

Information Services Department
refusing to provide a list of media organisation invited to cover the July 1
Reunification Anniversary celebrations/festivities
(Relating to the Code on Access to Information)
Investigation Report

On 27 July 2022, the complainant complained to this Office against the Information Services Department (“ISD”). On 28 July 2022, the complainant provided supplementary information.

The Complaint

2. On 16 June 2022, the complainant submitted to ISD an application for access to information, i.e. a full list of media organisations invited by ISD to cover the July 1 Reunification Anniversary celebrations/festivities, and the internal guidelines, policies and/or communications pertaining to the criteria of selecting media organisations for the July 1 events. On 6 July 2022, ISD declined the complainant’s request by citing paragraph 2.3 of the Code on Access to Information (“the Code”), which provides that the disclosure of information which would harm or prejudice Hong Kong’s security may be refused. Subsequently, the complainant approached ISD for a review. On 26 July 2022, the Department decided to uphold its decision.

3. The complainant considered ISD’s refusal unreasonable as the media organisations that covered the July 1 events were not a state secret. The complainant could not understand how the disclosure of a list of invited media organisations could pose a security threat to Hong Kong when the full list of registered media organisations was available on the website of the Office for Film, Newspaper and Article Administration (“OFNAA”). Against this background, the complainant sought our intervention.

Our Findings

4. On 3 August 2022, this Office commenced a full investigation into the complaint. ISD provided information to us on 31 August, 27 October and 4 November 2022. Having examined ISD’s information and response, we completed this investigation report on 13 January 2023. Our findings are as follows.

The Code

5. The Code obliges Government departments to make available as much Government-held information as possible for the public to be well informed about the Government and its services, unless the information falls into the categories which may be withheld under Part 2 of the Code, including paragraph 2.3(b) of the Code which stipulates that information the disclosure of which would harm or prejudice Hong Kong’s security may be refused.

6. Paragraph 1.14 of the Code stipulates that Government departments are not obliged to acquire information not in their possession.

7. According to paragraph 2.1.1 of the Code's Guidelines on Interpretation and Application ("the Guidelines"), the withholding of information under most provisions of Part 2 is subject to a "harm or prejudice test". The department concerned has to consider whether the public interest in disclosure of such information outweighs any harm or prejudice that could result. According to paragraph 2.2 of the Code, such harm or prejudice includes both actual harm or prejudice and the risk or reasonable expectation of harm or prejudice.

8. Paragraph 2.2.2 of the Guidelines further stipulates that when balancing the risk of harm or prejudice against the public interest in disclosure, the weight to be attached to the risk will depend on the nature of the harm which might result. Where the harm which might arise from disclosure would be extremely serious, e.g. prejudicial to security or might destabilise the economy, then it is not necessary to establish that it would be likely or certain to occur to take it into account.

9. According to paragraph 2.3.3 of the Guidelines, information the disclosure of which would harm or prejudice Hong Kong's security should be protected. Such information includes information which could be of assistance to those engaged in espionage, sabotage or terrorism. This includes the protection of individuals and sites which may be at risk, and the protection of information the disclosure of which would prejudice the operations, sources and methods of those whose work involves duties connected with Hong Kong's security.

ISD's Response

10. The year 2022 marked the 25th anniversary of the establishment of the Hong Kong Special Administrative Region and President Xi Jinping had attended the key 25th anniversary events. ISD explained that it was of significant public interest that all media organisations were able to freely report these important events. However, it was well understood among the journalists that in light of various restrictions, including the prevailing epidemic situation, security requirements and venue constraints, not all media organisations could be allowed to physically gather at the venues where the events took place in order to cover the events. ISD replied to the complainant on 16 June 2022 via its press enquiry channel that suitable media arrangements were adopted after taking the above-mentioned factors into consideration, which had posed an impact on the number of media organisations invited to apply for accreditation.

11. To facilitate media coverage of President Xi's activities and his messages, ISD had made available a high-quality live feed for all media organisations, including the complainant, so that they could instantly receive the visual and audio signals of these important events and could freely report the events at the same time when the events were taking place.

12. ISD explained that visits of national leaders and foreign heads of states and governments required the most stringent security arrangements as they are high-value targets of attack. Any information about the visits, including but not limited to the itinerary, participating organisations (such as the list of media organisations invited) and individuals, can possibly

assist terrorists to undermine the protection of these dignitaries. The public interest requires that disclosure of such information must be confined to those who absolutely need to know.

13. After the 25th anniversary events, while disclosure of the requested information would no longer harm or prejudice the protection of President Xi on 30 June and 1 July 2022, such disclosure would still assist the evasion of the security clearance mechanism in the future. This is because media organisations on the invitation list were invited to nominate reporters to physically cover the events. The nominations were vetted by the security authority before accreditation was granted. A comparison between the media invitation list and the eventual turnout of reporters at the event venues may assist terrorists to infer how the security clearance mechanism was operated and possibly evade such mechanism in the future. As a result, disclosure of such information may prejudice the security operations, sources and methods.

14. ISD agreed that disclosure of the requested information after the relevant events may carry some public interest. For example, it may allow the public to form a view on whether or not the media invitation list for these relevant events was reasonably derived. However, as ISD had provided a good alternative to those media organisations not invited to the event venues to cover the events, and the harm which might arise from the disclosure would be extremely serious, the Department did not consider that the public interest of disclosure of the media invitation list as requested by the complainant outweighed the risk of causing harm or prejudice to the operations, sources and methods in relation to the protection of national leaders and foreign dignitaries visiting Hong Kong in the future. In response to the complainant's argument in paragraph 3 above, ISD considered that whether or not there is a full list of media organisations in the public domain was irrelevant. The requested disclosure by the complainant was therefore declined.

15. ISD also clarified that it does not have any internal guidelines, policies and/or communications pertaining to the criteria of selecting media organisations for physically covering visits of national leaders and foreign heads of state or governments.

Our Comments

16. Paragraph 2.3(b) of the Code could be applied to refuse disclosure of information if the harm or prejudice that might result from disclosure outweighs the public interest in disclosure.

17. We acknowledge the assessment that visits of national leaders and foreign heads of states and governments require the most stringent security arrangements as they are high-value targets of attack. Any information about the visits, including the itinerary and the participating organisations, can possibly assist terrorists to undermine the protection of these dignitaries. To avoid any harm or prejudice to the protection of President Xi during his visit to Hong Kong, we find it not unreasonable for ISD to have withheld the list of invited media organisations **before** the events took place by citing paragraph 2.3(b) of the Code.

18. ISD has also explained why there are still security concerns surviving the events if the list of invited media organisations is disclosed **after** the anniversary events (see **paragraph 13**). Although we consider that the security concerns of each event may differ and should be

assessed on a case-by-case basis, we cannot rule out the possibility that disclosure of the list of invited media organisations may assist terrorists to infer how the security clearance mechanism was operated and evade such mechanism in the future, leading to potential harm or prejudice to the operations, sources and methods of those whose work involves duties connected with Hong Kong's security as stated in **paragraph 9** above.

19. According to the Code and its Guidelines, a risk of harm or prejudice suffices for non-disclosure of information and the weight to be attached to the risk will depend on the nature of the harm which might result (see **paragraphs 7 and 8**). In this case, in view of the grave security concern of the 25th anniversary events and the serious nature of the harm which might result from disclosure of the list of invited media organisations, i.e. prejudice to the protection of President Xi during his visit to Hong Kong and assisting the evasion of the security clearance mechanism for the protection of dignitaries in the future, we have no basis to dispute ISD's decision of non-disclosure of the said information by citing paragraph 2.3(b) of the Code. On the other hand, the full list of registered media organisations published on the website of OFNAA is general information for the public's reference and is unlikely to have implications for the security arrangements for the visits of dignitaries.

20. ISD has also clarified that it does not have any internal guidelines, policies and/or communications pertaining to the criteria of selecting media organisations for physically covering visits of national leaders and foreign heads of state or governments (see **paragraph 15**). It therefore could not provide such information to the complainant. While the Code does not oblige Government departments to acquire information not in their possession (see **paragraph 6**), we consider that ISD should have addressed this part of the information request more properly by stating clearly in its reply to the complainant dated 6 July 2022 that it does not possess the requested information. We urge ISD to learn from this case and seek to improve its future handling of information requests under the Code.

Conclusion

21. Based on our analysis above, we consider ISD's refusal to disclose the information requested by the complainant not unreasonable but part of the information request should have been handled more properly. Hence, this complaint is **unsubstantiated** but with **other inadequacies found**.

Recommendation

22. We recommend that ISD provide its officers with more training on the Code so that the latter could better address information requests when the Department does not possess the requested information (see **paragraph 20**).

Office of The Ombudsman

January 2023

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