

## **Investigation Report**

### **TD refused to provide the Code of Practice for the examination of private cars and light goods vehicles at designated car testing centres**

#### **The Complaint**

Mr Y submitted an application for access to information to the Transport Department (“TD”), requesting a copy of the current version of the Code of Practice (“COP”) issued by TD under section 88F(1)(a) of the Road Traffic Ordinance (Chapter 374) (“the Ordinance”) in relation to the examination of private cars and light goods vehicles at car testing centres (“the Examination”).

2. TD replied to Mr Y and refused his information request by invoking paragraph 2.9(c) of the Code on Access to Information (“the Code”), claiming that disclosure of the COP would harm or prejudice the proper and efficient conduct of the operations of the designated car testing centres (“DCTCs”), whose operations and services to the public are authorised by TD.

3. Mr Y complained against TD for its unreasonable refusal.

#### **Our Findings**

##### ***The Examination***

4. All private cars manufactured not less than 6 years before licensing and light goods vehicles with gross vehicle weight not exceeding 1.9 tonnes are required to receive annual examinations at DCTCs (i.e. the Examinations) before they can be re-licensed. It is to ensure that the vehicles are roadworthy and in compliance with the requirements of the Ordinance before licence renewal. Vehicle that has been tested in the Examination and found roadworthy would be issued with a Certificate of Roadworthiness.

5. Upon designation of DCTCs, a copy of the COP together with its attachments would be issued to the operators of DCTCs. The Examination should be carried out at a DCTC by an Approved Car Tester (“ACT”) under supervision of a Responsible Person (“RP”) of that DCTC.

##### ***COP***

6. According to the Ordinance, the COP sets out the practice and procedure to be followed and specifies the equipment to be used for the Examination.

7. From time to time, TD would issue new guidelines or requirements in the form

of advisory letters for compliance by the DCTCs. Moreover, Tester’s Inspection Manual (“the Manual”), which is a detailed guide to the inspection procedures to be adopted for the Examination, is attached to the COP. TD confirms that the attachments of the COP, which consist of those advisory letters<sup>Note</sup> and the full version of the Manual, form an integral part of the COP.

### ***Code on Access to Information***

8. In accordance with the Code, Government departments should, as far as possible, make available to the public the information they hold, unless there is a good reason to withhold disclosure under the provisions of Part 2 of the Code.

9. Paragraph 2.9(c) under Part 2 of the Code refers to *information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department*.

10. The Guidelines on Interpretation and Application of the Code (“the Guidelines”) further explains that paragraph 2.9(c) of the Code may be used to protect, for example, information relating to the conduct of tests or examinations conducted by or for a department where disclosure of the methods used might prejudice the effectiveness of the tests or the attainment of their objectives.

### ***TD’s explanation***

11. In gist, TD considered it appropriate to invoke paragraph 2.9(c) of the Code in refusing Mr Y’s information request for the following reasons:

- (a) The COP, together with the attachments, contains information about the minimum requirements and testing methods for ACTs to carry out the Examinations. It is designed for internal use of DCTCs’ personnel (i.e. ACTs and RPs) who had passed specific training arranged by TD, but not a document for facilitating car owners to prepare for the Examinations.
- (b) There is a risk of misinterpretation or misuse of the contents of the Manual by general public, especially in respect of information relating to internal communication and vehicle safety requirements which is considered sensitive and not appropriate for release publicly.
- (c) Some of the advisory letters contain information of corruption prevention measures. Disclosure of such information may attract unscrupulous vehicle owners to explore opportunity for collusion with DCTCs’ personnel and affect the effectiveness of the measures.

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<sup>Note</sup> Information from TD revealed that the first advisory letter was issued in April 1986. As of 8 October 2018, TD had issued totally 247 advisory letters to DCTCs in relation to the Examination.

12. In the course of our investigation, TD had reviewed the case. Notwithstanding that TD had reservation on releasing the full set of COP, in view of the current trend and development in other overseas countries (**paragraph 14** below), TD would have no objection in disclosing the current COP (19 pages) without the advisory letters and the Manual.

13. On the other hand, TD indicated that it had commenced a full review of the COP in mid-October 2018 in order to make the COP more updated and suitable for public consumption in future. The contents of the attachments, including those of the Manual and the advisory letters, would be suitably incorporated into the COP. The review was planned to be completed by mid-2019 and the updated version of the COP will be posted on TD's website for public information.

### **Our Comments**

14. The objective of the Examination is to ascertain the roadworthiness of the vehicles. As long as a vehicle has met all standards of the Examination set by TD, it should be considered to be roadworthy. We do not see how disclosure of the requirements and testing methods would prejudice the effectiveness of the Examination or attainment of its objective. On the contrary, disclosing such information would enhance the transparency of and public understanding on the Examination. In fact, similar schemes of vehicle examination are very common overseas. In many other countries such as Australia, Canada, the United Kingdom and the United States, the inspection manuals for vehicle examinations, which contain the details of the requirements and testing methods, are publicly accessible. Strictly speaking, in Hong Kong ACTs and RPs are currently under no obligation to keep the COP and associated documents to themselves.

15. Although TD emphasises that the COP is designed for internal use and not for vehicle owners to prepare for the vehicle examination (**paragraph 11(a)** above), paragraphs 1.9.2 and 1.10.2 of the Guidelines clearly state that in general the identity of the requestor (e.g. a vehicle owner) and the purpose of the request (e.g. preparation for the vehicle examination) should have no bearing on the decision to release the requested information or not. The fact that the purpose of the COP does not match with the purpose of the request is in itself not a valid reason under the Code to refuse disclosure.

16. Furthermore, TD reiterated that information contained in the COP/the Manual is sensitive and might be misinterpreted by general public (**paragraph 11(b)** above). These are, however, also not valid reasons under Part 2 of the Code for withholding the requested information.

17. As regards the corruption prevention measures (**paragraph 11(c)** above), we had scrutinised those relevant advisory letters. They mainly lay out the practice and procedure in handling bookings/conducting tests for the Examinations. We do not consider the disclosure of any of those advisory letters would attract collusion or affect the effectiveness of corruption prevention measures as alleged by TD.

18. All in all, we do not accept TD's invoking paragraph 2.9(c) of the Code to deny Mr Y's access to the current version of the COP and its attachments.

### **Conclusion**

19. In the light of paragraphs 14 to 18 above, The Ombudsman considers the complaint against TD **substantiated**. Nonetheless, we appreciate TD's initiative to conduct a full review of the COP with a view to publishing it on the Department's website (**paragraph 13** above).

### **Recommendation**

20. We note that the current version of the COP contains a lot of communications between TD and the DCTCs in the form of advisory letters over the past years (**Note**) and becomes quite difficult for the general public to comprehend. It is not user-friendly even for ACTs and RPs. Moreover, it would incur a significant charge for Mr Y to obtain a full copy of the COP with its attachments which contain hundreds of pages.

21. In view of the bulk volume of the current version of COP and its updated version is scheduled to be made available free of charge on TD's website by mid-2019, we recommend TD to further clarify the information request with Mr Y. If Mr Y still wants a full copy of the current version of the COP, or simply the COP without the attachments, TD should accede to Mr Y's request. If TD considers that any part of the information in the COP had fallen within Part 2 of the Code and should not be disclosed, TD may obliterate that information and explain to Mr Y accordingly.

**Office of The Ombudsman**  
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