of Cabinet documents has recently been reduced from 30 to 20 years. The Queensland government also plans to remove the categorical exemption for Cabinet documents ten years old or more, so that access to such information may be available on application subject to the public interest test.

**4.10** To ensure consistency, transparency and clarity, the FOIA of Australia provides for disclosure of specific categories of documents, which include reports concerning the results of studies, surveys, or tests of scientific or technical experts, subject to compliance with privacy and other relevant legislations. The FOIA also specifically provides that the right of access extends to documents held by contract service providers delivering services to the public on behalf of a government agency. Agencies are required to take contractual measures to ensure that information requests can be made for documents relating to the performance of the contracts.

**4.11** There are nine exemptions under the FOIA of **USA**. Presidential records of USA are subject to a different set of exemptions on access to records. The Presidential Records Act (“PRA”) of 1978, which provides for public access to the official records of Presidents and Vice Presidents created or received after 20 January 1981 under the FOIA beginning five years after the end of the Administration and the preservation of all such records, allows the President to invoke six specific restrictions to public access for up to twelve years. This means that there are fewer restrictions (or exemptions) on access to records under the PRA than those under the FOIA.<sup>21</sup>

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<sup>20</sup> *If a document meets the criteria for one of the conditional exemptions, the decision-maker must consider whether in the circumstances giving access to the document would be contrary to public interest by weighing factors favouring access and those favouring non-disclosure. The FOIA specifically sets out some factors that favour giving access when applying the public interest test. These factors include whether giving access would promote the objects of the Act, including scrutiny of government activity and promoting public participation in government decision-making. The FOIA also sets out some factors which must not be taken into account. They include embarrassment to or a loss of confidence in the government, misunderstanding, confusion or unnecessary debate, and the seniority of the document’s author.*

<sup>21</sup> *There are six PRA restrictions: (1) national security and foreign policy; (2) appointments to Federal*

**4.12** Pursuant to Article 19 of the ICCPR, the **United Nations Human Rights Council** provides for two areas of restrictions (or exemptions), i.e. for respect of the rights or reputations of others, and for the protection of national security or of public order, or of public health or morals. The exemptions must conform to the tests of necessity and proportionality, and be provided by law. When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat. The exemptions may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. The Council recognises that while it helps by having an independent Information Commissioner or some other dedicated body, irrespective of how refined the definition and the underlying principles, the exemptions are open to interpretations. It, therefore, stresses the importance of the FOI system to allow for transparency and consistency of all FOI decisions and their rationale. The Council requires that FOI decisions be open to public scrutiny.

**4.13** The Council of Europe, comprising 47 member countries, adopted the Convention on Access to Official Documents in 2008, which provides for limitations to the right of access to official documents. It provides that limitations shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting specific areas.<sup>22</sup> Member countries are required to set time limits beyond which the limitations above would no longer apply.

## **Our Observations**

**4.14** *In many respects, the subjects of exemptions provided under the Code in Hong Kong are similar to those of the FOI laws in other jurisdictions. However, this is as far as the similarity goes.*

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*offices; (3) exempted by statute; (4) confidential commercial information; (5) confidential advice; and (6) personal privacy. There are nine FOIA exemptions: (1) national security and foreign policy (same as PRA); (2) personnel rules and practices of an agency; (3) exempted by statute (same as PRA); (4) confidential commercial information (same as PRA); (5) deliberative process privilege; (6) personal privacy (same as PRA); (7) law enforcement in investigations; (8) financial institution reports; and (9) geological information about wells. Even though the PRA restrictions at (1), (3), (4), and (6) are lifted after twelve years, the corresponding FOIA exemptions remain and the files concerned continue to be withheld from disclosure.*

<sup>22</sup> *These areas are national security, defence and international relations; public safety; the prevention, investigation and prosecution of criminal activities; disciplinary investigations; inspection, control and supervision by public authorities; privacy and other legitimate private interests; commercial and other economic interests; the economic, monetary and exchange rate policies of the state; the equality of parties in court proceedings and the effective administration of justice; environment; or the deliberations within or between public authorities concerning the examination of a matter.*

**4.15** *There are inadequate guidelines governing the circumstances under which the exemptions are to be used. No mechanism is in place to ensure consistent application of the exemptions by B/Ds. There is also a lack of specifications as to the extent and the term of validity of the exemptions. As a result, the exemptions in the Code could be applied by individual B/Ds according to their own interpretations. Inconsistent and even erroneous application of the exemptions may go unnoticed to CMAB, so long as the requestors make no complaint about the B/Ds' handling of their information requests.*

**4.16** *The key difference between Hong Kong and the other jurisdictions is that Hong Kong lacks a built-in mechanism for regular review of the exemptions, while the other jurisdictions continually review and refine the categories of exemptions, to the effect of narrowing them down and reducing their term of validity for enhancing public access to information.*

**4.17** *We consider that CMAB should critically review the exemptions in the Code, in particular with a view to defining the term of validity of the exemptions, in the spirit of accountability, transparency and openness.*

**4.18** *CMAB should also give more advice to B/Ds to help them with interpretation and application of the Code, particularly for those exemptions in the Code that are subject to frequent queries and complaints from the public. A database of problematic cases and the application of the exemptions should be developed, from which B/Ds can take reference to ensure consistency of application of the exemptions. Government should certainly also establish a mechanism of regular review of the exemptions and their application, so as to minimise restrictions to ATI.*

# 5

## *OVERSIGHT RESPONSIBILITIES*

### **OVERSIGHT RESPONSIBILITIES**

#### **Current Situation**

**5.1** In Hong Kong, the responsibilities of administering the Code and handling of complaints about refusal/improper treatment of information requests rest respectively with CMAB and The Ombudsman.

**5.2** According to CMAB, it gives advice to B/Ds on administering the Code and provides training to enhance B/Ds' understanding and compliance (**para. 3.1**).

**5.3** The Ombudsman is specifically empowered by The Ombudsman Ordinance to investigate public complaints against B/Ds for non-compliance with the Code. The Ombudsman investigates such complaints and decides whether the complaints are substantiated, not substantiated or partially substantiated. This is not a formal appeal framework as the decisions of The Ombudsman are not binding upon B/Ds (**para. 2.13**). Where a B/D is found not to have followed the Code, it is up to the B/D to take disciplinary action against the staff member concerned. In reality, no disciplinary action has been so taken.

**5.4** Hong Kong does not have a formal independent body for advocating and promoting FOI. Nor is there an independent body to advise Government on FOI.

## FOI and Personal Data Protection

**5.5** FOI and protection of personal data are two subjects that are intricately linked in the consideration of information requests. FOI means disclosure of information as far as possible, while the protection of personal data<sup>23</sup> is one exemption often used to bar information disclosure.

**5.6** In Hong Kong, CMAB has policy responsibility over both FOI and protection of personal data. However, enforcement and oversight of implementation falls to separate bodies: CMAB oversees B/Ds' administration of the Code<sup>24</sup> (with The Ombudsman handling public complaints), while the Privacy Commissioner for Personal Data ("PCPD") takes care of the protection of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO").

**5.7** B/Ds often cite privacy (i.e. personal data) as the reason for refusing information requests. In 13 of the 49 complaint cases we handled in 2012, the B/Ds declined information requests on grounds of privacy.

**5.8** In some of those cases, the B/Ds refused the requests, without having weighed the public interest in or tried to seek the consent of the personal data subjects for disclosure of the information, as required by the Code. Some B/Ds are not even sure whether the information requested constitutes "personal data" and whether the question of "personal data protection" really needs to be considered at all (**Case Studies 4 and 6 in Annex E**). Some B/Ds would consult the Department of Justice ("DoJ") or their in-house legal units. The authority on personal data protection, PCPD, is not consulted as he does not have the statutory function to provide advice on the subject to B/Ds or the public. CMAB has not done much to address these problems, let alone give useful advice to B/Ds.

## Practices in Other Jurisdictions

**5.9** In many other jurisdictions, oversight of both FOI and personal data protection is put under the charge of one office – that of the Information Commissioner. Such offices have been established in countries like UK, Australia, Ireland, Slovenia,

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<sup>23</sup> Para. 2.15 of the Code provides that B/Ds may refuse to disclose information about any person (including a deceased person) other than to the subject of the information, or other appropriate person, except in certain specified circumstances, for instance, "the public interest in disclosure outweighs any harm of prejudice that would result".

<sup>24</sup> Though CMAB seems to be content with discharging what appear to be only parts of that responsibility (**para. 3.1**).

Serbia, Hungary, Mexico, France, Germany and Portugal. In other jurisdictions, such as the Northern Territory of Australia and British Columbia and Ontario in Canada, there is a trend that FOI and personal data protection are covered by the same law. In some other jurisdictions (New Zealand, Sweden, Norway and Bosnia), the independent Ombudsman is given the function of overseeing the right of access to information.

**5.10** In UK, ICO is an independent public body set up to uphold information rights in the public interest, promoting the openness of public organisations and personal data protection.<sup>25</sup> ICO is tasked to maintain a balance between the right of the people to seek information from the government and public organisations and the protection of individuals' personal data. ICO establishes regulations and guidelines, reviews refusal decisions, orders disclosure, promotes public awareness of FOI and reports data to the Parliament. The Office is empowered by the FOIA to ensure agencies' compliance with a number of instruments, including a practice recommendation<sup>26</sup>, a decision notice<sup>27</sup>, an information notice<sup>28</sup> and an enforcement notice<sup>29</sup>. The work of the Information Commissioner and his Office is supported and overseen by a Management Board, which develops long-term strategies and monitors the implementation of such strategies.

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<sup>25</sup> *Appointed by the Crown, ICO oversees the implementation of Data Protection Act, Privacy and Electronic Communications Regulations, Freedom of Information Act and Environmental Information Regulations.*

<sup>26</sup> *Where the Information Commissioner considers that the practice of a public authority does not conform to that proposed in the codes of practice, he may give that authority a Practice Recommendation under section 48 of the FOIA, specifying in writing the steps the Information Commissioner considers should be taken to bring about conformity with the particular provisions of the code of practice to which the Information Commissioner considers the public authority's practice does not conform. Failure to comply with a practice recommendation may mean failure to comply with the Act. A failure to take into account a practice recommendation may lead to an adverse comment in a report to Parliament by the Commissioner.*

<sup>27</sup> *The Information Commissioner may also refer to non-compliance with the Code in decision notices issued as a result of a complaint under section 50 of the FOIA and enforcement notices issued under section 52 of the FOIA where, irrespective of any complaints that may have been received, the Information Commissioner considers that a public authority has failed to comply with any requirement of Part 1 of the FOIA.*

<sup>28</sup> *If the Information Commissioner reasonably requires any information for the purpose of determining whether the practice of a public authority conforms to the Code, under section 51 of the FOIA he may serve an information notice on the authority, requiring it to provide specified information relating to its conformity with the Code.*

<sup>29</sup> *When there is clear evidence of more serious systemic or repeated breaches by public authorities, ICO may consider exercising regulatory intervention and will issue enforcement notices. If staff conceal, alter or deliberately destroy information, they may be liable to be prosecuted, for which the penalty can be a fine in the Magistrates Court of up to £5000. If a public authority fails to comply with a decision, information or enforcement notice, the Information Commissioner may certify in writing to the court that the public authority has failed to comply with that notice. The court may then inquire into the matter and may deal with the authority as if it had committed a contempt of court.*

**5.11** In **New Zealand**, the Ombudsman is the sole authority to review FOI decisions of agencies. Appointed by the Governor General, the Ombudsman is vested with power under the New Zealand Ombudsmen Act 1975 to investigate and review decisions of government agencies and to determine whether or not the agencies have complied with the OIA. The Ombudsman can make a binding recommendation, after reviewing the agency decision, for the information to be withheld or released. The agency is required by law to comply with the recommendation within 21 days. The Ombudsman's decision can be vetoed by an order of the Governor General in Council (or by the local authority's resolution under the Local Government Official Information and Meetings Act 1987).<sup>30</sup>

**5.12** In **Australia**, pursuant to the major reform of the FOI in 2010, the independent Office of the Australian Information Commissioner ("OAIC") has been created and has assumed a comprehensive oversight and advocacy role with functions including investigation of complaints about FOI administration<sup>31</sup>, merit review of access denial decisions, making of binding decisions on agencies on disclosure of information<sup>32</sup>, publication of FOI guidelines, providing advice to the government on information policy, and promoting a pro-disclosure culture across government agencies. FOI and privacy complaints are dealt with by the same branch of OAIC, namely, the Dispute Resolution Branch, and policy issues relating to FOI, privacy and information management are dealt with by the Regulation and Strategy Branch. OAIC also encourages agencies to adopt an integrated approach to information management in their handling of FOI and privacy matters. This integrated approach is reported to have changed the dialogue and the culture within Australian government agencies and the community.

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<sup>30</sup> *The Governor General can issue a "Cabinet veto" directing an agency not to comply with the Ombudsman's decision. The veto, however, can be reviewed by the High Court. Veto power has not been used since 1987, when it was converted to a collective decision. (Between 1983 and 1987, 14 vetoes were exercised under a system that allowed individual ministers to issue vetoes.)*

<sup>31</sup> *The Information Commissioner may investigate agency actions relating to the handling of FOI procedural compliance matters arising from complaints or on the Commissioner's own initiative. A person commits an offence if the person who is required by the Information Commissioner to appear before IC to answer questions for the purpose of an IC review breaches the requirement. Penalty for a contravention of this is 6 months' imprisonment.*

<sup>32</sup> *The Information Commissioner has power to enforce compliance with the FOI through making a binding decision that a document is not exempt upon an agency; issuing an implementation notice requiring an agency to specify the action it will take to implement a recommendation by the Commissioner following the investigation of a complaint against the agency; and issuing guidelines on the administration of the FOIA to which the agencies must have regard.*

**5.13** Pursuant to the 2010 FOI reform in Australia, an Information Advisory Committee<sup>33</sup> has been established to assist and advise the Information Commissioner in the performance of his functions, including reporting to the Minister on matters related to the disclosure of and access to information held by the government and other functions conferred by the Australian Information Commissioner Act.

**5.14** In USA, the responsibility of oversight of compliance with the FOIA is vested in the Office of Information Policy (“OIP”) under the Department of Justice. OIP is responsible for encouraging agency compliance with the FOIA and for ensuring that the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines are fully implemented across the government. OIP develops and issues policy guidelines to all agencies on proper implementation of the FOIA, publishes a comprehensive Guide on the FOIA, provides individualised guidance to agencies on the application of the FOIA, conducts training programmes for FOIA personnel across the government, and provides general advice to the public on use of the FOIA. OIP oversees, reviews and monitors compliance with the FOIA by agencies, which are required by law to report to the Department of Justice on their FOIA compliance through submission of Annual FOIA Reports and Chief FOIA Officer Reports. OIP reviews and compiles summaries of both agency Annual FOIA Reports and Chief FOIA Officer Reports. OIP adjudicates administrative appeals against denials of access to records under the FOIA or the Privacy Act of 1974.

**5.15** Officers withholding information are subject to disciplinary action. Persons aggrieved by a decision on an information request may resort to non-mutually exclusive channels including: head of the agency; Office of Government Information Services (under the National Archives and Records Administration); judicial review; and federal district courts<sup>34</sup>.

**5.16** The Regulations of the **People’s Republic of China** on Open Government Information provide for a person’s right to report to the higher level administrative agency, the supervision agency or the department in charge of open government information against an administrative agency which has failed to fulfill its obligations in respect of open government information. The agency that receives the report should investigate and handle it. A person may apply for administrative

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<sup>33</sup> *The Information Advisory Committee is chaired by the Information Commissioner and comprises senior agency officers and other people with relevant qualifications and experience appointed by the Minister.*

<sup>34</sup> *The power to overrule OIP’s decision is exercised by the courts. The decisions of the courts cannot be overridden by ministers.*

reconsideration or file an administrative lawsuit if the person believes that a specific administrative action of an administrative agency in its open government information work has infringed his/her lawful rights and interests. If an administrative agency fails to establish and perfect a mechanism for releasing government information or has failed to fulfill open government information obligations, failed to update the contents of government information, guidelines or catalogues, failed to collect fees in violation of provisions, disclosed government information that should not be disclosed, the supervision agency or the administrative agency at the next higher level shall order that administrative agency to correct the situation. If the circumstances are serious, administrative penalties shall be imposed on the principal responsible person(s) of that administrative agency.

### **Other International Standards and Practices**

**5.17** There is no specific obligation under international laws to create an oversight body such as an office of Information Commissioner. Some international bodies have nonetheless specifically suggested the creation of an independent body for oversight and promotion of and education on FOI.

**5.18** For example, in its May 2007 review of the right of access to information, the **Organisation for Security and Cooperation in Europe** (“OSCE”), which is the largest regional security organisation with 57 participating states from Europe, Central Asia and North America, included in its analysis of the core elements of that right the existence of a dedicated oversight body, and recommended that all member states create such a body which can investigate and order releases of information.<sup>35</sup>

**5.19** Article 8 of the **Council of Europe** Convention on Access to Official Documents provides that an applicant whose request for an official document has been denied, expressly or implied, whether in part or in full, shall have access to a review procedure before a court or another independent and impartial body established by law. It also provides that an applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review.

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<sup>35</sup> *“There should be an adequate mechanism for appealing each refusal to disclose. This should include having an independent oversight body such as an Ombudsman or Commission which can investigate and order releases. The body should also promote and educate on freedom of information.”*

## **Our Observations**

**5.20** *Personal data protection is often used by B/Ds as a reason for refusing to release information. Protection of personal data is underpinned by law in Hong Kong. However, the provisions of the Code have no legal backing. The result is that when it comes to consideration of information requests that appear to relate to personal data, bureaucrats easily become biased towards non-disclosure. Case 4 in Annex E is a case in point. They tend to become very cautious regarding personal data protection for fear of violating the law, and yet most of them are not really sure whether the information requested constitutes “personal data”.*

**5.21** *In Hong Kong, there is currently no mechanism in place to ensure due consideration is given to both personal data protection and citizens’ right of ATI when B/Ds vet information requests. B/Ds are unable to seek the expert advice of PCPD on the interpretation of the PDPO and the application of the related exemption under the Code. As a result, there are inconsistencies and errors in B/Ds’ application of the related exemption.*

**5.22** *Increasingly, in other jurisdictions, the two bodies overseeing personal data protection and FOI are either put under one roof or placed under the same law so as to ensure that both aspects are thoroughly considered and applied in a consistent manner. Government should, therefore, explore ways and means by which B/Ds can have access to authoritative expert advice and clear guidelines on handling information requests that appear to involve personal data. Indeed, without clear guidelines/expert advice on the application of the privacy (personal data) exemption, the Code might be conveniently used by B/Ds to ward off legitimate information requests.*

**5.23** *Moreover, CMAB does not have an established channel for consulting other experts and opinion leaders on its work relating to access to information. Taking account of the doubtful suitability and efficacy of CMAB as promoter and advocate for ATI (**para. 3.15**), we consider that Government should consider setting up an independent advisory body on ATI. That would bring about public engagement in CMAB’s work and motivate regular reviews of the relevant policy and procedures to keep up with the community’s expectations.*

**5.24** *Better still, Government should comprehensively review its regulatory framework of ATI in Hong Kong and consider legislation as in other jurisdictions to give full protection to citizens’ FOI through an independent regulating body with enforcement powers.*

# 6

## *CONCLUSION AND RECOMMENDATIONS*

### CONCLUSION

**6.1** In sum, we have found the following inadequacies in the access to information regime in Hong Kong:

- (1) The Code is purely administrative and lacks legal backing. There is no enforcement body that can make legally binding decisions on B/Ds and there is no statutory penalty for non-compliance (**paras. 2.13 and 5.3**).
- (2) Except for a limited few, the Code does not cover public organisations, many of which receive public funding and provide essential public services (**para. 2.26**).
- (3) In terms of contents and quality, insufficient information/training has been provided to enhance B/Ds' understanding of the Code and the exemptions and their knowledge of the international scene (**paras. 3.11-3.13**).
- (4) The contents of the APIs launched by CMAB have so far been rudimentary, lacking promotion of the underlying principles of transparency and openness of government and education for the public on their right of ATI (**para. 3.14**).
- (5) As an interested party in the application of the Code, CMAB may not be in the best position to act as promoter and advocate for public ATI (**para. 3.15**).

- (6) The quarterly reports produced by CMAB do not include vital data and analyses of complaint cases and enquiries. The Bureau does not systematically capture information about information requests made without citing the Code. As a result, there are conceivably a large number of information requests, the handling of which is not monitored by CMAB, and systemic problems or ambiguities are not identified (**para. 3.17**).
- (7) Some B/Ds take the Code and its provisions at their face value without having regard to the Code's spirit of presumption of disclosure, thereby rejecting or obstructing information requests (**para. 3.28**).
- (8) Compared to other jurisdictions, Hong Kong lags behind in the breadth and depth of information provided to the public about its administration of ATI. The public are not given any information about what information requests have been received by B/Ds and what the B/Ds have provided to the requestors in response, such as that contained in the disclosure logs of other jurisdictions. This has made it difficult for the public to understand the Code and to monitor B/Ds' performance (**paras. 3.25 and 3.43**).
- (9) There are inconsistencies among B/Ds and even within the same B/D in their application of the exemptions (**para. 4.4**).
- (10) The Code lacks specification of the extent and the term of validity of the exemptions and Government does not have a mechanism for regular comprehensive review (**paras. 3.12, 3.26-3.27, 4.5 and 4.15-4.18**).
- (11) No independent body has been set up to advise Government on FOI related matters (**paras. 5.4 and 5.23**).
- (12) There is no established channel for B/Ds to consult dedicated experts on information requests that appear to involve personal data. As a result, there are inconsistencies and errors in B/Ds' application of the related exemption under the Code (**para. 5.21**).

**6.2** Hong Kong's ATI regime has some of the key features of FOI laws elsewhere, namely, proactive disclosure, presumption of disclosure, timeframe for response, giving of reasons for refusal and an independent body (The Ombudsman) for handling complaints. However, the lack of statutory underpinning means that the right of ATI is not protected by legislation, which means that there is little assurance to

the public of Government's commitment to accountability, transparency and openness.

**6.3** The ATI regime in Hong Kong has not kept pace with international developments. A comprehensive review is called for.

## **RECOMMENDATIONS**

### **Legislation**

**6.4** The Ombudsman recommends that Government consider introducing a law to underpin citizens' right of ATI, covering information held by both B/Ds and public organisations, to be overseen by an independent body with enforcement powers.

**6.5** Before such a law is enacted, Government should:

### **Oversight**

- (1) Explore ways and means by which B/Ds can have access to authoritative expert advice and clear guidelines on handling information requests that appear to involve personal data;
- (2) set up an independent body to advise CMAB on matters relating to ATI;

### **Coverage**

- (3) draw up and implement a phased programme of subjecting public organisations to the Code and to CMAB's oversight;

### **Monitoring of Compliance and Statistical Analysis**

- (4) review its definition of "information request" for the purpose of monitoring B/Ds' compliance with the Code, so as to cover those requests made without citing the Code;

### **Increase of Transparency**

- (5) make more information available to the public and consider introducing disclosure logs so as to facilitate the public's understanding and scrutiny of B/Ds' performance;
- (6) significantly increase the amount, breadth and quality of information that it regularly provides to the public about the Code and its application;

### **Regular Review and Provision of Compendium of Cases**

- (7) establish a mechanism for regularly reviewing the Code to keep up with the times, in particular its exemption provisions to ensure that they are not excessive and are clearly defined, and that their term of validity is specified where possible;
- (8) devise and maintain a compendium of cases on specific topics relating to the administration of the Code and the application of exemptions to facilitate both B/Ds' and the public's understanding;

### **Giving of Advice**

- (9) enhance publicity to promote the channels for the public to seek advice on matters relating to the Code;
- (10) provide more advice and support to B/Ds to help them with interpretation and application of the Code, particularly for those exemptions in the Code that are subject to frequent queries and complaints from the public;

### **Training**

- (11) reinforce training for staff, including exposure to knowledge and best practices on implementation of FOI legislation in other jurisdictions;

## **ACKNOWLEDGEMENTS**

**6.6** The Ombudsman is grateful to CMAB for the cooperation and assistance rendered to this investigation. He would also like to thank all those who have given this Office views and information on the subject.

**Office of The Ombudsman**  
**Ref.: OMB/DI/238**  
**March 2014**

**Recommendations in the report on the 2010 Direct Investigation on  
Administration of the Code on Access to Information**

	<i>Recommendation</i>	<i>Progress by CMAB</i>
	<b>Staff Training</b>	
	To organise more, and timely, training for Access to Information Officers (“AIOs”) of B/Ds and remind B/Ds to provide AIOs with appropriate guidelines to assist their implementation of the Code	<p><b>Training.</b> Since February 2010, CMAB has been organising group briefings to new AIOs upon their assumption of duty. As at end June 2011, six group briefings have been held for 50 new AIOs.</p> <p><b>Internal circular/guidelines.</b> As at end 2010, all B/Ds have reviewed and updated their respective internal circulars and guidelines to facilitate the implementation of the Code. The Administration issued the updated General Circular on the Code in May 2010, which included a reminder to B/Ds to provide AIOs with appropriate guidelines.</p>
	To work with B/Ds to organise more training for other staff directly or through their departments	Since the first quarter of 2010, B/Ds have been required to report on a quarterly basis details of in-house training sessions conducted on the Code. As at end June 2011, 65 B/Ds have conducted a total of about 1,460 training sessions on the Code for over 28,000 staff members.
	<b>Publicity</b>	
	To arrange regular publicity for the Code	CMAB earmarked about \$0.8 million in 2011-12 to raise public awareness of the Code. A new poster has been displayed. Promotional broadcasts through various means will continue.
	To add a Chinese version of the Guidelines to the Government webpage on the Code	The Chinese version of the Guidelines was uploaded to the Government webpage on the Code in May 2010.
	To require all departments’ homepages to introduce the Code briefly and to be hyperlinked to the webpage on the Code	All B/Ds have added an introductory note on the Code on their homepages and provided a hyperlink to the Government webpage on the Code.
	<b>Promotion within Government</b>	
	To prepare a dossier on the findings of our complaint cases and the results of review cases of various departments for reference in staff training	Since February 2010, the findings of some of our complaint cases have been used as training materials for AIOs. The results of some review cases have also been referred to in the training sessions for AIOs where

		appropriate.
	To regularly update and re-circulate relevant circulars	The updated General Circular on the Code was issued in May 2010. B/Ds are reminded to provide AIOs with appropriate guidelines, including the internal circulars of the B/Ds on the Code and detailed guidelines for implementation of the Code. B/Ds are required to re-circulate the General Circular annually to all officers involved in implementing the Code.
	To regularly update the list of Frequently Asked Questions and precedent cases, taking into account the development of the dossier	The FAQs and precedent cases on the Code were last updated in January and March 2010 respectively. They will be updated regularly, taking into account the development of complaint cases lodged with The Ombudsman and enquiries received from B/Ds on the implementation of the Code.
	<b>Monitoring of Departmental Guidelines</b>	
	To provide advice to departments to ensure that departmental guidelines are clear, correct and up-to-date	As at end December 2010, all B/Ds have updated their departmental circulars and guidelines on the Code at CMAB's request. In the course of the updating, CMAB provided advice to B/Ds upon the latter's enquiries.
	<b>Monitoring of Compliance</b>	
	To keep the format of the quarterly return under regular review	The format of the quarterly return has been reviewed and a new proforma has been used since the second quarter of 2010 to capture more information about partially met/refusal cases. CMAB has undertaken to continue to monitor B/Ds' compliance with the Code and keep the format of the quarterly return under regular review.
	To follow up with other public bodies within The Ombudsman's purview for them to adopt the Code or some similar guide	Among the six public bodies identified in the report as not having adopted the Code or a similar guide, five have adopted a similar guide.

**Exemption provisions or “information that may be refused” as set out in  
Part 2 of the Code**

- (1) Defence and security
- (2) External affairs
- (3) Nationality, immigration and consular matters
- (4) Law enforcement, legal proceedings and public safety
- (5) Damage to the environment
- (6) Management of the economy
- (7) Management and operation of the public service
- (8) Internal discussion and advice
- (9) Public employment and public appointments
- (10) Improper gain or advantage
- (11) Research, statistics and analysis
- (12) Third party information
- (13) Privacy of the individual
- (14) Business affairs
- (15) Premature requests
- (16) Legal restrictions

## Major features of the FOI regimes of other jurisdictions

	UK	New Zealand	Australia	USA	PRC	UN Human Rights Council	Council of Europe
Stipulations	Freedom of Information Act ("FOIA") 2000  Environmental Information Regulations 2004	Official Information Act 1982  Local Government Official Information and Meetings Act	Freedom of Information Act ("FOIA") 1982	Freedom of Information Act 1966  Openness Promotes Effectiveness in our National government Act of 2007  OPEN Freedom of Information Act (FOIA) of 2009	Regulations of the People's Republic of China on Open Government Information (中華人民共和國政府信息公開條例) 2008	Article 19 of the International Covenant of Civil and Political Rights ("ICCPR") 1966; and  General comment No. 34 on Article 19: Freedoms of opinion and expression	Convention on Access to Official Documents 2008
Status	National law	National law	National law	National law	National law	International covenant	International convention
Applicable to	About 100,000 public authorities:  central and local governments, Parliament, the National Assembly for Wales, the armed forces, the police, hospitals, doctors and dentists, schools, universities, publicly-funded museums publicly owned companies designated bodies performing public functions	Any Minister in his/her official capacity, or any government department or organisation listed in the Ombudsmen Act 1975, including government ministries, hospitals, universities, schools, the Security Intelligence Service, and state-owned enterprises (e.g. New Zealand Post, New Zealand Railways)	All "ministers, departments and public authorities" of the Commonwealth	Executive office of the President, executive departments, military departments, government corporations, government controlled executive branch of the government  Executive branch and independent agencies under the Federal Government	All government agencies, organisations that exercise administrative powers and provide public service, and public corporations and institutions  Information in relation to public services by public enterprises and institutions that are closely related to the people's interests such as education, medical care, family planning, water supply, electricity supply, gas supply, heating, environmental protection and public transportation	All branches of the State (executive, legislative and judicial) and other public or governmental authorities at national, regional or local levels that carry out public functions  Acts of semi-State entities under some circumstances (para. 7, General Comments)  Entities carrying out public functions (para. 18, General Comments)	Government and administration at national, regional and local level;  legislative bodies and judicial authorities in so far as they perform administrative functions according to national law;  natural or legal persons in so far as they exercise administrative authority.
Authority	Information Commissioner	Ministry of Justice	Information Commissioner	Department of Justice (through its Office of Information Policy)	The General Office of the State Council 國務院辦公廳	-	Member Parties
Information covered	Any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland	All information held by the parties specified above.  There is no definition of "official information" (thus allows for a broad interpretation).	"Documents" are defined under section 4 as being written and may take numerous forms.	All agencies must register their structure, functions and regulations, interpretation of policy and administrative guidelines.  Records held by state and local government agencies, covered by relevant laws	Information made or obtained by administrative agencies in the course of exercising their responsibilities and recorded and stored in a given form  Information affecting the immediate interests of citizens, legal persons or organisations  Information necessary to be widely known or participated in by the public Information regarding an	All forms of expression and the means of their dissemination, including spoken, written and sign languages and such non-verbal expressions as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression. (Para. 12 of	"Official documents" means all information recorded in any form, drawn up or received and held by public authorities

	UK	New Zealand	Australia	USA	PRC	UN Human Rights Council	Council of Europe
					agency's institutions, functions and procedures of handling administration affairs	General comment)	
Acceptable modes of requests	Written request (For requests made under the Environmental Information Regulations, a request can be made in any form or context, including oral requests)	By phone, in writing or in person	In writing	Not stated	Written, electronic or oral request	Not stated	Not stated
Timeline for response to requests	20 days	20 working days  An organisation can request extension of deadline for one time if a large quantity of information is requested or consultations are necessary.  Transfer of request (if applicable) should be made within 10 working days	Acknowledge receipt of request within 14 days.  Notify requestor of decision within 30 days of receipt of request.	20 days except Saturdays, Sundays and legal public holidays (minus time for clarification); extension is allowed but not more than 10 days under unusual circumstances  No fee is chargeable beyond 20 days of processing (by virtue of the OPEN Government Act of 2007)	15 working days after receipt; can be extended for 15 days	Not stated	A request shall be dealt with promptly. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand.
Exemptions	8 absolute exemptions;  16 qualified exemptions  (7 class-based exemptions + 8 harm-based exemptions + 1 both class and harm based exemption)	5 administrative reasons for refusal  5 conclusive reasons for refusal  9 other reasons for refusal	9 exemptions  8 conditional exemptions	9 exemptions	7 areas of exemptions	2 areas of restrictions  Restrictions must be provided by law.  A law may not confer unfettered discretion on those charged with its execution. Laws must provide sufficient guidance on its execution.	11 areas of harm-based exemptions  The Parties shall consider setting time limits beyond which the limitations above would no longer apply.
Sanctions	Staff concealing, altering or deliberately destroying information may be liable to prosecution and subject to up to £5000 fine in the Magistrates Court.  Failure to comply with "information notices", "decision notices" or "enforcement notices" will be considered as contempt of court.	Not stated	A person commits an offence if the person who is required by the Information Commissioner to appear before IC to answer questions for the purpose of an IC interview breaches the requirement. Penalty for a contravention is 6 months imprisonment	Officer will be subject to disciplinary action for withholding information.	Administrative sanctions and civil charge  Criminal penalty	Not stated	Not stated
Proactive disclosure	FOIA requires every public authority to have a publication scheme, approved by Information Commissioner		Information Publication Scheme as provided in the FOIA	Automatically posted online by all Department components	Administrative agencies at every level are required by law to disclose specific government information proactively	State parties should proactively put in the public domain government information of public interest	Not stated

**Public organisations that have adopted the Code on Access to Information or a similar guide**

(as at 28 February 2014)

- (1) Airport Authority
- (2) Auxiliary Medical Services
- (3) Civil Aid Service
- (4) Consumer Council
- (5) Employees Retraining Board
- (6) Equal Opportunities Commission
- (7) Estate Agents Authority
- (8) Financial Reporting Council
- (9) Hong Kong Arts Development Council
- (10) Hong Kong Housing Authority
- (11) Hong Kong Housing Society
- (12) Hong Kong Sports Institute Limited
- (13) Hospital Authority
- (14) Kowloon-Canton Railway Corporation
- (15) Legislative Council Secretariat
- (16) Mandatory Provident Fund Schemes Authority
- (17) Privacy Commissioner for Personal Data
- (18) Securities and Futures Commission
- (19) The Hong Kong Examinations and Assessment Authority
- (20) Urban Renewal Authority
- (21) Vocational Training Council
- (22) West Kowloon Cultural District Authority

## Complaint cases handled by The Ombudsman

<i>Year of complaint</i>	<i>Gist of Case</i>
2011	<p data-bbox="427 371 1449 450"><b>Case Study 1: Refusal to provide information in the form of a compact disc</b></p> <p data-bbox="427 517 1449 741">The Lands Department (“Lands D”) had refused to provide a copy of certain records (over 180 pages) in the format requested by the complainant, i.e. scanned copy saved on a compact disc, even though he had agreed to bear the extra cost. Lands D asked the complainant to make a photocopy of the records himself at its office instead.</p> <p data-bbox="427 801 1449 1025">The Ombudsman considered that Lands D should have been more helpful in handling the complainant’s request, since its office did have scanners. The Ombudsman also suggested that CMAB keep the Code and the Guidelines abreast of the times by asking all B/Ds to provide information in the form of compact disc if requested.</p> <p data-bbox="427 1086 1214 1122">In October 2012, CMAB revised the Guidelines accordingly.</p>
2013	<p data-bbox="427 1187 1449 1265"><b>Case Study 2: Inconsistent and erroneous application of “third party information” exemption</b></p> <p data-bbox="427 1332 1449 1458">The Environmental Protection Department (“EPD”) had refused to provide to the complainant information about the exhaust systems of two restaurants allegedly causing a nuisance to him.</p> <p data-bbox="427 1518 1449 1597">EPD cited “third party information” i.e. para. 2.14 of the Code, as the ground for its refusal.</p> <p data-bbox="427 1657 1449 1736">However, similar information had in fact been given to the complainant by the Food and Environmental Hygiene Department (“FEHD”).</p> <p data-bbox="427 1796 1449 2033">The Ombudsman found that EPD’s decision was not only inconsistent with FEHD’s, but was also erroneous. There was no evidence to suggest that the requested information was “held for the owners of the restaurants”, or “provided by the owners of the restaurants under an explicit or implicit understanding that it would not be further disclosed”. Neither was there any</p>

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	<p>suggestion from EPD that disclosure of information would harm or prejudice the owners of the restaurants.</p> <p>EPD eventually provided the information as requested.</p>
2013	<p><b>Case Study 3: Inconsistent application of exemption</b></p> <p>The Building Department (“BD”) had refused to provide the complainant with details of an appeal filed by the owner of an unauthorised building works (“UBW”) item against a removal order issued by BD.</p> <p>The Ombudsman concluded that it was proper of BD to refuse to disclose details of the appeal for privacy reason, since the UBW item was on the owner’s land and did not affect the complainant in any way, i.e. no public interest was involved to justify disclosure of the information.</p> <p>However, The Ombudsman queried why BD had in the first place told the complainant about its removal order and the UBW owner’s intention to lodge an appeal. The same exemption for privacy reason should have been applied.</p>
2013	<p><b>Case Study 4: Over-cautious approach in interpreting the “privacy (personal data)” exemption</b></p> <p>A Rural Committee had asked the Home Affairs Department (“HAD”) to provide a copy of its accounts which the Rural Committee had previously submitted to the Department. HAD agreed, but obliterated the name and signature of the former Chairman of the Rural Committee who signed the accounts. HAD cited the “privacy (personal data)” exemption, i.e. para. 2.15 of the Code, arguing that the name and signature were personal data of the former Chairman, who had refused to give consent for disclosure.</p> <p>While accepting that those were personal data, The Ombudsman concluded that there was in fact no case of “disclosure”, as the information (the old accounts) was actually from the Rural Committee itself. Hence, it was totally unnecessary for HAD to seek the consent of the former Chairman.</p> <p>HAD subsequently provided the information to the Rural Committee as requested.</p>

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2013	<p><b>Case Study 5: Refusal to release “internal guidelines” without citing a reason</b></p> <p>The complainant had asked the Joint Office for Investigation of Water Seepage Complaints (“JO”) to provide “a full set of regulations and guidelines that JO uses in processing water seepage complaints”. The officer concerned refused his request on the grounds that the guidelines were “internal materials”, and merely provided him with:</p> <ul style="list-style-type: none"> <li>● a copy of the relevant sections of the Public Health and Municipal Services Ordinance;</li> <li>● a set of notes to owners/occupiers of premises, entitled “General Procedures for Investigating Water Seepage Problems by the Joint Office”; and</li> <li>● a self-help pamphlet on conducting water seepage tests.</li> </ul> <p>The Ombudsman concluded that JO had refused to provide the complainant with its guidelines without a valid reason.</p>
2012	<p><b>Case Study 6: Erroneous application of “third party information” exemption</b></p> <p>The complainant had asked the Labour Department (“LD”) for a copy of the laboratory report on the plastic particles emitted by a shop, which, according to the complainant, had caused her husband’s death. LD cited “third party information” (para. 2.14(a) of the Code) and refused her request, indicating that the report touched upon information of individuals in the laboratory and the shop owner. LD also pointed out that under the Occupational Safety and Health Ordinance (“the Ordinance”), a public officer commits an offence if, without lawful authority, he/she discloses to another person information relating to manufacturing or commercial secrets or working processes that was obtained through the exercise or performance of a function under the Ordinance.</p> <p>The Ombudsman considered LD to have erroneously cited “third party information” in refusing the request. The Department had confused “third party information” (para. 2.14 of the Code) with “privacy (personal data) of individuals” (para. 2.15 of the Code). Even if LD was worried about infringing the privacy of individuals, it could have attempted to seek the</p>

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	<p>consent of the individuals concerned for disclosure or it could have masked all personal data in the report before giving a copy to the complainant.</p> <p>In the event, LD informed the complainant of the result of the laboratory test.</p>

**Direct Investigation on The Access to Information Regime in Hong Kong (OMB/DI/238)  
& Direct Investigation on Public Records Management System in Hong Kong (OMB/DI/246)**

**Public Submissions**

	<i>Sender</i>	<i>Gists of comments and views</i>	<i>Contents related to</i>
1.	Individual	<ul style="list-style-type: none"> <li>● Pledged full support for introduction of law on archives</li> </ul>	DI/246
2.	Individual	<ul style="list-style-type: none"> <li>● Suggested aspects that The Ombudsman should look into in the direct investigation on public records management</li> </ul>	DI/246
3.	Individual	<ul style="list-style-type: none"> <li>● Pledged full support to The Ombudsman for initiating the direct investigation on public records management</li> <li>● Urged The Ombudsman to recommend law with punishment provision as soon as possible</li> </ul>	DI/246
4.	Individual	<ul style="list-style-type: none"> <li>● Pledged full support to The Ombudsman for initiating the direct investigation on public records management</li> <li>● Supported introducing an archive law</li> </ul>	DI/246
5.	Individual	<ul style="list-style-type: none"> <li>● Considered that citizens' right to know cannot be protected without a law</li> <li>● Pointed out some problems under the current records management system</li> </ul>	DI/246
6.	Individual	<ul style="list-style-type: none"> <li>● Pledged full support for the direct investigation on public records management</li> <li>● Pointed out the importance of proper records and archives management</li> <li>● Suggested setting up an archive department of information</li> </ul>	DI/246
7.	Individual	<ul style="list-style-type: none"> <li>● Applauded the efforts to initiate the direct investigation and hoped the government and legislators will act positively to enact a comprehensive archives law</li> </ul>	DI/246
8.	Individual	<ul style="list-style-type: none"> <li>● Strongly suggested that the direct investigation report should recommend introduction of an archives law without further delay</li> </ul>	DI/246
9.	Individual	<ul style="list-style-type: none"> <li>● Supported archives legislation</li> <li>● Pointed out the importance of having specialists in archive management oversee the public records office, assess records and archives' value and categorise them</li> </ul>	DI/246
10.	Group/Organisation	<ul style="list-style-type: none"> <li>● Highlighted what an archives law would achieve for Hong Kong and pointed out the problems under the current public records management system</li> </ul>	DI/246

	<i>Sender</i>	<i>Gists of comments and views</i>	<i>Contents related to</i>
11.	Individual	<ul style="list-style-type: none"> <li>● Pointed out some of the problems of records management in Hong Kong, in particular the widening gap between the current competencies and those that are required to manage organisational records in a digital environment and discussed steps taken by other jurisdictions to address associated problems</li> <li>● Highlighted the importance of records management and the problems associated with poor recordkeeping</li> </ul>	DI/246
12.	Individual	<ul style="list-style-type: none"> <li>● Pledged full support for the direct investigation on public records management</li> <li>● Pointed out some problems resultant from Hong Kong's lack of archive law</li> <li>● Suggested directions of the direct investigation on public records management</li> </ul>	DI/246
13.	Group/Organisation	<ul style="list-style-type: none"> <li>● Welcomed the direct investigation on public records management and supported introducing an archives law</li> <li>● Shared experience and work done in related field</li> </ul>	DI/246
14.	Individual	<ul style="list-style-type: none"> <li>● Set out the problems of the absence of an archives law</li> </ul>	DI/246
15.	Individual	<ul style="list-style-type: none"> <li>● Pointed out that Hong Kong lacked information policy and the legal framework suitable for an information society</li> <li>● Pointed out the problems with the Code on Access to Information</li> </ul>	DI/238
16.	Group/Organisation	<ul style="list-style-type: none"> <li>● Welcomed the direct investigation</li> <li>● Hoped that the direct investigation on the access to information regime in Hong Kong would facilitate the introduction of legislation on freedom of information</li> </ul>	DI/238
17.	Individual	<ul style="list-style-type: none"> <li>● Pointed out the lack of transparency in certain bureaux/departments' responses to straightforward information requests</li> <li>● Pointed out the benefits of information sharing by Government</li> </ul>	DI/238
18.	Individual	<ul style="list-style-type: none"> <li>● Pointed out that Hong Kong lagged far behind other developed economies in providing legal right to freedom of information and the inadequacies of the Code on Access to Information, particularly its exemption clauses</li> </ul>	DI/238
19.	Individual	<ul style="list-style-type: none"> <li>● Pointed out the lack of transparency in certain bureaux/departments' responses to straightforward</li> </ul>	DI/238

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		<p>information requests</p> <ul style="list-style-type: none"> <li>● Pointed out the benefits of information sharing by Government</li> </ul>	
20.	Individual	<ul style="list-style-type: none"> <li>● Shared experience and observations in dealing with Government regarding records creation and management</li> <li>● Highlighted the problems associated with lack of access to public records</li> </ul>	DI/238
21.	Individual	<ul style="list-style-type: none"> <li>● Shared experiences in being refused information requests by Government bureaux/departments</li> <li>● Considered the need for legislation to set out the framework for clearly defining the way bureaux/departments and public bodies should release information</li> </ul>	DI/238
22.	Group/Organisation	<ul style="list-style-type: none"> <li>● Welcomed the direct investigation</li> <li>● Called for legislation for access to information</li> <li>● Pointed out the importance of access to information for Hong Kong as an international financial centre</li> <li>● Pointed out some examples of Government failing the uphold citizen's right to access information</li> </ul>	DI/238
23.	Individual	<ul style="list-style-type: none"> <li>● Shared experience in requesting information from bureaux/departments</li> <li>● Pointed out ways that the standards and practices could be improved</li> </ul>	DI/238
24.	Individual	<ul style="list-style-type: none"> <li>● Pointed out some problems associated with the current access to information regime</li> </ul>	DI/238
25.	Individual	<ul style="list-style-type: none"> <li>● Sent in a related research paper</li> </ul>	DI/238
26.	Group/Organisation	<ul style="list-style-type: none"> <li>● Pointed out some problems associated with the management of archaeological archives</li> </ul>	DI/246 & DI/238
27.	Group/Organisation	<ul style="list-style-type: none"> <li>● Pointed out, with examples, the importance of public records and that public records were created and managed using public money</li> <li>● Supported introducing laws to protect access to information and archives</li> </ul>	DI/246 & DI/238
28.	Individual	<ul style="list-style-type: none"> <li>● Pointed out, with examples, the importance of public records and that public records were created and managed using public money</li> <li>● Supported introducing laws to protect access to information and archives</li> </ul>	DI/246 & DI/238

	<i>Sender</i>	<i>Gists of comments and views</i>	<i>Contents related to</i>
29.	Individual	<ul style="list-style-type: none"> <li>● Pledged full support for introduction of laws to protect access to information and archives</li> <li>● Pointed out that the laws are necessary for proper functioning of a civil society and the associated problems with the lack of such laws</li> </ul>	DI/246 & DI/238
30.	Individual	<ul style="list-style-type: none"> <li>● Pledged full support for introducing laws to protect archives and records and freedom of information</li> </ul>	DI/246 & DI/238
31.	Individual	<ul style="list-style-type: none"> <li>● Commented on the scope of the direct investigation</li> <li>● Pointed out practices and standards in other jurisdictions laws concerning public records management and freedom of information</li> <li>● Pointed out the importance of public records management and freedom of information</li> </ul>	DI/246 & DI/238
32.	Group/Organisation	<ul style="list-style-type: none"> <li>● Supported introduction of laws on freedom of information and archives</li> <li>● Sent in a related research report</li> </ul>	DI/246 & DI/238
33.	Individual	<ul style="list-style-type: none"> <li>● Pointed out the problems associated with the lack of laws governing public records management and freedom of information</li> </ul>	DI/246 & DI/238
34.	Individual	<ul style="list-style-type: none"> <li>● Pledged full support for The Ombudsman in initiating the two direct investigations</li> <li>● Pointed out the importance of public records management and the problems associated with the current regimes</li> <li>● Shared experiences and observations of the practices and standards in the private sector</li> </ul>	DI/246 & DI/238
35.	Individual	<ul style="list-style-type: none"> <li>● Pointed out the problems associated with the current access to information regime in Hong Kong</li> <li>● Commented on the attitudes of Government and some political parties in public records management and public records management</li> </ul>	DI/246 & DI/238
36.	Individual	<ul style="list-style-type: none"> <li>● Sent in a related research paper</li> <li>● Shared experience in making information requests to Government bureaux/departments</li> <li>● Pledged full support to The Ombudsman in initiating the direct investigations and introduction of laws on access to information and public records management</li> </ul>	DI/246 & DI/238
37.	Group/Organisation	<ul style="list-style-type: none"> <li>● Pledged full support for the direct investigations</li> </ul>	DI/246 &

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		<ul style="list-style-type: none"> <li>● Commented on Government's attitude in introducing laws on public records management and archives</li> </ul>	DI/238
38.	Individual	<ul style="list-style-type: none"> <li>● Welcomed the direct investigations and hoped that The Ombudsman would suggest introducing laws to protect freedom of information and archives in Hong Kong</li> <li>● Pointed out the problems under the current access to information regime and the current public records management system in Hong Kong</li> </ul>	DI/246 & DI/238
39.	Individual	<ul style="list-style-type: none"> <li>● Supported passing a freedom of information and law</li> <li>● Suggested areas in which control and sharing of Government information should be liberalised</li> <li>● Suggested improvements to The Ombudsman's public consultation exercise</li> </ul>	DI/246 & DI/238