

**Security Bureau, Immigration Department,
Customs and Excise Department, Correctional Services Department,
Fire Services Department, Hong Kong Police Force
and Government Flying Service
failing to provide statistics on disciplined services staff’s
acceptance of advantages
(Related to Code on Access to Information)
Investigation Report**

The complainant complained to this Office against the Security Bureau (“SB”), Immigration Department (“ImmD”), Customs and Excise Department (“C&ED”), Correctional Services Department (“CSD”), Fire Services Department (“FSD”), Hong Kong Police Force (“HKPF”) and Government Flying Service (“GFS”) on 17 December 2021.

The Complaint

2. The complainant made media enquiries to six departments, namely ImmD, C&ED, CSD, FSD, HKPF, GFS (“the six departments concerned”) and the Independent Commission Against Corruption (“ICAC”) separately in October 2021, requesting information about acceptance of advantages by the aforesaid departments and organisation and their staff between January 2020 and September 2021. The information requested was:

- (1) the number of applications for acceptance of advantages offered to staff in his/her official capacity and the numbers of applications granted and rejected (“Information 1”);
- (2) the number of applications for acceptance of advantages offered to staff in his/her personal capacity and the numbers of applications granted and rejected (“Information 2”); and
- (3) returns on gifts and donations accepted by bureaux/departments for the benefit of staff submitted to the Civil Service Bureau (“CSB”) by the aforesaid departments and organisation (“Information 3”).

3. Meanwhile, the complainant also made a media enquiry to CSB to request figures regarding Information 3 and the overall number of applications for acceptance of advantages by civil servants and the numbers of applications granted and rejected (“Information 4”).

4. ICAC provided the complainant with the relevant information in late October. When giving the complainant the figures regarding Information 3, CSB indicated that it had not maintained information regarding Information 4. In their reply on 29 October, the six departments concerned advised the complainant to refer to CSB’s reply to his requests for Information 3 and indicated that they had not compiled statistics regarding

his other enquiries. On the same day, the complainant made requests to the six departments concerned under the Code on Access to Information (“the Code”), asking for Information 1 and Information 2 again and also the number of applications for acceptance of advantages by staff as members of staff associations and the numbers of such applications granted and rejected (“Information 5”).

5. On 5 and 19 November, the six departments concerned refused the complainant’s requests for information on the grounds that they had not maintained such statistics, and if they were to provide them, they would have to retrieve the relevant information from a large quantity of documents. Compilation and collation of such statistics would be very time consuming and require a lot of manpower. Hence, the departments refused the complainant’s requests pursuant to paragraph 1.14 and/or paragraph 2.9(d) of the Code.

6. The complainant made requests for review to the six departments concerned on 5 and 19 November and amended his requests for information to cover a shorter period between September and October 2021, instead of the period between January 2020 and September 2021.

7. Having reviewed his requests for information, SB replied to the complainant on behalf of the six departments concerned on 2 December and reiterated that the requests were refused pursuant to paragraphs 1.14 and 2.9(d) of the Code. It explained further that staff’s application forms for acceptance of advantages were kept in the project files of each section or unit and/or the personnel file of each staff member in the six departments concerned. Compilation of the requested statistics would require central coordination by the departments to identify relevant documents among a large number of files maintained by the respective sections or units, thus consuming considerable public resources.

8. As regards his requests for Information 1, Information 2 and Information 5, the complainant was dissatisfied with SB and the six departments concerned in that:

- (1) the six departments concerned unreasonably took about two weeks only to give a brief reply to his media enquiries.
- (2) the six departments concerned failed to comply with paragraph 2.9.7 of the Guidelines on Interpretation and Application of the Code (“the Guidelines”) to discuss with him the possibility of modifying his requests to a mutually acceptable level, or identifying the requested information more precisely, before refusing his requests pursuant to paragraph 2.9(d) of the Code.
- (3) the six departments concerned failed to give him a reply or explain to him the exceptional circumstances in which they had to respond beyond the timeframe of 21 days laid down in the Code, despite his repeated calls and emails to enquire about the progress of his requests for review.

- (4) he submitted his requests for information on 29 October but it was not until 2 December that he learned from SB's reply about the departments' procedures for collection of information in detail. Hence, he could not amend the scope and time period of his requests for information in a timely manner.
- (5) it was unreasonable for GFS with only about 400 staff to fail to provide him with the relevant information when ICAC with an establishment of about 1,500 staff could do so.
- (6) the fact that ICAC could provide him with the relevant information showed that some law enforcement agencies did possess and could compile such information. Refusal of his requests by the six departments concerned pursuant to paragraphs 1.14 and 2.9(d) of the Code was therefore unreasonable.
- (7) when reviewing his requests, the departments concerned failed to consider the increasing public concern about the integrity of civil servants and Government officials and the significant public interest involved. When processing his requests for review, SB also failed to duly consider or respond to the fact that he had already amended his requests to cover a shorter period of two months.

Our Findings

9. Having scrutinised the complainant's submission of 17 and 31 December 2021 and 19 January 2022, this Office launched a full investigation involving SB and the six departments concerned and sought information and views from CSB on 9 February 2022. We completed this investigation on 24 June 2022. Our findings are as follows.

Relevant Provisions of the Code

10. Paragraph 1.14 of the Code stipulates that the Code does not oblige departments to acquire information not in their possession.

11. According to paragraphs 1.16 to 1.18 of the Code, information will be made available within ten days of receipt of a request for information where possible. If that is not possible, the applicant will be given an interim reply within ten days and provided with the information within 21 days. Response may be deferred beyond 21 days only in exceptional circumstances, which should be explained to the applicant. Any deferral should not normally exceed a further 30 days. If a request is to be refused, the applicant will be so informed within the aforementioned timeframe. Moreover, paragraph 1.25.3 of the Guidelines stipulates that the target response times set out in paragraphs 1.16 to 1.19 of the Code should be adhered to in handling requests for review.

12. Moreover, the Code requires that Government departments make available Government-held information as far as possible for the public to adequately understand the Government and its services, unless the information falls into the categories which can be withheld under Part 2 of the Code. This includes information which could only be made available by unreasonable diversion of a department's resources as mentioned in paragraph 2.9(d) of the Code. Paragraph 2.9.7 of the Guidelines elaborates the circumstances under which such information can be withheld: the information sought is in large volume, or the request is framed in general terms. Before refusing a request under this provision, departments should first discuss with the applicant the possibility of modifying the request to a mutually acceptable level, or identifying the requested information more precisely.

Responses from SB and the Six Departments Concerned

13. Responses from SB and the six departments concerned are summarised as follows.

- (1) The six departments concerned had not maintained the statistics requested by the complainant. If they were to compile such statistics, they would have to find the forms and relevant documents regarding their staff's applications for acceptance of advantages among the project files of each section or unit and/or the personnel file of each staff member. Given that the six departments concerned had nearly 66,000 staff members in total as at 31 March 2021, examining such a large amount of files would require considerable public resources. Moreover, SB and the six departments concerned had been occupied with urgent anti-epidemic work since 2020. Deploying staff to compile the requested information would affect such work, which would not be a proper use of resources. Hence, SB and the six departments concerned refused the complainant's requests for information pursuant to paragraphs 1.14 and 2.9(d) of the Code.
- (2) The complainant made media enquiries to the six departments concerned separately on 15, 19 and 29 October 2021. Upon receipt of the enquiries, HKPF and FSD replied to the complainant on the same day and within ten days respectively, while the other departments gave their replies within 14 days. The six departments concerned were compliant with the established guidelines, which require that replies be normally given within 30 days upon receipt of enquiries.
- (3) On 5 and 19 November 2021, SB received the complainant's requests for review. It had taken time to find out the detailed procedures of the six departments concerned for collecting the relevant information. Besides, SB and the six departments concerned had been occupied with urgent anti-epidemic work. In such exceptional circumstances, it was difficult for them to spare resources to give a final reply within 21 days.

Nevertheless, the six departments concerned had informed the complainant within 21 days of the deferral of their final reply.

- (4) When making the review request, the complainant amended his requests for information by shortening the period concerned from 21 months to two months. SB re-examined the complainant's requests and concluded that the procedures for compiling the relevant information would be the same and considerable public resources would be used regardless of the length of time that the information covered. Hence, SB maintained the decision to refuse the complainant's requests for information.
- (5) As regards ICAC's provision of the relevant information to the complainant, SB and the six departments concerned would not comment on or make comparisons with the operation of other organisations.

CSB's Comments

14. According to CSB, each policy bureau and department will consider its own operation and needs in deciding whether and how to maintain statistics on staff's applications for acceptance of advantages and cases granted and rejected. In CSB's opinion, the main concern is whether the bureaux and departments have followed the Civil Service Regulations and relevant CSB circulars in processing applications and keeping relevant records for subsequent review of the approval process when necessary. As each application has its own merits and the nature of advantages involved varies, the numbers of applications and those granted and rejected alone do not have much significance. CSB, therefore, has no plans to require bureaux and departments to maintain such statistics.

15. Currently, CSB requires that bureaux and departments submit a return on gifts and donations by bureaux/departments for the benefit of staff ("the Return") every six months so that CSB can monitor the overall situation. On the Return, the bureaux and departments need to fill in the name of donor, amount of donation/estimated value of gifts, nature and purpose of donation as well as details of approval (including the approving authority, the date and file reference of the approval).

Our Comments

Allegation (1)

16. Under the established guidelines, the six departments concerned should normally reply to an enquiry within 30 days. The departments had handled the complainant's media enquiries of October 2021 in accordance with the requirement (see **para. 13(2)**). Moreover, it is understandable that some departments needed more time to understand and respond to the complainant's media enquiries which requested multiple items of information.

Allegations (2) and (4)

17. Paragraph 2.9.7 of the Guidelines stipulates that before refusing a request under paragraph 2.9(d) of the Code, the department concerned should first discuss with the applicant the possibility of modifying the request to a mutually acceptable level, or identifying the requested information more precisely (see **para. 12**).

18. Before refusing the complainant's requests for information or request for review pursuant to paragraph 2.9(d) of the Code, SB and the six departments concerned indeed had not followed the requirement of the Guidelines to first discuss with him the scope of his information requests. In this regard, SB and the six departments concerned explained that even though the complainant subsequently amended his requests for information to cover a shorter period of time (see **para. 6**), each department still needed to retrieve the relevant documents among the project files of each section or unit and/or the personnel file of each staff member in order to compile the statistics. That would still require considerable public resources (see **para. 13(1) and (4)**). For that reason, SB and the six departments concerned considered it unnecessary to discuss with the complainant the possibility of narrowing the scope of his information requests before their refusal. We consider SB and the departments' handling not unreasonable. Nevertheless, they should have explained to the complainant why they did not follow the requirement of the Guidelines when refusing his requests.

Allegation (3)

19. Having scrutinised relevant records, we found that ImmD, C&ED, CSD, FSD and GFS received the complainant's requests for review on 5 November 2021 and SB gave him a final reply on 2 December 2021. Prior to the final reply, the departments had informed him within 21 days of the deferral of their final reply (see **para. 13(3)**), but the reason for it was not explained, thus violating the requirement of the Code (see **para. 11**). While we accept the departments' explanation that participation in anti-epidemic work could be regarded as exceptional circumstances, according to the Code, the departments should still explain the reason for deferral to the applicant under exceptional circumstances.

20. As for the complainant's request for review to HKPF, the request was made on 19 November 2021 and SB gave the final reply on 2 December (i.e. within 21 days), which was compliant with the Code.

Allegations (5) to (7)

21. SB and the six departments concerned already explained that currently they do not compile the statistics that the complainant requested. They also gave the details of the procedures and resources involved for compiling such information (see **para. 13(1) and (4)**). At present, the departments concerned record information about their staff's acceptance of advantages in different capacities only on physical documents. Hence, to collate and compile the information requested by the complainant, the departments

would need to allocate manpower resources to examine the relevant files kept by each section or unit and retrieve relevant information from a large amount of physical documents, regardless of the length of time period covered. We agree that compilation of such statistics would definitely require substantial resources. In view of the considerable resources dedicated to anti-epidemic work, it is understandable that the departments could not spare resources for compiling the relevant information. Against this background, we accept the refusal by SB and the six departments concerned of the complainant's requests for information (including his amended requests) by invoking paragraphs 1.14 and 2.9(d) of the Code.

22. Nevertheless, we do not concur with CSB's view that it does not bear significance to request bureaux and departments to compile statistics on their staff's acceptance of advantages (see **para. 14**). Inevitably, keeping proper records of each application enables the bureaux and departments to check the approval process when necessary. However, what is more important is that the management can make use of the records for the effective monitoring and upholding of staff integrity, which is essential to the integrity management of the organisation. The fact that CSB currently requires bureaux and departments to submit the Return every six months to facilitate its monitoring (see **para. 15**) demonstrates the importance of retrieving relevant information from records. We have examined the sample proforma of the Return, in which bureaux and departments are required to fill in details including the name of donor, amount of donation or estimated value of gifts, and the nature and purpose of donation. This squarely shows that CSB considers it necessary to understand and monitor the compliance of the bureaux and departments through the Return. Similarly, we consider that in order for the bureaux and departments to monitor the compliance of sections, units as well as their staff, administrative measures must be in place to enable them to readily compile relevant statistics based on the records kept. After all, the risk of non-compliance of individual staff and sections/units should not be lower than that of the bureaux and departments.

23. It is our view that only through compilation and examination of statistics can CSB and bureaux/departments monitor staff's acceptance of advantages and be able to promptly identify and systematically prevent any actual and perceived conflict of interest. For example, through understanding whether sections/units of particular bureaux or organisations have more staff accepting advantages, or whether certain individuals/organisations frequently offer gifts to the sections/units/staff of different bureaux or departments, CSB and the bureaux and departments can assess whether additional measures should be introduced to prevent corruption and reduce conduct-related risks.

24. Apart from facilitating effective monitoring by the management, keeping relevant statistics can also help the bureaux/departments to reply to requests for information by members of the public more comprehensively and promptly, thereby meeting the requirements of the Code. ICAC's handling of the complainant's request in this case not only demonstrated its higher transparency, accountability and efficiency, but also strengthened public confidence in its probity and conduct. Its handling is

indeed worth learning by CSB and bureaux/departments.

25. Furthermore, we hope to emphasise that as stipulated in the Introduction of the Guidelines, government departments should respond positively to requests for information without using the Code as a device for obstructing information flow. Although paragraph 1.14 of the Code does not oblige departments to create a record which does not exist, the relevant provision in the Guidelines requires that when a record can easily and quickly be produced from computerised information, the departments may provide it. The crux of the matter in this case is that even if the departments concerned have kept the records necessary for compiling the statistics requested by the complainant, they still need to examine the physical documents stored in the project files of sections or units or the personnel files in order to retrieve the information, thus requiring substantial manpower to compile the statistics. In our view, CSB should encourage bureaux and departments to utilise common data access technology to maintain records so as to enhance their administration, internal supervision and capability of responding to public enquiries.

Conclusion

26. In view of the analysis in **paragraphs 16 to 25**, The Ombudsman considers that while SB and the six departments concerned had not discussed with the complainant the scope of his information requests, their handling of the requests was generally compliant with the Code and the Guidelines. Refusal of the request was not unreasonable. Hence, on the whole, this complaint is **unsubstantiated**. At the same time, we found ImmD, C&ED, CSD, FSD and GFS to have failed to follow the Code by not explaining to the complainant the reason for deferral of the final reply or responding to his follow-up enquiries. Our relevant comments are set out in **paragraphs 18 and 19**. We expect the departments concerned to learn from this complaint and avoid occurrence of similar incidents in future.

27. This case reveals that the six departments concerned have not compiled statistics on their staff's acceptance of advantages. We also note that CSB has not required Offices of Secretaries, bureaux and departments to compile such statistics. There is room for improvement in this regard. In our view, compilation of relevant statistics will not only facilitate the handling of public enquiries when necessary, but also assist the Government to monitor their staff's acceptance of advantages under the administrative system. It should help demonstrate the Government's commitment to accountability and good governance. We believe this practice will be highly useful for maintaining open and accountable public administration and a civil service of probity.

Recommendation

28. Based on the above, The Ombudsman recommends that CSB consider requiring Offices of Secretaries, bureaux and departments to utilise data access technology to maintain records for speedy compilation of statistics on staff's acceptance of advantages when necessary.

**Office of The Ombudsman
June 2022**