

**Department/Organisation: Leisure and Cultural Services Department  
("LCSD")**

**Case concluded in: March 2018**

**LCSD refused to provide CCTV footage of a public library**

*The Event*

One day, in an LCSD public library, Ms B slung onto the ground the bag of another reader Mr C. The latter then made a report to the Police. Before the Police arrived at the library, a quarrel broke out between Ms B and Mr C, and the two parties used their mobile phones to take pictures of each other. After investigation, the Police indicated that they would not press charges against Ms B but Mr C could file a civil lawsuit against Ms B for compensation. Ms B later requested LCSD to provide the closed circuit television ("CCTV") footage of the incident ("the footage").

LCSD refused to provide the footage to Ms B by invoking paragraph 2.6(c)<sup>1</sup> of the Code on Access to Information ("the Code"). In LCSD's opinion, the footage recording the confrontation between Ms B and Mr C was information "which relates to investigation", and releasing such information would be inappropriate. LCSD also pointed out that the CCTV system was for venue management and security purposes and the video images recorded should be kept confidential in all circumstances. Moreover, Ms B might have committed an offence for damaging another person's property. Both she and Mr C might also have contravened the Libraries Regulation by taking pictures and obstructing, disturbing, interrupting or annoying others in the library. Furthermore, Mr C might file a civil lawsuit against Ms B. Hence, LCSD considered that even if no one would be prosecuted eventually, and even if Mr C would not file any civil lawsuit against Ms B, paragraph 2.6(c) still applied.

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<sup>1</sup> Paragraph 2.6(c) of the Code: "Information which relates to proceedings which have been completed, terminated or stayed, or which relates to investigations which resulted in or may have resulted in proceedings, whether any such proceedings are criminal or civil."

## *Our Findings*

According to paragraphs 2.1.1<sup>2</sup>, 2.6.9<sup>3</sup> and 2.6.10<sup>4</sup> of the Guidelines on Interpretation and Application (“the Guidelines”) of the Code, it is in fact not a must for the Government to refuse public access to information covered by paragraph 2.6(c) of the Code. Rather, it should assess whether disclosure of such information will prejudice any person or investigation, and the possibility and magnitude of such prejudice. In this case, LCS D had not indicated that releasing the footage would prejudice any person or investigation. Neither had the Department explained why the footage should be kept confidential. Therefore, we considered LCS D not to have given adequate grounds for refusing to provide the footage under paragraph 2.6(c) of the Code.

Nevertheless, we noticed that Mr C and a number of library staff members were shown in the footage and their appearances are their personal data. If LCS D provided the footage to others, it might infringe the privacy of those subjects. As releasing the footage might violate the provisions of the Personal Data (Privacy) Ordinance, we considered that LCS D could use paragraph 2.15 (“privacy of the individual”) of the Code to refuse Ms B’s request.

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<sup>2</sup> Paragraph 2.1.1 of the Guidelines: “...The withholding of information under most provisions of Part 2 (of the Code) is subject to a ‘harm or prejudice test’. 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. It is important to note that the operative word is *may* rather than *shall* (withhold the information)...”

<sup>3</sup> Paragraph 2.6.9 of the Guidelines: “...There will also be circumstances in which it is proper to preserve the confidentiality of information which has been gathered in the course of an investigation, whether or not such investigation resulted in any criminal or civil proceedings.”

<sup>4</sup> Paragraph 2.6.10 of the Guidelines: “Much information comes into the possession of the Government in the course of investigations of a criminal and regulatory nature and such information may not eventually be used in any proceedings for a variety of reasons. Release of such information *may* prejudice the subject of the information or a person who co-operated with the investigation or may be prejudicial to any similar investigations in the future.”