

**Home Affairs Department, Transport and Housing Bureau and
Lands Department being late in responding to a request
(Partly related to Code on Access to Information)
Investigation Report**

Between 4 October and 10 November 2021, the complainant complained to this Office, with supplementary information, against the Home Affairs Department (“HAD”), the Transport and Housing Bureau (“THB”) and the Lands Department (“LandsD”). In response to our inquiry, LandsD, THB and HAD replied to the complainant and this Office in parallel on 17, 21 and 29 December 2021 respectively.

2. Upon examining the relevant information, we launched a full investigation into the complaint on 25 January 2022, and received from LandsD, THB and HAD further information and comments on 23 February, 18 March and 8 April 2022 respectively.

The Complaint

3. Allegedly, on 8 September 2021, the Sha Tin District Office (“DO”) under HAD wrote to the Chairman of the Owners’ Committee of the housing estate where the complainant lived (“the OC”), indicating that the Government was conducting a consultation exercise on Tenancy Agreement No. STTST0046 with respect to the proposed transitional housing project at Lok Wo Sha Lane, Ma On Shan, New Territories (“the Project”). On 16 September, the complainant wrote to DO to request extension of the consultation period and provision of the detailed reasons plus all the documents in relation to the Project in accordance with the Code on Access to Information (“the Code”). In its reply to him on 4 October, DO stated that the consultation period had been extended to 6 October, and attached a notice about the extension already sent to the Chairman of the OC on 23 September for the complainant's reference. DO also told the complainant that his information request had been referred to THB and the Sha Tin District Lands Office (“DLO”) under LandsD for follow-up. Nevertheless, the complainant had not received any response from THB or DLO when he lodged the complaint with this Office.

4. On the aforementioned, the complainant made the following allegations:

- (1) DO had delayed in notifying him of the extension of the consultation period;

- (2) DO had failed to reply to his information request in accordance with the target response time specified in the Code; and
- (3) THB and DLO had failed to respond to his information request in accordance with the target response time specified in the Code.

Our Findings

Relevant Parts of the Code

5. Paragraph 1.15 of the Code stipulates that if a department receives a request for information which is held by another department, it will transfer the request to that department and so advise the applicant. Paragraphs 1.15.2 and 1.15.3 of the Guidelines on Interpretation and Application of the Code (“the Guidelines”) further require that the Access to Information Officer of the department which first received the application should transfer the request as soon as possible, preferably within one or two days by the most immediate means, e.g. by fax or email, to the appropriate department and inform the applicant accordingly; and when a request is transferred to another department, it shall for the purpose of the target response times be deemed to be a request made to that other department and received on the day on which the transferred request is received.

6. Paragraph 1.16 of the Code states that where possible, information will be made available within ten days of receipt of a written request. If that is not possible, the applicant will be so advised by an interim reply within ten days of receipt of the request. The target response time will then be twenty-one days from receipt of the request.

Sequence of Major Events

7. The sequence of major events in handling the complainant’s case by DO, THB and DLO is as follows.

8. On 1 September 2021, DLO requested DO to conduct district consultation on the Project. After discussing the consultation list (“the List”) with DLO, DO issued the consultation papers to the listed groups (including the chairman of the Ma On Shan North Area Committee, the housing estates and schools near the location of the Project) on 8 September. The consultation period would end on 23 September 2021.

9. On 16 September, the complainant emailed DO. Considering the information in the consultation papers insufficient, he requested that the deadline for feedback be extended to 30 days after receiving all additional information from DO. The complainant further invoked paragraph 1.16 of the Code to ask for the detailed reasons for the Government to implement the Project and all the relevant documents.

10. Between 16 and 23 September, DO referred requests for extending the consultation period (including the complainant's email) to THB and recommended that the requests be considered.

11. On 23 September, THB replied to DO that the consultation period would be extended until 6 October to match the time schedule of the Project. That same day, DO notified the groups on the List (including the OC) of THB's decision.

12. On 3 October, the complainant lodged a complaint with 1823 against DO for failing to respond to his email request on 16 September for extending the consultation period and for information.

13. On 4 October, DO referred the complainant's information request to THB and DLO for follow-up and asked them to reply to the complainant direct. DLO emailed THB, indicating that the documents requested were about THB's transitional housing projects, so THB should reply to the complainant direct.

14. That same day, DO replied to the complainant by email about the extended consultation period, with the consultation papers in full attached for his reference, and informed him that his information request had been referred to THB and DLO for direct reply [Note: this email was not copied to THB and DLO]. The complainant was dissatisfied with DO's delay in handling his request, and requested again that the consultation period be extended until 30 days after his receipt of all the information.

15. On 15 October, DO asked THB and DLO to provide information so that it could reply to the complainant's request for extending the consultation period. On 18 October, DO emailed the complainant, saying that his information request had been referred to THB for direct reply [Note: this email was not copied to THB and DLO].

16. On 21 October, THB provided the information to DO via email for the latter's reply to the complainant [Note: this email was garbled].

17. On 16 November, this Office referred the complainant's complaint to HAD, THB and LandsD. THB re-sent its 21 October email to DO and asked if it had replied to the complainant and provided the requested information. It was not until then DO was aware that THB's email on 21 October already contained the information for reply to the complainant. It then furnished the complainant with the information that day.

Allegation (1): DO had delayed in notifying complainant of the extended consultation period

HAD's response

18. Upon receipt of the complainant's request for extending the consultation period on 16 September, DO referred his request to THB that same day (see **paras. 9 and 10**). Having learned THB's decision on 23 September, DO notified all the groups on the List (including the OC) (see **para. 11**). However, the complainant was only informed of the same on 4 October (see **para. 14**). The complainant thus felt aggrieved that he was not given sufficient time to express his views. DO apologised for this and undertook to improve.

Allegation (2): DO had delayed in replying to the information request

HAD's response

19. DO received on 16 September 2021 the complainant's email request for information and extending the consultation period. Since transitional housing projects were under THB's purview, DO did not possess the requested information. Consequently, it relayed the complainant's request to THB that same day. In its email to THB, DO pointed out that residents of three housing estates in the vicinity also requested extension of the consultation period, and the complainant asked the Bureau to provide more information for him to consider. DO also attached the complainant's email for THB's reference. On 23 September 2021, THB notified DO of its decision to extend the consultation period, so DO wrote to all the groups on the List (including the OC) to inform them of THB's decision that day (see **paras. 9 to 11**).

20. While DO had referred the complainant's request and email to THB on 16 September 2021 (see **para. 10**), it failed to communicate to THB clearly in its email that the Bureau was expected to follow up on the complainant's information request and reply to the complainant direct. In response to the complainant's complaint to 1823 on

3 October, DO referred his information request to THB and DLO again on the following day and asked them to reply to him direct (see **paras. 12 and 13**). It also notified the complainant of the referral on 4 October (see **para. 14**). This had exceeded the target response time specified in the Code, i.e. to give the applicant an interim reply within ten days of receipt of a written request. DO had apologised to the complainant for the delay.

21. DO received a garbled email from THB on 21 October 2021 (see **para. 16**). However, its staff mistook that the email was misdirected and therefore, failed to confirm its original content with THB. It was not until 16 November when THB enquired of DO about its reply to the complainant that DO discovered that the garbled message was not misdirected but was the Bureau's reply intended to be provided to the complainant via DO. That day, DO relayed THB's reply to the complainant (see **para. 17**).

22. In order to straighten out the process of case follow-up in the future, DO has strengthened its liaison and communication with other relevant departments with respect to the handling of public enquiries, including that staff are required to ring up the relevant department promptly after making an email referral to confirm receipt and explain the content of it, and copy to the relevant departments their replies to members of the public. DO has also reminded its staff to pay more attention to the requirements of the Code and the target response time specified therein when dealing with similar enquiries, and communicate with the enquirers in a timely manner to keep them informed of the case progress.

Allegation (3): THB and DLO had failed to respond to the information request

THB's response

23. Upon receipt of DO's referral email about the complainant's information request on 4 October 2021 (see **para. 13**), THB took immediate actions with a view to providing the relevant information. On 8 October, THB staff rang up DO and learned that the latter had replied to the complainant and told him that his information request had been referred to the Bureau for follow-up. Although THB did not receive a copy of DO's reply to the complainant and had no idea about its content, it mistakenly assumed that the complainant had received an interim reply. So, it did not issue an interim reply to him separately while it continued to prepare the requested information earnestly.

24. THB subsequently received DO's email of 15 October 2021 (see **para. 15**) and misunderstood that DO was coordinating a reply to the complainant afresh. So, it provided the information to DO on 21 October (i.e. within 21 days of receiving the referral, see **para. 16**) in response to the complainant's request.

25. On 16 November 2021, THB received this Office's referral of the case and at once re-sent its 21 October email to DO asking if it had replied and provided the information to the complainant (see **para. 17**). It found out in subsequent communications with DO that the latter had already replied to the complainant on 16 November and the 21 October email it received from THB was garbled. THB considered there to be a lack of communication between its staff and DO in the process, resulting in a delay in providing the information to the complainant. Notwithstanding that the departments concerned had to deal with a huge number of enquiries and views during the consultation process, this complaint about delay in reply to information request could have been avoided if their staff had strengthened communication among themselves. THB apologised to the complainant for the delay.

26. THB had re-circulated the Code and the Guidelines to the staff members in the Task Force on Transitional Housing and reminded them to reply to public enquiries made under the Code in a timely fashion. The Bureau would also step up staff training, so as to ensure that its staff are conversant with and would strictly adhere to the requirements of the Code, and would maintain close communication with other relevant departments when handling information requests from the public.

LandsD's response

27. DLO received DO's referral email of the complainant's information request on 4 October 2021. Despite the fact that it possessed the requested information, the Project was coordinated by THB and the district consultation papers as well as the revised proposal of the Project were provided by THB. Therefore, it contacted THB that day by email (with a copy to DO) and suggested that the Bureau provide the information and reply to the complainant direct (see **para. 13**). On 18 October, DO indicated in its email reply to the complainant that his information request had been referred to THB, which would reply to him direct (see **para. 15**). DO also gave the complainant the contact details of the THB staff concerned for further enquiries. Under the circumstances, DLO did not notify the complainant further with regard to the referral.

28. LandsD opined that had DLO notified the complainant in a timely manner of the referral arrangement and provided the contact details of the THB staff concerned, it could have facilitated the complainant's early understanding of the situation.

Our Comments

Allegation (1): DO had delayed in notifying the complainant of the extended consultation period

29. It can be seen from **paragraph 18** above that DO received the complainant's request for extending the consultation period on 16 September 2021. However, when it learned on 23 September that the consultation period would be extended to 6 October, it only notified the group on the List and failed to reply to the complainant in parallel. It issued a reply to the complainant on 4 October (i.e. two days before the end of the extended consultation period) only after he had lodged a complaint with 1823. DO's handling was indeed unsatisfactory.

30. In this light, The Ombudsman considers allegation (1) **substantiated**.

Allegation (2): DO had delayed in replying to the information request

31. **Paragraphs 19 to 21** above reveal a number of inadequacies in DO's handling of the complainant's information request. As a result, there was delay in handling the request and the complainant could not obtain the requested information as soon as possible.

32. First of all, DO only replied to the complainant's information request of 16 September on 4 October 2021. This exceeded the target response time of ten days as specified in the Code (see **para. 6**).

33. Secondly, while scrutinising the relevant work records, we noticed that although DO did mention the complainant's information request when it referred his email to THB on 16 September 2021, it did not ask the Bureau to follow up or provide a response. It only asked THB explicitly to reply to the complainant's information request after the complainant had lodged a complaint with 1823 (see **paras. 12 and 13**). In response to our investigation, HAD admitted to DO's inadequacies in communication with THB in its 16 September email (see **para. 20**).

34. Furthermore, while THB's email reply to DO on 21 October 2021 was garbled, DO just assumed that the email was misdirected without clarifying with the Bureau. Until THB received our referral and made enquiry with it, it had not corrected the mistake (see **paras. 16 and 17**), thereby causing a delay in replying to the complainant. This is unsatisfactory.

35. In light of the elaborations in **paragraphs 31 to 34**, The Ombudsman considers allegation (2) **substantiated**.

Allegation (3): THB and DLO had failed to respond to the information request

36. According to the Code, upon receipt of an information request transferral, a reply should be provided to the information requestor within the target response time specified. In its email of 4 October 2021 (see **para. 13**), DO did ask THB and DLO to directly reply to the complainant with respect to his information request. As such, THB and DLO should have followed the Code to issue an interim reply and respond to the complainant.

37. THB, without knowing whether DO had actually replied to the complainant, just assumed that DO had issued to him an interim reply and the Bureau did not need to give him an interim reply (see **para. 23**). Besides, we also notice that DO never indicated in its 15 October email (see **para. 15**) that it would coordinate a reply to the complainant afresh. However, THB just took it for granted that DO would do so before ever discussing the matter with it (see **para. 24**).

38. Since both THB and DLO possessed the information requested by the complainant, DLO opined that THB, as the provider of the information relating to the Project, should reply to the information request direct (see **para. 27**). We consider this arrangement understandable. Nevertheless, DLO failed to notify the complainant of the arrangement. It only asked THB by email to do so on 4 October 2021 with a copy to DO and assumed that DO's reply to the complainant on 18 October should suffice (see **para. 27**).

39. In light of the observations set out in **paragraphs 37 and 38** above, this Office considers that communication between THB/DLO and DO had been inadequate regarding the complainant's information request. Furthermore, both THB and DLO misunderstood that they needed not follow the Code to send the complainant an interim

reply. Hence, the complainant did not receive any reply from either of them, resulting in this complaint.

40. In sum, The Ombudsman considers allegation (3) **substantiated**.

Conclusion and Recommendations

41. Overall, The Ombudsman considers the complaint against HAD, THB and LandsD **substantiated**.

42. This Office is glad to note that DO has undertaken to improve its arrangement for replying to enquiries about extension of consultation period (see **para. 18**), required its staff to step up communication with the various relevant departments and enquirers and heed the requirements and the target response times set out in the Code (see **para. 22**). THB has reminded its staff to communicate closely with the relevant departments and reply to members of the public in a timely manner in accordance with the Code. It would also step up staff training (see **para. 26**). LandsD also agreed that timely notification to the complainant about referral of his information request could have facilitated the complainant's early understanding of the situation (see **para. 28**).

43. To avoid recurrence of similar incidents, The Ombudsman **recommends** that:

- (1) **HAD** examine the settings of its email system regarding the garbled email with a view to identifying and resolving related technical issues;
- (2) **LandsD** step up staff training on handling of information requests to enhance their understanding of the Code's requirements.

Office of The Ombudsman
May 2022