

**Department/Organisation: Registration and Electoral Office (“REO”)
Case concluded in: April 2017**

REO refused to provide the complainant with statistics of the 2016 Legislative Council Election

The Event

The complainant requested REO to provide statistics of the 2016 Legislative Council Election (“the Election”), including “the number of invalid ballot papers and the reason for their being regarded as invalid”, “the number of complaints about voter impersonation”, “the cumulative voter turnout at polling stations each hour” and “the number of votes and invalid ballot papers that election agents were notified of at the venues”. REO told the complainant that the requested information could not be provided for the time being.

As required by the law, REO would investigate matters relating to the Election. The Electoral Affairs Commission (“the Commission”) would then make a report (“the Report”) to the Chief Executive and then publish it. Some of the information that the complainant requested would be included in the Report.

According to REO, the statistics that the complainant requested related to the data of around a thousand election documents and of nearly 600 polling stations. Since REO had not yet finished collating and verifying the information, it would have to deploy a lot of manpower and other resources for such compilation just to provide some scattered statistics to the complainant before completion of the Report. Besides, disclosure of incomplete statistics and piecemeal information before publishing the Report would not show a full picture and could be misleading. Premature disclosure of information would also deprive the Commission of its priority to make a report and recommendations to the Chief Executive. Therefore, REO invoked paragraphs 2.9(d) (“unreasonable diversion of a department’s resources”) and 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”) of the Code on Access to Information (“the Code”) and refused to provide the statistics requested by the complainant before the Report was published.

Our Findings

Re: “the number of invalid ballot papers and the reason for their being regarded as invalid” and “the number of complaints about voter impersonation”

REO stated that disclosure of such information could be misleading. We found its statement not adequately grounded. REO had failed to explain how such disclosure would cause misunderstanding and what kind of misunderstanding might be caused. We did not see how disclosure of such information could be misleading in any way. Hence, we did not agree that REO could refuse to provide the information on the

grounds that “disclosure could be misleading” citing paragraph 2.13(a) of the Code.

Nevertheless, we found it not unreasonable of REO to estimate that it would have a deploy a lot of manpower to provide the information as that would involve statistical analysis and classification of a large number of ballot papers and complaints. Given that such information had not yet been made public, it would deprive the Commission of its priority to provide information to the Chief Executive if REO were to provide the complainant with such information first. In our view, REO’s decision to refuse disclosure of such information on the grounds of “unreasonable diversion of a department’s resources” citing paragraph 2.9(d) and that disclosure would “deprive the department or any other person of priority of publication” citing paragraph 2.13(a) of the Code was not unjustified.

Re: “the cumulative voter turnout at polling stations each hour” and “the number of votes and invalid ballot papers that election agents were notified of at the venues”

We considered that disclosure of such information would not cause any misunderstanding. Moreover, any possibility of misunderstanding could be eliminated by the way of adding an explanatory note. Therefore, we did not accept REO’s invoking paragraph 2.13(a) of the Code (“disclosure could be misleading”) as a reason for withholding information.

Furthermore, those data had already been released on the day of the Election. Hence, it would not cost REO much manpower to provide the information to the complainant. Besides, when the Commission subsequently submitted the Report to the Chief Executive, there would no longer be a question of priority of publication as far as those data were concerned, as they had already been released on the day of the Election. In this regard, we considered that both paragraphs 2.9(d) (“unreasonable diversion of a department’s resources”) and 2.13(a) (disclosure could “deprive the department or any other person of priority of publication”) of the Code were not applicable.

Outcome

In the course of our investigation, REO provided the requested information to the complainant.