

Department/Organisation: Home Affairs Department (“HAD”)

Case concluded in: July 2018

HAD refused to provide an unabridged version of the Model Rules for Rural Committee Elections and the Constitutions of all Rural Committees

The Event

Mr E requested HAD to provide the Model Rules for Rural Committee Elections (“the Model Rules”), which stipulate the electoral methods and proceedings of Rural Committees (“RCs”), and the Constitutions of all the 27 RCs in Hong Kong.

In response to Mr E’s request for information, HAD had written to each of the RCs to seek their consent to disclose the information to the applicant (i.e. Mr E). The result was that most of the RCs objected to disclosure of RC-related information in the Model Rules, while five RCs indicated that they had no comments. Moreover, all RCs objected to disclosure of their Constitutions. Taking into account the stance of the RCs, and since HAD considered there to be no sufficient grounds to justify that the public interest in disclosing the Constitutions and the information in the Model Rules regarding the numbers of RC General Assembly Members and relevant details would outweigh any harm or prejudice that would result, HAD only provided Mr E with the Model Rules after obliterating such information from the document (remaining contents included major principles of RC elections, election details and complaint handling).

Our Findings

Third Party Information

We did not accept that information in the Model Rules regarding the numbers of RC General Assembly Members with relevant details and the RC Constitutions were third party information. Ever since the RCs were established and their Constitutions drawn up, the Government has taken part and offered its advice over the years. In fact, information about the composition of seats in RCs contained in the Model Rules was derived from the RC Constitutions, which District Officers must require RCs to provide so that District Officers and the Secretary for Home Affairs (“SHA”) would be able to discharge their statutory duties and be accountable to the public^{Note}.

^{Note} Pursuant to section 6(1) of the Societies Ordinance, RCs are societies acknowledged by the Secretary for Home Affairs. Any RC in need of amending its Constitution should pass the amendments within the RC as well as seek endorsement from the local District Officer. A copy of the amended Constitution, after endorsed, should be submitted to the District Officer for record keeping.

Consensus/Agreement on Confidentiality

Even if the relevant information is “third party information”, one of the valid reasons under the Code on Access to Information and its Guidelines for withholding “third party information” is that there must be a consensus or agreement, explicit or implicit, between the information provider and the Government of keeping the information confidential. In the abridged version of the Model Rules provided to Mr E, the parts obliterated by HAD included information about the category of seats in the General Assemblies of RCs for which HAD officers would perform the duties of returning officers or observers. HAD officers performing the duties of returning officers or observers were working in an official capacity. They were not doing any clandestine work undercover. Therefore, we did not consider that RCs had any reason to expect such information to be kept confidential.

Refusal to Give Consent

One of the reasons cited by HAD in withholding information from Mr E was the RCs’ explicit refusal to give consent. However, as we noted above, the relevant information did not constitute “third party information” and no agreement on confidentiality regarding such information should have existed between HAD and the RCs. We, therefore, considered that there was no need for HAD to seek consent from the RCs for disclosure of information in the first place.

Public Interest

While RCs are responsible for administering and handling rural affairs, the Chairmen and Vice-Chairmen of all RCs are ex-officio members of Heung Yee Kuk (“HYK”), and the Chairmen are concurrently ex-officio members of the District Councils (“DCs”). Through the subsectors and functional constituencies of HYK and DCs, they can also participate in elections of the Legislative Council and the Chief Executive Election Committee. This shows that RCs’ role, function and composition are related to the interest of the entire territory and all Hong Kong residents. We considered that RCs’ function, role and composition are closely intertwined with public and political affairs. Disclosure of information in the RC Constitutions and the Model Rules regarding the numbers of RC General Assembly Members with relevant details would allow members of the public to understand the duties performed by the SHA and the District Officers in various New Territories districts, and thereby monitor their work and accountability. Hence, there is clear and compelling public interest involved.

Harm or Prejudice That Would Result

HAD contended that it was invited by RCs to participate in their affairs and elections based on trust and respect from RCs. Furthermore, RCs adopted the Model Rules, which had no mandatory force, on a voluntary basis as a result of liaison between HAD and RCs. As HAD strenuously reiterated that RCs' cooperation was crucial in the matter, we could not rule out that HAD was probably concerned that disclosure of the relevant information would affect the amicable relationship between HAD and RCs, or even hinder implementation of the Model Rules.

This Office understood the concerns of HAD. It might be that RCs indeed had not expected the relevant information to be disclosed when they initially liaised with the District Offices of the then New Territories Administration/HAD. However, times have changed, and both the society's current expectations of public bodies and the political situation are now different from the past (for instance, the establishment of DCs, and the chance for RC Members to join the Legislative Council and the Chief Executive Election Committee). It follows that disclosure of the relevant information has become reasonable and necessary. Consequently, neither HAD nor RCs can live up to modern standards if they adamantly adhere to the past practice of non-disclosure. While this Office considered HAD not unreasonable to have concerns about full disclosure of the relevant information, HAD should have clearly put the case to the RCs with a view to disclosing to the public an unabridged version of the Model Rules and the Constitutions of all RCs.