

Health Bureau’s handling of a report of suspected contraventions of Prevention and Control of Disease Ordinance and subsidiary legislation Investigation Report

On 11 July 2022, this Office received a complaint against the Health Bureau (“HHB”).

The Complaint

2. According to the complainant, he made a report on 16 June 2022 to HHB (formerly the Food and Health Bureau) about suspected contraventions of the Prevention and Control of Disease Ordinance (“the Ordinance”) by some members of the public on 13 May. He also queried that it was unreasonable for the entire residential estate (“Estate A”) to use one single LeaveHomeSafe (“LHS”) venue QR Code. On 27 June, HHB gave him a reply with extracts from the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) (“the Regulation”) and hyperlinks, asking him to file a report with relevant enforcement agencies direct. On 30 June, the complainant asked HHB to clarify which departments were the “relevant enforcement agencies” it referred to. HHB again gave him extracts from the Regulation (with hyperlinks), and asked him to file a report with relevant enforcement agencies direct. On 5 July, the complainant requested HHB to tell him exactly which departments were “relevant enforcement agencies”, such that he could file a report direct. HHB gave him a reply on 6 July with hyperlinks of the authorised officers to enforce the Regulation. After checking the hyperlinks, he learned that HHB was one of the departments enforcing the Regulation.

3. The complainant was dissatisfied with HHB’s replies, none of which addressed his questions, and its perfunctory manner. He also criticised HHB for passing the buck in asking him to file a report with relevant enforcement agencies direct even though HHB itself was one of the departments enforcing the Regulation.

HHB’s Explanation

4. HHB said that it would generally refer reports of suspected contraventions received from members of the public to relevant enforcement agencies according to the case nature. If the relevant enforcement agencies find the case outside their purview

or no non-compliance after examining it, HHB, as the policy bureau, would give the complainant a reply about relevant legislation and the directions involved. Complainants who still consider that non-compliance has occurred can file a report with relevant enforcement agencies direct.

5. Authorised officers under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) include the Health Department, the Food and Environmental Hygiene Department (“FEHD”), HHB, the Home Affairs Department (“HAD”), the Lands Department, the Leisure and Cultural Services Department, the Hong Kong Police Force (“HKPF”) and the Tourism Commission. HHB’s scope of enforcement mainly includes hotels and guesthouses. HHB said that HAD and HKPF are the key enforcement agencies responsible for the event premises in this complaint case.

6. On 16 June 2022, HHB received the complainant’s complaint against Estate A’s management office (a property management company) for its improper display of the LHS venue QR code. Considering that he had complained against the property management company about estate management and convening of owners’ meeting, HHB referred the case to HAD on 17 June. On 24 June, HHB received HAD’s reply that the case was not within its purview. HHB then further examined the complainant’s complaint and the information provided. Since relevant restrictions were set out in Cap. 599F, HHB’s replies to the complainant dated 27 June and 4 July mentioned the provisions and restrictions for club-houses and event venues under Cap. 599F.

7. HHB said that the Government generally would not give advice or comments on specific incidents. Accordingly, in its replies it suggested the complainant to file a report with relevant enforcement agencies if he suspected an incident of non-compliance. In the reply dated 6 July, HHB also provided him with hyperlinks of the authorised officers under Cap. 599F for him to contact relevant departments according to circumstances of the case, where necessary. Moreover, the authorised officers under Cap. 599F include multiple departments, they would initiate inspection and enforcement action from time to time pursuant to anti-epidemic regulations, and might conduct inter-departmental joint operations at times according to circumstances and case nature. For instance, FEHD and HKPF would jointly inspect catering premises. As the policy bureau, HHB’s replies to public enquiries generally would not disclose information of relevant enforcement agencies in relation to specific cases. Given that this complaint case involved the club-house of a residential estate, the relevant duties were mainly performed by HAD and HKPF.

8. HHB added that according to the directions issued under Cap. 599F in relation to event premises, the poster containing the LHS venue QR code must be displayed at the entrance of the premises or at a conspicuous location which must be unobstructed at any one time so that it is readily accessible for scanning with the LHS mobile application on mobile phone/other mobile device by persons entering the premises and the size of the image of the poster displayed must not be less than 210×297 mm (A4 size).

Our Comments

9. After receiving the complainant's complaint, HHB referred his case to HAD, which subsequently replied that the case was not within its purview. Nonetheless, HHB made no attempt to clarify which departments were responsible for this case. Instead, it issued a reply to the complainant providing the hyperlinks of all authorised officers under the Ordinance, informing him to contact relevant departments according to circumstances of the case without explaining which departments were relevant. We consider HHB's handling tantamount to shifting the duty of clarifying the responsible departments for this case to a member of the public. If the member of the public decided not to pursue the report, it might result in contraventions of the legislation administered by HHB not being properly addressed. On the other hand, if he had no idea which department(s) was/were relevant, he might file a report with all authorised officers under the Ordinance. It would create unnecessary work for various departments. Either scenario would be unsatisfactory. During the making of legislation, HHB, as the principal bureau for the Ordinance, is duty bound to clarify which departments are responsible for enforcing the provisions in different scenarios before conferring powers on their officers; before the legislation coming into effect, it should also foster a consensus with those departments through effective liaison. If HHB subsequently refers a case to a relevant department and receives its reply that the case is outside its purview, HHB should take the initiative to clarify the purview of departments, and directly inform the complainant where the responsibility lies. During this process, HHB can also ensure there are no enforcement gaps, i.e. certain behaviours specified under the legislation went unmonitored and unregulated by any authorities. This Office urges HHB to improve its handling of reports/complaints and strengthen inter-departmental collaboration.

10. In its reply to this Office, HHB said that HAD and HKPF were mainly responsible for performing the duties related to this case. However, in handling the complainant's report, HHB did not follow up with HAD after receiving the latter's reply that the case was outside its purview (see **para. 9**), nor did it refer the case to another

department it deemed relevant (i.e. HKPF). We consider HHB to have not properly handled the complainant's report according to its own understanding.

11. In addition to making a report of suspected contraventions, the complainant also queried whether one LHS venue QR Code commonly used by the entire Estate A was reasonable (see **para. 2**). In its reply, HHB only mentioned the requirements for the size of poster displaying the LHS venue QR Code, etc. It gave no response about whether one venue QR Code used by the entire estate was reasonable, or whether there were any provisions in this regard.

12. Further, we notice that the incident reported by the complainant occurred in mid-May, but the information provided in HHB's reply was the social distancing measures effective from 16 to 29 June, and from 30 June to 13 July. HHB's reply stated that those measures "are largely an extension of existing social distancing measures". However, since the onset of the pandemic the social distancing measures have changed time and again. Simply based on the information provided by HHB, it was unclear whether such information was applicable to the incident reported by the complainant, and it also gave a perception that HHB was not answering his questions.

Conclusion

13. Based on the analysis in **paragraphs 9 to 12**, The Ombudsman considers the complaint **substantiated**.

Recommendation

14. The Ombudsman recommends that HHB:

- clarify which departments should take responsibility for this case, and improve its reply to public enquiries/reports in future with direct response and more appropriate information.

Office of The Ombudsman
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