

The Hong Kong Police Force refused to provide information about fixed penalty notices issued pursuant to two subsidiary regulations under the Prevention and Control of Disease Ordinance (Related to Code on Access to Information)

Investigation Report

A complainant, Ms A, complained to this Office against the Hong Kong Police Force (“HKPF”).

The Complaint

2. Ms A claimed that on 14 October 2020, she requested HKPF and several other Government departments in accordance with the Code on Access to Information (“the Code”) to provide the “offence details” as recorded on each of the fixed penalty notices (“Notices”) they had issued since July 2020 pursuant to the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (“PGG Regulation”, Cap. 599G) and the Prevention and Control of Disease (Wearing of Mask) Regulation (“WM Regulation”, Cap. 599I). The “offence details” included the date, time and complete address of the location in question (“the Information”). She also requested that the departments provide the Information using a specific electronic form.

3. On 2 November, HKPF cited paragraph 2.9(d)¹ of the Code to refuse Ms A’s request for the Information. Ms A sought a review on the same day. She requested HKPF to explain how the provision of the Information would entail unreasonable diversion of the department’s resources, and to specify the work hours required and manpower arrangement for preparing the Information. In addition, she asked HKPF to discuss with her the time scope of the Information that could be provided such that it would take HKPF a shorter time to prepare the information requested.

4. On 19 November, HKPF replied to Ms A’s request for review. It said that since some Notices contained the complete addresses of private residential flats, while some others might involve “legal disputes with uncompleted legal proceedings”, considerable manpower would be required for deleting relevant details from the records.

¹ Paragraph 2.9(d) of the Code: information which could only be made available by unreasonable diversion of a department’s resources.

In this light, HKPF maintained its decision to refuse providing the Information to Ms A by citing paragraph 2.9(d) of the Code.

5. On 24 November, Ms A wrote to HKPF again for a review. She questioned that since the two pieces of legislation aforementioned just regulate people's behaviours in public places, no private residential address should be involved. Besides, other departments, in replying to her requests for the same information, had never mentioned anything about having to delete private residential addresses or about "legal disputes with uncompleted legal proceedings". Food and Environmental Hygiene Department ("FEHD") had even provided to her the complete information about the addresses as recorded on the Notices.

6. In the light of the above, Ms A alleged that HKPF had breached the Code by refusing her information request without providing reasonable explanation.

Our Findings

Subsequent Development of the Case

7. Upon completion of the internal review (see **para. 5**), HKPF provided to Ms A on 14 December 2020 in an electronic form the Information on the Notices it had issued up till the second half of November pursuant to the WM Regulation, including the dates, time and complete addresses of the locations in question. As regards the Information on the Notices issued pursuant to the PGG Regulation, HKPF reiterated that it had to deploy considerable extra manpower to scrutinise the contents of over 7,000 such Notices in order to delete information believed to be addresses of residential or private premises. Consequently, it upheld its decision to refuse Ms A's request for the records on the Notices issued under the PGG Regulation, and cited paragraphs 2.9(d) (see **Note 1**) and 2.15² of the Code as the justification. Later that day, Ms A requested HKPF to provide the "offence details" as recorded on the Notices issued between 15 and 31 July 2020 pursuant to the PGG Regulation.

² Paragraph 2.15 of the Code:
Information about any person (including a deceased person) other than to the subject of the information, or other appropriate person, are information which may be refused, unless:
(a) such disclosure is consistent with the purposes for which the information was collected; or
(b) the subject of the information, or other appropriate person, has given consent to its disclosure; or
(c) disclosure is authorized by law; or
(d) the public interest in disclosure outweighs any harm or prejudice that would result.

8. On 14 January 2021, HKPF explained to Ms A that even though she had narrowed down the time scope of the Information requested, it still had to use considerable extra manpower in order to delete addresses of residential or private premises. As such, it maintained the decision to refuse her information request.

Response from HKPF

9. HKPF said that according to the legal advice it obtained, private residential flats or private premises may be regarded as “public places” under certain circumstances. The locations of offence recorded on some Notices issued by HKPF under the PGG Regulation might be private residential flats or private premises. If they were, then information about such locations would be personal information referred to in paragraph 2.15 of the Code. Disclosing the addresses of those residential or private premises might also lead to identification of the users of those premises or the recipients of the Notices, causing them inconvenience, embarrassment or even nuisance. The harm or prejudice to the persons involved would outweigh the public interest in disclosure.

10. As for Notices involving “legal disputes with uncompleted legal proceedings”, the Notice recipients had already notified HKPF in writing of their intention to contest, but HKPF had yet to complete review of their cases or the related legal proceedings were still underway. Besides, Notice recipients who had not yet paid the fixed penalty or indicated an intention to contest might still raise a plea before the court issued a recovery order. Regarding such cases, HKPF deemed it inappropriate to disclose their details involving the addresses of residential or private premises, both for the sake of personal data protection as discussed in **paragraph 9** above, and for the prevention of nuisance to the persons involved lest the legal proceedings/lawsuits that might commence or were still ongoing be prejudiced. In this light, the Department considered that those addresses should not be disclosed pursuant to paragraph 2.6(b)³ of the Code.

11. HKPF pointed out that as at end of October 2020, it had handled 5,368 and 489 Notices issued under the PGG Regulation and the WM Regulation respectively. Upon internal review, it noticed that fewer Notices had been issued under the WM Regulation

³ Paragraph 2.6(b) of the Code: information the disclosure of which would harm or prejudice the conduct or impartial adjudication of legal proceedings or any proceedings conducted or likely to be conducted by a tribunal or inquiry, whether or not such inquiry is public or the disclosure of the information has been or may be considered in any such proceedings.

in comparison and those Notices did not involve addresses of residential or private premises. Consequently, on 14 December 2020, HKPF provided Ms A with the Information on those Notices as requested (see **para. 7**).

12. Regarding the “offence details” on Notices issued under the PGG Regulation, as expounded in **paragraphs 9 and 10** above, HKPF would have to delete the addresses of residential or private premises before it could accede to Ms A’s information request. The deletion would mean that HKPF had to deploy staff first to scrutinise the records on each Notice so as to isolate those locations that might be residential flats or private premises, then re-examine the details of the offences or conduct site visits to confirm whether or not the locations in question were residential flats or private premises. Since provision of the Information to Ms A would entail considerable amount of extra resources, HKPF considered it unreasonable and therefore, invoked paragraph 2.9(d) of the Code to refuse the request. Even though Ms A later on had narrowed down the time scope of the Information to between 15 and 31 July 2020 (see **para. 7**), HKPF contended that 925 Notices had been issued during the period and 181 of them might contain addresses of residential or private premises. As such, considerable extra manpower was still needed for providing the Information. In this light, HKPF upheld its decision to refuse Ms A’s information request (see **para. 8**).

Our Comments

13. Ms A’s information request covered the Notices issued by HKPF under two regulations. The Information relating to the WM Regulation had been provided to her upon a review conducted as per the mechanism prescribed in the Code.

14. As for the Information relating to the PGG Regulation, this Office accepted HKPF’s explanation. Under the Code, HKPF had a reason to keep the addresses of residential or private premises confidential (see **paras. 9, 10 and 12**). Besides, we had asked HKPF to elaborate the procedures and resources entailed for identifying and confirming addresses of residential or private premises. We opined that even though Ms A had subsequently narrowed down the time scope of the Information, it was still reasonable for HKPF to refuse her request by citing paragraph 2.9(d) of the Code (see **Note 1**).

15. On the other hand, Ms A had shown us the replies to her information requests issued by FEHD and the Housing Department, and claimed that unlike HKPF, the two departments had not refused her requests. Yet, we noticed that the locations of offence

as recorded on the Notices issued by these two departments were places such as markets, cooked food stalls, shopping malls and shops on streets (including restaurants). It was unlikely that addresses of residential or private premises would be involved. Given the different nature of the premises/locations that HKPF and these two departments are responsible for under the two regulations, we consider it inappropriate to make direct comparisons between their decisions on her information requests.

Conclusion

16. In the light of the analysis in **paragraphs 13 to 15**, The Ombudsman considers this complaint against HKPF **unsubstantiated**.

Office of The Ombudsman

April 2021