

**Hong Kong Police Force refused to provide copies of donation records of  
Police Welfare Fund (Case 1) and donation information of Police Children’s  
Education Trust and Police Education and Welfare Trust (Case 2)  
(Related to Code on Access to Information)**

**Investigation Report**

The complainant lodged a complaint with this Office against the Hong Kong Police Force (“HKPF”) for allegedly violating the Code on Access to Information (“the Code”) in handling his two requests for information.

**The Complaint (Case 1)**

2. On 14 December 2020, the complainant submitted an information request form to HKPF. Specifically, he asked for the donation information of the Police Welfare Fund (“PWF”) for the years 2014/15, 2016/17 and 2019/20, including the dates of donations, names of the donors/donating organisations and donation amounts. HKPF subsequently arranged the complainant to inspect the requested information at the Police Headquarters at a designated time on 12 January 2021. Nevertheless, the Department only allowed on-site inspection. It had not provided the complainant with a copy of the information, neither had it allowed the latter to make records of any form (including jotting notes with a pen or crosschecking against his own notes) during the inspection.

3. The complainant complained against HKPF for failing to comply with the Code to provide him with a copy of the information he had requested.

**Our Findings**

***HKPF’s Response***

4. HKPF explained that as required by the “Civil Service Bureau Circular No. 11/2003– Donations to the Staff Welfare Fund” (“the Circular”), HKPF maintains a register recording the details of each donation made to the PWF (“the Register”), and makes available for public inspection on request the main information about the donations, including the names of donors/donating organisations, donation amounts, as well as the nature, purpose and dates of donations. This is to comply with the Circular’s requirements on transparency and accountability of the departments.

5. As per the Circular's instruction, HKPF informs each and every donor to the PWF of the above arrangement in writing, and asks for their consent to show their names on the Register. Donors can choose to remain anonymous if they prefer. This would be so recorded in the Register.

6. Regarding the arrangement of allowing the complainant to inspect the Register without making records of any form or crosschecking against any information, HKPF reiterated that it had acted in accordance with the requirement of the Circular and allowed the public to inspect the Register at its Headquarters. In HKPF's understanding, "inspection" does not include making records of any form or crosschecking information. In addition, the donors had not authorised the public to make records of any form or crosscheck information while inspecting the donation information. Consequently, the Department did not allow the complainant to make record, take pictures or videos, or crosscheck against other information during inspection. In fact, HKPF has all along been arranging public inspections of the Register at the Headquarters, and the practice is in no way unique to HKPF. The Registration and Electoral Office, for example, has been adopting similar arrangements for public inspection of the electoral registers.

7. HKPF stressed its commitment to balancing the public's right to inspect information and its obligation to protect the donors' privacy and safety, and emphasised its duty to ensure the smooth operation of the PWF. Since the social events in 2019, HKPF noticed a surge in requests for inspecting the Register. Media reports in the wake of such inspections had caused donors worry that they would be doxed and under the threats to personal safety. HKPF had also received complaints from donors (including those who had agreed to showing their names in the Register as well as those who disagreed to doing so) expressing deep worries about possible extensive disclosure of their personal data. Such worries had weakened their confidence in and inclination to support HKPF.

8. HKPF also reiterated that it had handled the complainant's request for the donation information of the PWF in accordance with the requirements of the Circular rather than the stipulations of the Code. As such, it considered the case outside the purview of this Office as specified in the Ombudsman Ordinance<sup>1</sup>.

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<sup>1</sup> Under paragraph 7(1) of the Ombudsman Ordinance, with respect to HKPF, this Office may only investigate cases involving suspected violation of the Code.

## Our Comments

9. Regardless of whether the handling of information requests has been guided by the requirements of the Circular, a government department should comply with those of the Code in the handling process. The Circular carries no provisions exempting departments from following the Code in handling public requests for information relating to staff welfare funds. Requirements of the Circular do not override those of the Code.

10. In response to our enquiries, the Civil Service Bureau (“CSB”) confirmed that government departments must make available for public inspection the main information of the donation registers of their staff welfare funds, while specific arrangements for inspection are for individual departments to decide. Public requests for information made under the Code should be handled in accordance with the Code’s requirements.

11. Regarding the provision of information, paragraph 1.13 of the Code lists out the following four forms:

- (1) *providing a copy of the relevant record or part thereof;*
- (2) *providing a transcript of the relevant record or part thereof;*
- (3) *affording a reasonable opportunity to inspect, hear or view the relevant record or part thereof; or*
- (4) *providing a summary of the relevant record or part thereof.*

In respect of the above-mentioned four forms in which information may be given, paragraph 1.13.2 of the Guidelines on Interpretation and Application of the Code (“Guidelines”) further points out that:

*... it is up to the department concerned to decide which is the most appropriate one to adopt in a particular case. From the policy point of view, the first alternative (i.e. “providing a copy of the relevant record or part thereof”) is the preferred one... if the applicant requests to take pictures/images or make copies of the records by using a camera or any other reproduction equipment of his*

*own, the department concerned may accede to such a request. Refusal to accede to the requests should be backed up by valid reasons...*

In addition, paragraph 1.13.3 of the Guidelines states that:

*If a department decides to adopt the other alternatives instead of the preferred one, it should explain the reason(s) to the requestor...*

12. HKPF had explained to us its considerations behind the arrangements for the complainant to inspect the information on-site (see **paras. 6 and 7**). The Department considered that it had clear and sufficient justifications to carefully protect the donation information of PWF, and that it must handle public requests to inspect the information in a prudent manner. HKPF added that when the complainant was given the opportunity to inspect the information at its Headquarters on 12 January 2021 (see **para. 2**), its officers had verbally explained to him clearly that the information he was going to inspect involved personal privacy and sensitive data; HKPF, therefore, could not allow him to make records of any form during inspection lest the information be used for any other purposes. The complainant did not raise any queries or objections to the arrangement then, and had inspected the Register accordingly. In this light, HKPF considered itself to have complied with the Code in making the decision to give the complainant “a reasonable opportunity to inspect or view” the donation information of the PWF, and by explaining to him the reasons behind the arrangement.

13. Our examination of the case focused on whether HKPF’s reasons given in **paragraphs 6 and 7** could fully justify the Department’s decision not to provide the information in the preferred form as suggested in the Code.

14. First of all, we agreed that HKPF must carefully protect the privacy and safety of the donors. The names of donors are personal data, disclosure of which is subject to the donors’ consent. Actually, HKPF would only show the names of donors in the Register who were willing to do so (see **para. 5**). Donors who have concern about disclosing their information could indicate clearly to the Department their intention to remain anonymous.

15. As to whether donors’ consent to disclosing their names could be read as their authorising HKPF to make copies such information or permitting the public to make records of the information during inspection, our view is that to allow mere examination of the information on the spot, but refuse to provide a copy of the information and even

prohibit recording of the information in any form would be a very narrow interpretation of the word “inspect”, and may not be in line with the popular perception. For example, the Guidelines points out that “for public consumption” includes the printing and distribution of copies of information<sup>2</sup>. To give another example, the Register of the President's and Members' Interests (of the Executive Council) and the Register of Gifts Presented to the Chief Executive, etc. have already been uploaded to the relevant websites for public inspection<sup>3</sup>. Obviously, nowadays, “public inspection” of information can already be done online, and actually anytime, anywhere. Furthermore, CSB, while requiring government departments to follow the Circular’s instructions to arrange members of the public to inspect information relating to staff welfare funds, has not precluded the provision of information with a copy, or prohibited a requestor of information from making notes during inspection.

16. Admittedly, it was possible that in the past, donors were willing to show their names in the Register because HKPF had routinely prohibited record-making of any sort during inspections (see **para. 6**). In light of the circumstances HKPF described in **paragraph 7**, some donors might have changed their mind with respect to disclosure of their names, such that the consent previously obtained by HKPF might no longer apply. Notwithstanding this, the Department should have followed the requirements of the Code and the Guidelines<sup>4</sup> to provide the donation information of the PWF to the complainant after redacting the personal data contained in the Register.

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<sup>2</sup> Paragraph 1.14.3 of the Guidelines mentioned that “*Most departments routinely publish a great deal of information for public consumption, e.g. annual departmental reports, departmental handbooks, information leaflets etc.*” In the Chinese version, 「索閱」 is used in the place of “consumption”, same as that used in the place of “inspection” in the Circular. In other words, information for public inspection include printed records distributable to the public.

<sup>3</sup> Paragraph 6 of the document on System of Declaration of Interests by Members of the Executive Council on the Executive Council website states that “The declarations are also uploaded to the ExCo Council website for public inspection.” The Chinese version reads, “有關申報亦會上載行政會議網址，供公眾查閱”.

<sup>4</sup> Paragraph 1.13 of the Code: Where disclosure of certain information in a record is to be refused, access will normally be provided to the remaining part of the record.

Paragraph 1.13.1 of the Guidelines: If the original record contains information falling within Part 2 of the Code, and it is decided that such information should not be disclosed, such information should be obliterated from the copy of the document to be provided to the requestor. When information is so obliterated, reference should be made against the obliteration to the relevant paragraph(s) in Part 2 of the Code.

Paragraph 2.15.5 of the Guidelines: ... the request must still be complied with to the extent that this can be done without disclosing the identity of the source by deleting his or her name and any other identifying particulars...

17. Furthermore, paragraph 1.13.2 of the Guidelines (see **para. 11**) requires that refusal to provide copies of the requested information or to allow the requestor to make records of his own should be backed up by valid reasons, such as risk of the records concerned being damaged during the course or reproduction; or the information requested being impossible to copy because the records involved are voluminous, or because a wide range or huge amount of personal data are involved (such as the electoral registers mentioned in **para. 6**). Nevertheless, in this case, HKPF's refusal to provide a copy of the information or to allow the complainant to make records of the Information during inspection was not based on the above reasons.

18. In sum, we are of the view that while HKPF's current practice of allowing public inspection of the donation information of the PWF without making any record does not exactly constitute a refusal to requests for access to the information, the way the Department has adopted to provide the information does not fully comply with the requirements of the Code and the Guidelines.

## **Conclusion**

19. In light of the elaborations in **paragraphs 9 to 18**, we consider that in **Case 1**, the complaint against HKPF was **partially substantiated**.

## **Recommendation**

20. This Office recommended that HKPF review its arrangements for public inspection of the donation information of the PWF, including the feasibility of providing a copy of the information to requestors and allowing them to make records during the inspection, so that the arrangements could comply with the Code. If donors do not wish to disclose their names or if HKPF is not sure whether donors who have agreed to disclosure in the past would agree to the same under the new arrangement, the Department can obliterate their names when disclosing the content of the Register. In the future, HKPF should also consider notifying donors of the new arrangement when it accepts donations and seeks donors' consent to disclosing their names.

## **The Complaint (Case 2)**

21. On 15 January 2021, the complainant submitted a request to HKPF to inspect the donation information (including dates of donation, names of donors/donating organisations and donation amounts) of the Police Children's Education Trust ("PCET")

and the Police Education and Welfare Trust (“PE&WT”) (collectively called “the Trusts” hereafter) for the years 2014/15 to 2019/20. On 26 January, HKPF wrote to him stating that the Trusts are set up and managed by their respective ordinances, and no mechanism was in place to allow public inspection of the donation information of the Trusts. Without the donors’ consent, the information cannot be disclosed.

22. Considering the Trusts are of similar nature to the PWF in **Case 1**, the complainant opined that HKPF should not have refused his request for inspecting the information. He also pointed out that donors to the PWF would be marked as “anonymous” if they did not wish to disclose their names. The complainant, therefore, alleged that HKPF’s refusal to provide the information based on “donors’ objection” was unjustified and in breach of the Code.

## **Our Findings**

### ***HKPF’s Response***

23. Established respectively under the Police Children’s Education Trust Ordinance and the Police Education and Welfare Trust Ordinance, both the PCET and the PE&WT are subject to stringent regulation. Details of their income and expenditure would be published in their respective annual reports, and their annual financial statements audited by the Director of Audit before submission to the Legislative Council (“LegCo”).

24. HKPF contended that although it would make records for each donation made to the Trusts, it has not compiled a “donor register” for them. Besides, the Trusts are not required to maintain a register for public inspection, unlike the PWF which is required to do so under the Circular. As paragraph 1.14 of the Code does not oblige departments to create a record not in existence, HKPF, therefore, could not provide the requested information to the complainant.

25. HKPF further explained that the financial management of the Trusts is under the scrutiny of the Joint Management Committee, the Joint Investment Advisory Board (their Chairmen and members appointed by the Chief Executive) and the trust companies. As the Secretariat of the Trusts, HKPF has been maintaining separate text files on the information of each donor and his/her donation for determining whether to accept the donation, instead of keeping such information in an accounting format. As such, it would be impossible for HKPF to compile the donation information requested

by the complainant directly from the computer and make it available for public inspection. To extract the relevant information from more than 800 text files, re-compile them by computer and manually check the information to convert it into a register for public inspection would unreasonably divert the Department's resources. In this light, HKPF could refuse the complainant's information request pursuant to paragraph 2.9(d)<sup>5</sup> of the Code.

26. In addition, even if HKPF had compiled a "donor register" for the Trusts, as the donation information of the Trusts involves donors' privacy, when HKPF accepted donations to the Trusts, donors would be asked to sign a consent form which stated clearly that the personal data they provided would only be used for HKPF's consideration whether to accept the donation. In other words, the donors are fully aware that their personal data would not be further disclosed. Thus, HKPF considered that disclosing the information to the complainant would be inconsistent with the initial purpose for which it was collected, and paragraph 2.15 of the Code<sup>6</sup> would preclude the disclosure. Furthermore, disclosing the information may expose donors' information to the risk of abuse and doxing, resulting in possible and probable harm or prejudice to the donors. Hence, HKPF did not consider the public interest in disclosure would outweigh the harm or prejudice that would result.

## **Our Comments**

27. Paragraph (ix) of the Guideline provides that:

*The Code authorises and requires civil servants to provide information unless there are specific reasons for not doing so...*

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<sup>5</sup> Paragraph 2.9(d) of the Code: Information which could only be made available by unreasonable diversion of a department's resources.

<sup>6</sup> 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, 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 authorised by law, or
- d. the public interest in disclosure outweighs any harm or prejudice that would result.

Paragraph 1.7.1 of the Guidelines also states clearly that:

*When access to information is sought pursuant to the Code and there is no legal restriction on access to information, the request should be acceded to, unless there are reasons under Part 2 of the Code to withhold the information...*

Neither the Police Children's Education Trust Ordinance nor the Police Education and Welfare Trust Ordinance imposes any restriction on inspection of the donation information of the Trusts. In this light, HKPF would not violate the Ordinances if it allows public inspection of the donation information of the Trusts as authorised and required by the Code.

28. Moreover, by reason of "without the donors' consent", HKPF cited paragraph 2.15 of the Code to refuse provision of the donation information of the Trusts. We agreed that donors' names were personal data, and the consent form used by HKPF to collect the personal data of donors (see **para. 26**) did not mention that such data would be made available for public inspection.

29. Nevertheless, save for the donors' names, other donation-related information sought by the complainant (the dates and amounts of donations) did not involve privacy of individuals. The consent form (see **para. 26**) did not cover these two items of information either. As such, we are of the view that upon receipt of a request for the information, HKPF should have handled it in accordance with the Code and the Guidelines (see **Note 4**), redacted all personal data and disclose the rest of the information which did not involve privacy of the donors.

30. On the other hand, having considered the mode of financial management of the Trusts, how HKPF has actually been maintaining records of the donations, and HKPF's explanation above (see **para. 25**), this Office agreed that HKPF was justified in citing paragraph 2.9(d) of the Code to refuse the complainant's information request.

## **Conclusion**

31. In light of the elaborations in **paragraphs 27 to 30**, we consider that in **Case 2**, the complaint against HKPF was **unsubstantiated**.

## Overall Observations and Comments

32. It can be observed from the two cases that the PCET and the PE&WT are established under specific legislation, reflecting higher expectations of the Government and the public of their operation and regulation as opposed to those of the PWF. While the PWF is only subject to the requirements of the Circular, it has adopted the same income-expenditure reporting and auditing arrangements as the PCET and the PE&WT (see **para. 23**), with its annual financial statements to be audited by the Director of Audit before submission to the LegCo. There is, however, no administrative mechanism for public inspection of the donation registers of the Trusts. In other words, in terms of transparency and accountability, the Trusts compare unfavourably to even a general staff welfare fund.

33. A stringent vetting process for donations to welfare funds is imperative, but open and transparent public scrutiny is of no less importance. This is the one and only way to forestall and handle potential conflict of interests, and to ensure that all donations accepted are perceived to be and actually made above board, so that there would be no misconstruction.

34. The spirit of the Code calls for government departments to provide information to the public as far as possible so that members of the public would sufficiently understand their decisions and the justifications behind. The Guidelines also reminds departments to approach information requests with a positive attitude and work on the basis that information requested will be released. The Code should not be used or perceived to be used as a device for obstructing information disclosure<sup>7</sup> either. The two cases in point showed that HKPF actually had ample room for manoeuvre to satisfy public requests for the information of the funds/trusts made pursuant to the Code, without mobilising a lot of extra resources (or could even save resources) or infringing on the donors' privacy, in order to further enhance the transparency and accountability of the three fund/trusts.

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<sup>7</sup> Paragraph (vii) of the Guideline: The approach to release of information under the Code should be positive; that is to say, departments should work on the basis that information requested will be released unless there is good reason to withhold disclosure under the provisions of Part 2 of the Code.

Paragraph (viii) of the Guideline: ...it is important that the Code is not used, or perceived to be used, within or outside Government, as a device for obstructing this sort of information flow...