

LCQ14: Access to government information

Following is a question by the Hon Charles Mok and a written reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (June 6):

Question:

Some members of the public have complained that they had made applications for access to government information under the Code on Access to Information (the Code) to the policy bureaux and government departments (B/Ds) covered by the Code, but then the B/Ds concerned rejected such applications without giving any reasons. They have pointed out that the criteria adopted by various B/Ds for vetting and approval of such applications are vague, thereby lowering the transparency of public administration and hindering members of the public from effectively monitoring the use of public funds. Besides, it has been reported recently that the Government, when commissioning consultancy studies, often incorporates a confidentiality clause in the contracts, and then claims on this ground that the relevant study reports are within the scope of exemptions under the Code, and hence rejects the access applications concerned. In this connection, will the Government inform this Council:

(1) of the details of the applications for access to information which were made by invoking the Code as received by various B/Ds in the 2017-2018 financial year, including the (i) names of B/Ds, (ii) number of applications received, (iii) number of pieces of information involved, (iv) number of applications under process, (v) number of applications the applicants of which were provided with all the requested information, (vi) number of applications the applicants of which were provided with part of the requested information, and (vii) average time for processing an application (set out in a table);

(2) of the number of applications for access to information which were rejected by various B/Ds in the 2017-2018 financial year, together with a breakdown by (i) category of information requested and (ii) reason for rejection; the number of times for which the applicants of such cases requested a review of the refusal decisions;

(3) as paragraph 2.2 of the Code stipulates that if the harm or prejudice which arises from disclosure of the information may outweigh the public interest, including both actual harm or prejudice and the risk or reasonable expectation of harm and prejudice (harm or prejudice outweighing the public interest), a department may refuse to disclose the information, and paragraph 2.2.3 of the Guidelines on Interpretation and Application of the Code states that a civil servant is required to act reasonably in reaching his/her decision, of the procedures for various B/Ds to conduct the "harm or prejudice" tests and the number of the tests conducted last year; whether a

mechanism is currently in place to review if (i) the decisions concerned and (ii) the justifications therefor are reasonable; if so, of the details; if not, the reasons for that;

(4) of the number of applications for access to information that were rejected by various B/Ds in the past five years on grounds of "harm or prejudice outweighing the public interest", together with a breakdown by name of B/D; the procedure (e.g. conducting the "harm or prejudice" tests, and assessing public interest) that various B/Ds went through in reaching the decisions to reject the applications?

(5) of the number of cases in which various B/Ds set out the aforesaid confidentiality clause in the contracts when commissioning consultants or other organisations to conduct studies in the past three years and the details, including the (i) names of B/Ds, (ii) names of the study projects, (iii) dates on which the studies were conducted, (iv) consultancy fees, and (v) reasons for keeping the study reports and the relevant documents confidential (set out in a table); and

(6) of the figures relating to the study reports which were classified by various B/Ds as information available for public access after they had commissioned consultants or other organisations to conduct the studies in each of the past three financial years (set out in the table below)?

Financial year	2015-2016	2016-2017	2017-2018
Number of consultancy studies			
Number of study reports available for public access			

Reply:

President,

The Government has always been committed to providing information requested by members of the public in accordance with the Code on Access to Information (the Code). Having consulted the policy bureaux, our consolidated reply to different parts of the Hon Charles Mok's question is as follows:

(1) and (2) The number and details of applications for access to information made by invoking the Code as received by various policy bureaux/departments (B/Ds) between January 2017 and December 2017 are set out at Annex 1. Of the 6 051 applications for access to information received during the above-mentioned period, 136 were refused. The B/Ds involved, together with the statistical data on reasons for refusal, are at Annex 2. There had been 10 requests by members of the public for reviews against these refusals. As for the number of pieces of information sought in the applications for access to information, and the category of information requested in the refused cases,

no statistics or records had been kept by the relevant B/Ds.

(3) and (4) Part 2 of the Code sets out the categories of information that a department can refuse to disclose, including information the disclosure of which may harm or prejudice certain kinds of work or matters (such as the conduct of external affairs, or relations with other governments or with international organisations). The Guidelines on Interpretation and Application (the Guidelines) of the Code gives a detailed interpretation in this respect. In deciding whether harm or prejudice may arise in disclosure of the information, a department must consider all relevant material and balance the public interest in disclosure against any harm or prejudice that could result in order to reach a reasonable decision. Where the harm which may arise from disclosure would be extremely serious, then it is not necessary to establish that the harm would be likely or certain to occur to take it into account. On the other hand, if the perceived risk is neither very likely nor serious, this point should be given less weight. In addition, in circumstances where there is no statutory restriction or legal obligation which prevents disclosure, and where there is a clear public interest in the disclosure of information sought, and this public interest outweighs the harm or prejudice that may result to the Government or to any other person, such information may be disclosed. We have not collected information from departments on the number of cases where departments refused disclosure of information on the consideration that the harm or prejudice that may thus be caused had outweighed public interest in disclosure. Any person who believes that a department has failed to comply with any provision of the Code may ask the department to review the situation. Any person who believes that a department has failed to properly apply any provision of the Code may also complain to The Ombudsman.

(5) The number and details of cases involving the setting of confidentiality clause in the contracts by the B/Ds when commissioning consultants or other organisations to conduct studies in the past three financial years which prevent the Government from disclosing the related reports are at Annex 3.

(6) The figures relating to the study reports which were classified by various B/Ds as information available for public access following commissioned studies by consultants or other organisations in each of the past three financial years are provided in the table below:

Financial year	2015-2016	2016-2017	2017-2018
Number of consultancy studies	114	138	131
Number of study reports available for public access	94	99	122