

**Leisure and Cultural Services Department refusing to provide  
information of books removed from public library shelves or withdrawn  
(Related to Code on Access to Information)  
Investigation Report**

The complainant complained to this Office against the Leisure and Cultural Services Department (“LCSD”).

**The Complaint**

2. On 26 January 2022, the complainant made a request to LCSD under the Code on Access to Information (“the Code”) for the following information:

- (1) a list of books that were “removed from library shelves” in 2020 and 2021 for not conforming to the collection principles and/or established policies of the Hong Kong Public Libraries (“HKPL”), including the title in both Chinese and English, year of acquisition or collection, and International Standard Book Number (“ISBN”) (if available) of each book;
- (2) a list of books “under review” for content suspected of breaching the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“the National Security Law”), including the title, year of acquisition, and/or ISBN of each book;
- (3) the total number of books (not just the number of titles) involved in information (2); and
- (4) the total number of books “discarded” in 2020 and 2021 for not conforming to the HKPL’s collection principles and, if feasible, information on how these books, after discarded, were disposed of.

3. In the reply to the complainant of 17 March 2022, LCSD stated that in 2020 and 2021, one item of library materials (totalling 36 copies) not conforming to the HKPL’s collection development policies (but not related to the National Security Law)

was “removed from shelves for withdrawal” (i.e. **information (4)**). LCSD also provided the book title. As for the other information requested by the complainant (i.e. **information (1) to (3)**), LCSD considered that the disclosure of which would harm or prejudice Hong Kong’s security, the preservation of the peace, public safety or order, and the efficient conduct of department operations; and the information could only be made available by unreasonable diversion of department resources. LCSD, therefore, refused disclosure by invoking paragraphs 2.3(b), 2.6(f), 2.9(c) and 2.9(d) in Part 2 of the Code<sup>1</sup>.

4. The complainant alleged that LCSD’s decision to not disclose **information (1) to (3)** was unreasonable on the following grounds:

- (1) LCSD has a responsibility to disclose information about the titles removed from library shelves for content suspected of breaching the National Security Law, such that the public can monitor its decision-making in collection development. Disclosing such information would provide other libraries in Hong Kong with reference and benchmark, which is conducive to the safeguarding of national security.
- (2) In refusing his request for **information (1) to (3)**, LCSD failed to comply with the Code in the following ways:
  - In the reply letter, LCSD only quoted the relevant paragraphs in Part 2 of the Code that it relied on, without specifying which category in Part 2 of the Code was applicable to each item of information (i.e. **information (1) to (3)** in **paragraph 2**) requested by him. Nor did it explain the rationale for classifying the information into relevant categories.

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<sup>1</sup> Part 2 of the Code lists the categories of information which may be refused. Details of the relevant paragraphs are as follows:

2.3(b): Information the disclosure of which would harm or prejudice Hong Kong’s security.

2.6(f): Information the disclosure of which would harm or prejudice the preservation of the peace, public security or order, or the preservation of property.

2.9(c): Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department.

2.9(d): Information which could only be made available by unreasonable diversion of a department’s resources.

- When invoking paragraphs 2.3(b) and 2.6(f) of the Code as reasons for refusing information, LCSD did not explain how the disclosure of information would harm or prejudice the security and public safety in Hong Kong, or how it would unreasonably interfere with the duties of the Hong Kong Police Force<sup>2</sup>.
- When invoking paragraphs 2.9(c) and 2.9(d) of the Code, LCSD did not explain how the disclosure of information about the titles removed from library shelves for suspected breaching of the National Security Law would harm or prejudice the efficient conduct of its operations and unreasonably divert department resources. The complainant criticised LCSD for acting contradictorily as it had already provided information on books removed from library shelves for other reasons (i.e. not related to the breaching of the National Security Law) (see **paragraph 3**), but refused his request for information on the grounds of prejudicing department operations or resources.
- LCSD failed to balance the potential harm against the public interest in disclosure as specified under paragraph 2.2.2 of the Guidelines on Interpretation and Application (“the Guidelines”) of the Code.

## **Our Findings**

### ***Response from LCSD***

5. According to the HKPL’s established policies on withdrawal of library materials, items which are worn out/damaged, with outdated content, with no more reference or research value, and not conforming to the library collection principles (including those suspected of breaching the National Security Law or other laws of the Hong Kong Special Administrative Region, containing obscene, indecent, violent or erroneous elements, etc.) are reviewed and withdrawn regularly and systematically.

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<sup>2</sup> According to the Guidelines on Interpretation and Application of the Code, paragraph 2.6(f) of the Code is intended to reflect the broad scope of the duties imposed on the Hong Kong Police by the terms of section 10 of the Police Force Ordinance. The Code does not oblige the Government to disclose information which would assist those who attempt to disturb public order or threaten property.

6. Upon receiving the complainant's request on 26 January 2022, LCSD sought legal advice from the Department of Justice, and issued the reply on 17 March after considering the legal advice.

Regarding **information (1)**: List of books removed from library shelves in 2020 and 2021 for not conforming to the library collection principles and/or established policies

7. LCSD stated that in each of the previous three financial years, the HKPL withdrew an average of over 400,000 books which were worn out/damaged or with outdated content according to established policies. Since the list requested by the complainant could not be generated directly from the HKPL computer system, the information could only be made available by unreasonable diversion of department resources, including additional manpower to process a large volume of data within a limited time frame. As a result, LCSD invoked paragraph 2.9(d) of the Code (i.e. information which could only be made available by unreasonable diversion of department resources) to refuse the disclosure of **information (1)**.

Regarding **information (2)**: List of books under review for content suspected of breaching the National Security Law

8. LCSD pointed out that apart from the HKPL, bookstores and other institutions/individuals might also possess those books which have been removed from the HKPL shelves for review due to suspected breaching of the National Security Law. Releasing **information (2)** may lead to wide circulation of such books with malicious intent by other parties or organisations and is thus detrimental to the safeguarding of national security and public order.

9. When considering the complainant's request for information, LCSD had balanced the potential harm against the public interest in disclosure, including the public's right to be informed of the bibliographic data relating to suspected breaching of the National Security Law. LCSD considered that the disclosure of information that might harm or prejudice Hong Kong's public safety was not necessary for the purposes of supervising the HKPL's collection development or strengthening security measures, as well as monitoring the decision-making on purchasing library materials. Hence, there was insufficient justification in support of the public interest in disclosing the bibliographic data outweighing any harm or prejudice to national security.

10. Following our inquiry into this complaint case, LCSD reviewed the complainant's request for information. LCSD considered that as regards the refusal of **information (2)** (i.e. the list of books under review), it would be more appropriate to simply rely on paragraph 2.3(b) of the Code (i.e. information the disclosure of which would harm or prejudice Hong Kong's security), and thus paragraph 2.6(f) of the Code (i.e. information the disclosure of which would harm or prejudice the preservation of public safety or order) did not need to be invoked as a reason for refusal.

Regarding **information (3)**: Number of books under review for content suspected of breaching the National Security Law

11. LCSD pointed out that the review of library materials for suspected breaching of the National Security Law is continuous process, which includes removing books from library shelves, reviewing the content of the books, determining whether they are detrimental to national security, and withdrawing the materials. After review, the books removed may not necessarily be withdrawn and will be returned to library shelves. Hence, the number of books under review changes from time to time with significant fluctuations. LCSD reckoned that disclosing **information (3)** might cause the public to have false impressions about the scale of review conducted by the HKPL (including misconceptions of too many or too few books being under review for suspected breaching of the National Security Law); it might cause unnecessary misunderstanding and undermine the normal and efficient conduct of the review operations. As a result, LCSD invoked paragraph 2.9(c) of the Code (i.e. information the disclosure of which would harm or prejudice the proper and efficient conduct of department operations) to refuse the disclosure of **information (3)**.

12. LCSD added that an internal assessment concluded that **information (3)** itself, and the false impressions about the scale of review conducted by the HKPL that might be resulted from the disclosure of **information (3)**, might lead to malicious defamation and smears of the National Security Law and its implementation, thereby undermining the prosperity and stability of the Hong Kong Special Administrative Region.

Regarding **information (4)**: Total number of books discarded in 2020 and 2021 for not conforming to the library collection principles

13. In 2020 and 2021, LCSD withdrew one item of library materials not conforming to the library collection principles for containing erroneous elements and numerous grammatical/spelling mistakes. LCSD provided the information in its reply

to the complainant on 17 March 2022 (see **paragraph 3**). Although the complainant only asked for the number of relevant books but not the book titles, this Office notes that LCSD also provided the book title in the above-mentioned reply.

14. Meanwhile, LCSD did not include in the reply how the books were disposed of after withdrawal. LCSD told this Office that all library materials, after withdrawal, are generally handled through recycling as waste paper or discarded as general waste.

### ***Our Comments***

#### **Regarding the refusal of information (1)**

15. Given that in 2020 and 2021, more than 400,000 books not conforming to the HKPL's established policies were removed from shelves for withdrawal by LCSD, the number was substantial. As the information requested could not be generated directly from the HKPL computer system, the information could only be made available by unreasonable diversion of department resources. This Office, therefore, considers it justified for LCSD to invoke paragraph 2.9(d) of the Code to refuse the provision of **information (1)** to the complainant.

#### **Regarding the refusal of information (2)**

16. This Office agrees that the books removed by LCSD from the HKPL shelves for review (regardless of whether any potential breaching of the National Security Law is involved) might also be held by bookstores and other institutions/individuals. The harm caused to the safeguarding of national security by disclosing **information (2)** as described by LCSD (see **paragraph 8**) is indeed a possible scenario.

17. Furthermore, as mentioned in **paragraph 9**, LCSD had weighed the public's right of access to information and the public interest when considering the complainant's request for information. In fact, the "harm" or "prejudice" referred to in Part 2 of the Code associated with a department's refusal to disclose is explained in paragraph 2.2.2 of the Guidelines, according to which, it is not necessary to be able to prove in any particular case that harm or prejudice, i.e. damage or detriment, would result from disclosure of particular information; it will be sufficient if there is a risk or reasonable expectation of harm in the circumstances. Moreover, 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. This Office, therefore, considers it reasonable for LCSD to invoke paragraph 2.3(b) of the Code to refuse the disclosure of **information (2)**, and it was not in breach of the Code. As for paragraph 2.6(f) of the Code, LCSD has decided not to invoke that paragraph as a reason for refusing **information (2)** after reviewing the case under the mechanism stipulated by the Code.

### Regarding the refusal of **information (3)**

18. This Office has obtained further information about LCSD's workflow for reviewing library materials. We recognise that the review of library materials is continuous process, and the number of books under review (including those suspected of breaching the National Security Law) changes from time to time. Disclosing **information (3)** might lead to public misunderstanding of the scale of review conducted by the HKPL. Since people might hold divergent opinions on the number of books under review and the time taken, we understand LCSD's concerns that such discussions would exert pressure on library staff and potentially prejudice the effective and efficient conduct of such operations in future. However, many duties performed by Government departments are affected by external or seasonal factors, and their workloads change frequently; and people in the community might hold divergent opinions on the progress of various Government projects. From a perspective of good public administration, the Government should release the information with explanation, instead of withholding the information. Although **information (3)** involved the National Security Law which is relatively sensitive, the reasons given by LCSD (see **paragraph 11**) are apparently insufficient to support the refusal of **information (3)** based on paragraph 2.9(c) of the Code.

19. If the internal assessment mentioned by LCSD (see **paragraph 12**) is valid, **information (3)** will belong to the category of information that can be refused under paragraph 2.3(b) of the Code, i.e. information the disclosure of which would harm Hong Kong's security or the preservation of national security. This assessment involves judgement about how the implementation of the National Security Law would be affected, on which we refrain from commenting. As mentioned in **paragraph 17**, it is not necessary to be able to prove in any particular case that harm or prejudice would result from disclosure of particular information; where the disclosure of information might prejudice security or destabilise the economy, then it is not necessary to establish that it would be likely or certain to occur to take it into account.

20. This Office, therefore, does not accept that paragraph 2.9(c) of the Code is sufficient to support LCSD's refusal to disclose the number of books under review for content suspected of breaching the National Security Law. However, based on the internal assessment by Government authorities, LCSD can refuse disclosure based on paragraph 2.3(b) of the Code.

### **Other Observations**

21. Paragraph 2.1.2 of the Guidelines stipulates that when a request for information is to be refused or partially refused, the applicant concerned must be informed of the reasons for refusal quoting all the relevant paragraphs in Part 2 of the Code on which the refusal is based with appropriate elaboration to justify invoking the relevant paragraphs in Part 2 of the Code (where applicable).

22. This Office notes that although LCSD quoted the relevant reasons in Part 2 of the Code when refusing the complainant's request for information, it did not specify the provisions of the Code on which the refusal was based for each item of information, nor did it elaborate on the justification for invoking the relevant paragraphs. It did not fully comply with the requirements of the Code and the Guidelines. In any event, LCSD's elaboration on the concerns and reasons for not providing **information (1) to (3)** is relayed in **paragraphs 7 to 11**.

23. Separately, LCSD has provided the number of books involved under **information (4)**, and the book title while not being asked by the complainant, but it did not respond to how these books were disposed of after withdrawal. We believe that this is due to the fact that LCSD staff did not examine the questions carefully. In any event, LCSD has provided this Office with supplementary information (see **paragraph 14**).

### **Conclusion and Recommendation**

24. Based on the analysis in **paragraphs 15 to 23**, this Office considers the complaint against LCSD **unsubstantiated but with other inadequacies found**.



25. This Office recommends that LCSD strengthen staff training to ensure their comprehensive understanding of the provisions of the Code and the Guidelines.

**Office of The Ombudsman**  
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