

**Food and Environmental Hygiene Department refused to disclose  
the full report on the Site Selection Feasibility Study of  
the Tin Shui Wai public market  
(Related to Code on Access to Information)  
Investigation Report**

On 10 May 2021, the complainant lodged a complaint with this Office against the Food and Environmental Hygiene Department (“FEHD”).

### **The Complaint**

2. On 21 March 2021, the complainant requested the Food and Health Bureau (“FHB”) in accordance with the Code on Access to Information (“the Code”) to provide the full report on the Site Selection Feasibility Study of the public market on Tin Fuk Road, Tin Shui Wai (“the Full Report”). On 12 April 2021, replying on behalf of FHB, FEHD refused his request for information, citing paragraph 2.10(b)(ii) of the Code (“information the disclosure of which would inhibit the frankness and candour of discussion within the Government, and advice given to the Government. Such information may include opinions, advice, recommendations, consultations and deliberations by Government officials or advisers to the Government) as the reason for non-disclosure.

3. The complainant disagreed with FEHD’s view that disclosure of the Full Report would inhibit the frankness and candour of discussion within the Government. He, therefore, complained to us against FEHD for unreasonably refusing his information request.

### **Our Findings**

4. We commenced inquiry with FEHD on 18 May 2021 and received its reply on 30 June 2021. Having examined the reply, we launched a full investigation on 23 July. On 15 October, FEHD provided further information. This investigation report was completed on 12 November.

### ***Relevant Parts of the Code***

5. The Code requires Government departments to make available as much Government-held information as possible to the public unless there are reasons as listed in Part 2 of the Code to withhold the information. One of those reasons is set out in paragraph 2.10(b)(ii) of the Code (see **para. 2** above). Paragraph 2.10.3 of the Guidelines on Interpretation and Application of the Code (“the Guidelines”) further elaborates that the civil servants involved in the decision-making process should be able

to express views and tender advice without being concerned that these views and advice will be subject to public debate and criticism.

6. Another reason for non-disclosure set out in Part 2 of the Code is found in paragraph 2.13(a): “information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication or commercial value.” Paragraph 2.13.2 of the Guidelines goes on to explain that departments may withhold information relating to incomplete analysis, research or statistics where the incompleteness could produce a misleading impression. Departments may however decide to release this type of information if it is possible for the information to be accompanied by an explanatory note explaining the ways in which it is defective.

7. Paragraph 2.1.1 of the Guidelines stipulates that the withholding of information under most provisions of Part 2 of the Code is subject to a “harm or prejudice test”, meaning that the department concerned has to consider whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure.

### ***Response from FEHD***

#### Background

8. In the 2017 Policy Address, the Chief Executive announced the decision to construct a public market in Tin Shui Wai. FHB and FEHD, in collaboration with relevant Government departments, subsequently embarked on a site selection feasibility study in the Tin Shui Wai district. Having considered different factors, the Government considered the section of Tin Fuk Road adjoining the Tin Shui Wai MTR station most suitable. In the 2018 Policy Address, the Chief Executive announced the plan to construct a new public market on Tin Fuk Road, Tin Shui Wai. The Government then gave briefings to the Yuen Long District Council, its committees or working groups in October 2018, March 2020, as well as March and June 2021 on the considerations for site selection, plans of design and work progress.

9. On 21 February 2021, the Government applied to the Town Planning Board (“TPB”) for approval to construct a new market on Tin Fuk Road, Tin Shui Wai with documents including a detailed analysis of the selection of the Tin Fuk Road site. The Rural and New Town Planning Committee under TPB granted approval on 28 May 2021.

#### The Full Report

10. FEHD pointed out that the Full Report was a confidential document submitted to the Chief Executive within the Government. In addition to the site selection analysis and study for the Tin Shui Wai public market, the Full Report also contained the Government’s preliminary technical assessments of the Tin Fuk Road site, preliminary

proposals on conceptual design, assessment of local response, initial cost estimation of the project, internal work schedules, etc.

11. FEHD explained that the Full Report contained the views and suggestions put forward by officers of various Government departments during the decision-making process of the Tin Shui Wai public market project. Disclosure of such information might lead those members of the public dissatisfied with the Tin Fuk Road site to criticise the departments involved for the site selection. They might further request those departments to provide assessment details and justifications, and to appoint officers to attend open meetings to explain. Even though the Full Report did not contain the names of any Government officers, representatives of the relevant departments might still face criticisms from individuals or groups on different occasions or through various channels. This would definitely cause stress to those who had participated in the discussions, provided assessment and made judgement about the Tin Fuk Road site, which would in turn inhibit frank and candid discussion within the Government about construction of the Tin Shui Wai public market and other public markets in the future.

12. FEHD also stressed that the feasibility study in question was conducted in 2018, rendering some information therein incomprehensive and out-dated. Disclosure of such information might lead to public misunderstanding about the new public market project. The Department expected that such misunderstanding might render explanation for the project in the future difficult and tough, thereby undermining public confidence in and support for the project. FEHD also reckoned that information in the Full Report was more than simple facts or data analysis, research or statistics; rather, it involved discussions and suggestions made within the Government and hence formed part of the Government's internal policy-making process. As such, even with explanatory notes, it would be hard to explain thoroughly how the information was actually defective. Besides, FEHD had already explained the project to the District Council and TPB when comprehensive information became available (see **paras. 8 and 9** above). The relevant documents were open records and available for public viewing.

13. FEHD argued that if the Full Report were to be disclosed, the Government's position on individual potential sites for the market would be subject to criticism, and various stakeholders might make all sorts of requests to the Government to review the site selection and the whole project. Progress of the construction and completion of the market would inevitably be delayed. As the Tin Shui Wai community has long been urging for a public market, any delay in its construction would be against the public interest. In this light, FEHD considered that the harm or prejudice that might result from disclosure of the information outweighs the public interest such disclosure would bring.

#### Latest Development

14. In view of the planning approval by the Rural and New Town Planning Committee under TPB for the Tin Shui Wai public market project on 28 May 2021,

FEHD revisited the Full Report and considered partial disclosure of the Report (mainly about the project background, sites considered and conclusion) at the present stage acceptable. Nevertheless, disclosure had to be accompanied by notes clearly explaining that some of the information was out-dated and reminding readers to pay special attention.

15. With respect to the part of the Full Report relating to the preliminary assessments by the relevant Government departments and a mass transport company, preliminary conceptual design, estimated construction costs and tentative timetables, FEHD maintained its views as set out in **paragraphs 10 to 13** above. Since the mass transport company in question objected to any disclosure of its views, FEHD would not release the relevant part of the Full Report.

16. FEHD further indicated that the contracts for the design and construction of the Tin Shui Wai public market were still in the tendering stage. Disclosing the part on design strategies might impact on the tendering process. As such, the Department considered it inappropriate to disclose the relevant part of the Full Report.

## **Our Comments**

17. FEHD initially refused the complainant's request for information by citing paragraph 2.10(b)(ii) of the Code. Upon our intervention, the Department conducted a review and agreed to partial disclosure of the Full Report. As for the remaining parts, FEHD cited paragraphs 2.10(b)(ii) and 2.13(a) of the Code to justify non-disclosure.

18. This Office has scrutinised the Full Report and information pertinent to this case. We appreciate that the Full Report was written in 2018 and the Government departments concerned could only base their analysis, assessments and design on the limited information available back then. Part of the Full Report might have become obsolete after more in-depth technical study over the past few years. Consequently, disclosure of the Full Report might cause people dissatisfied with the Tin Fuk Road site to criticise relevant Government departments that the then site selection assessments or design proposals were incomprehensive or different from the present configuration. Under such circumstances, although the Full Report did not contain any identifying data of individual Government officers, those officers who had participated in the discussion, made assessment and judgement about the Tin Fuk Road site might have refrained from giving preliminary views or estimates at the planning stage should they know that the Full Report would be disclosed, lest the departments concerned be criticised or asked to explain and defend themselves. Having examined the relevant information of this case, we accept FEHD's view that disclosure of the Full Report might inhibit frank and candid discussion within the Government about the construction of public markets in the future.

19. On the other hand, we appreciate FEHD's view that disclosure of incomplete and out-dated information in the Full Report might lead to misunderstanding, which

might not be avoided even with explanatory notes. In this light, disclosure of the Full Report would not be beneficial to the public interest. As for the concern over the impact of partial disclosure of the Full Report on the tendering process, we agree that the impartiality and integrity of the tendering process as well as the Government's interests should be protected. Disclosure of the relevant parts could, therefore, be withheld.

20. Regarding the public interest in disclosure, we consider the issue addressed when FEHD explained to the public through the District Council and TPB the justifications for selecting the site. Further disclosure of the Full Report would not bring more benefit so that the public interest in disclosure would outweigh the harm or prejudice that might result.

21. To summarise our elaborations in **paragraphs 18 to 20** above, we consider FEHD's refusal to disclose the Full Report not unreasonable. This complaint was, therefore, **unsubstantiated**. That said, it would have been more desirable if FEHD had, at the outset, quoted paragraph 2.13(a) of the Code together with a detailed explanation, in addition to paragraph 2.10(b)(ii) of the Code, as the reasons for refusing the complainant's information request.

22. Overall, we consider that the complainant's request for the Full Report might have originated from the fact that the Government's explanation for selecting the Tin Fuk Road site for the Tin Shui Wai public market (including the briefings given to the District Council and the TPB) had failed to address fully certain public concerns and doubts, especially of those who opposed the site selection result. We must emphasise that members of the community having different opinions or queries about public policies, services or measures is a natural phenomenon. When facing public criticisms or queries, Government representatives should be patient in explaining the stance of the departments with a view to maintaining transparency and accountability of the Government. We notice that although FEHD had explained to the Yuen Long District Council the factors in site selection and reasons for choosing the Tin Fuk Road site for the market, some of its elaborations appeared to be rather general and might have failed to address the sceptics' concerns about the project. In this regard, FEHD could consider providing the public with more information and justification, including, if feasible, the technical assessments by relevant departments based on the information currently available, so as to explain thoroughly the appropriateness of the Tin Fuk Road site. We believe that more detailed expositions by the Government would help win public support and recognition for the Tin Shui Wai public market project.