

LCQ20: Handling of data access requests

Following is a question by the Hon Shiu Ka-chun and a written reply by the Secretary for Home Affairs, Mr Caspar Tsui, in the Legislative Council today (May 27):

Question:

Several street sleepers in Tung Chau Street Park have sought my assistance, alleging that some police officers damaged their properties and assaulted them while taking law enforcement actions there in February this year. Since March, I have been assisting such persons in making data access requests, under section 18 of the Personal Data (Privacy) Ordinance, (Cap. 486) to the Leisure and Cultural Services Department (LCSD), and requesting copies of the video footages captured by the closed-circuit television installed by LCSD in the aforesaid park. After consulting the Office of the Privacy Commissioner for Personal Data, Hong Kong, the Department of Justice (DoJ) and the Hong Kong Police Force (HKPF), LCSD made an appointment with the aforesaid persons for a meeting on April 29 to watch the relevant video footages. However, on that day before the meeting, HKPF requested LCSD to postpone the above meeting on the grounds that legal advice had to be sought. LCSD explained that, under paragraph 1.15.4 of the Code on Access to Information (the Code), it had to consult the government departments that were related to the data (i.e. HKPF); and given that HKPF was seeking legal advice, LCSD was for the time being unable to handle the data access requests concerned. In this connection, will the Government inform this Council:

(1) whether it has assessed if the Code overrides Cap. 486; if it has assessed and the outcome is in the negative, whether LCSD may, on the grounds of having to act in accordance with the Code, suspend the handling of the aforesaid data access requests pursuant to the requirements under section 18 of Cap. 486;

(2) as LCSD has already consulted DoJ before making an appointment with the aforesaid persons for a meeting, of HKPF's justifications for requesting LCSD to postpone the meeting with the aforesaid persons on the grounds that legal advice had to be sought; and

(3) as it is stipulated in section 19 of Cap. 486 that a data user must, within 40 days after receiving a data access request, supply a copy of the data to the data subject, whether the Government has assessed if LCSD has contravened the provision; if it has assessed and the outcome is in the affirmative, of the follow-up actions?

Reply:

President,

Closed-circuit televisions (CCTVs) installed in Tung Chau Street Park by the Leisure and Cultural Services Department (LCSD) serve the purpose of enhancing management and maintaining order. My reply to the question raised by the Hon Shiu Ka-chun is as follows:

(1) and (2) In this case, LCSD has processed the request for a copy of the CCTV footage taken at Tung Chau Street Park in compliance with both the Personal Data (Privacy) Ordinance and the Code on Access to Information. According to Section 18 and data protection principle 6 of the Personal Data (Privacy) Ordinance, a data subject is entitled to the right of data access request. Upon receipt of the three street sleepers' request made via the Hon Shiu Ka-chun for access to a copy of the CCTV footage taken at Tung Chau Street Park in early March 2020, follow-up action was immediately taken by LCSD, including retaining the CCTV footage and consulting departments concerned such as the Office of the Privacy Commissioner for Personal Data, Hong Kong, the Department of Justice (DoJ) and the Hong Kong Police Force (the Police) in processing the request. As the CCTV footage is related to criminal investigation of the Police, the data user may refuse to comply with the data access request subject to the exemptions provided under Part 8 of the Personal Data (Privacy) Ordinance or other cases where Part 8 of the Personal Data (Privacy) Ordinance is applicable. Hence, LCSD is required to consult the Police on the exemptions or other requirements under Part 8 of the Personal Data (Privacy) Ordinance.

Paragraph 1.15.4 of the Code on Access to Information stipulates that if the requested record is also related to other department(s), the receiving department should, where necessary, consult all parties concerned before making a decision on whether or to what extent a particular request should be met. As the CCTV footage is related to criminal investigation, LCSD consulted the Police as required by the above-mentioned Code.

The Police may seek legal advice from DoJ on legal issues in the course of handling criminal cases. The time that DoJ takes to provide legal advice on each case would depend on a range of factors, including the nature and complexity of the case. Since the CCTV footage mentioned in the question is related to an ongoing criminal investigation of the Police, provision of the CCTV footage to the data subject at this stage may affect the Police's investigation. Hence, the Police are seeking advice from DoJ on the issue concerned.

(3) Upon receipt of the Data Access Request Form from the Hon Shiu Ka-chun on March 9, 2020 requesting access to a copy of the CCTV footage taken at Tung Chau Street Park, follow-up action was immediately taken by LCSD. These included retaining the footage and consulting departments concerned. LCSD issued a written reply to the Hon Shiu Ka-chun on April 14, 2020 (i.e. within 36 days after receiving the Data Access Request Form), indicating that arrangement could be made for him to watch the footage. A meeting with the Shiu Ka Chun Legislative Councillor's Office was originally arranged on April 29. However, as the department was notified by the Police that it needed time to consult DoJ, the meeting had to be deferred as a result.