

12 May 2010

General Circular No. 2/2010

Code on Access to Information

(Note : Distribution of this Circular is Scale C. It should be read by all Directors of Bureaux, Permanent Secretaries, Heads of Departments and Directorate Officers ~~in Bureaux and Departments~~, and all other officers who by the nature of their duties may be required to provide information to members of the public.)

Introduction

The Code on Access to Information (the Code) provides a formal administrative framework for the provision of information by the Government to members of the public with the objective of keeping the community well informed about the Government, the services it provides and the basis for policies and decisions that affect individuals and the community as a whole. The Code was introduced, initially on a pilot scheme basis, in March 1995 and was extended progressively to the whole of the Government in December 1996. All government departments* should comply with the provisions of the Code, which are elaborated in a set of Guidelines on Interpretation and Application of the Code (the Guidelines). This Circular highlights the salient features of the Code and special areas for attention to facilitate departments to implement the Code.

2. Attached to this Circular is **Annex A** to the Code which lists all the departments to which the Code applies.

* The term “department” includes any **policy bureau**, department, ~~bureau~~, force, service, unit, secretariat, or other agency of the Government.

Salient Features of the Code

3. The underlying principle of the Code is that information held by the Government will be made available, either routinely or on request, unless there are valid reasons related to public interests, commercial interests, third party or privacy to withhold the information. The aim of the Code is to **provide information as promptly and as helpfully as possible**. It should not be used, or perceived to be used, within or outside ~~the~~ Government, as a means to obstruct the existing practices and avenues of providing information routinely or informally.

4. The Code defines the scope of information which departments are to provide, either routinely or on request, and sets out procedures and timeframes by which such information is to be made available. It **authorises and requires departments to provide access to the information requested unless there are reasons for not so doing**. These reasons are set out in Part 2 of the Code and should normally be referred to if a request for access to information is refused.

5. Where a ~~civil servant~~**government officer** acts in good faith in the course of his/~~her~~ employment and, pursuant to the Code, releases or refuses to release information sought, any civil liability that may ensue will be borne by the Government.

6. All requests for information under the Code should be dealt with according to the timeframe as stipulated in the Code, i.e. information to be provided within **10 calendar days** from date of receipt of the request. If this is not possible, an interim reply should be provided in which case the timeframe will be extended to 21 days. Responses may be deferred beyond 21 days only in exceptional circumstances, which should be explained to the applicant. Any extension necessary should be kept to a minimum and should not normally exceed a further 30 days.

7. The Code provides for review of the original decision by the department dealing with a request for information. It is further underpinned by a complaint channel through The Ombudsman who is entirely independent of the Government. An applicant who considers that a department has failed to apply any provision of the Code properly may lodge a complaint with The Ombudsman.

8. The Code does not apply to information held by courts, tribunals or inquiries which are defined very broadly to include all judicial or quasi-judicial proceedings. The existing rules governing disclosure of information in the context of judicial proceedings are not affected. Equally the Code does not affect statutory prohibitions on or rights of access to information, or legal restrictions on access to information which may arise under common or international agreements.

Approach on Release of Information

9. The approach to release of information under the Code should be **positive**. Departments should work on the basis that information requested will be released unless there is valid reason to withhold disclosure under the provisions of Part 2 of the Code.

10. Part 2 of the Code defines the types of information the disclosure of which may be withheld. Departments should not interpret the provisions of Part 2 of the Code as directives to withhold the information requested. The fact that specific information falls within the areas listed in Part 2 does not necessarily imply that access to it should or will be refused. 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 from disclosure.

11. In general, other than requests for personal information or commercially sensitive information, the identity of the requestor would normally have no bearing on whether or not the information sought should be released. Similarly, the purpose of the request, or refusal to reveal the purpose on the part of the requestor, should not be a reason for withholding the information requested.

Procedures for Refusing to Disclose Information

12. When a request for information is to be refused or partially refused, the applicant concerned must be informed of –

- (a) the reasons for refusal, quoting all the relevant paragraph(s) in Part 2 of the Code on which the refusal is based, with appropriate elaboration to justify invoking the relevant paragraph(s) in Part 2 of the Code (where applicable);

- (b) the avenue of internal review if the applicant is not satisfied with the department's decision; and
- (c) the option of lodging a complaint with The Ombudsman.

13. Paragraph 12 above also applies to cases in which there is a good reason for departments to –

- (a) provide a summary of records instead of a copy of the particular record requested; or
- (b) refuse to confirm and/or deny the existence of information (in case giving the reasons for refusal would serve to confirm that the information did or did not exist, the point in paragraph 12(a) above does not have to be included in the reply to the applicant).

Level of Decision Making

14. Decision on whether a particular request for information should be met would be made by the subject officer responsible for the particular area of work covered by the request for information. In complex cases or where a refusal to disclose all or part of the information is contemplated, the decision might best be made at the directorate (D1 or D2) level. In deciding on the level of officer making decision on a request, account should also be taken on the requirements pertaining to the rank of the reviewing officer under the Internal Review Procedure (see paragraph 15 below).

Internal Review Procedure

15. Any request for review should be considered by a directorate officer at least one rank senior to the officer who made the original decision. In a formal response to a review request, the availability of The Ombudsman complaint channel should be made clear. The target response times for handling Code cases mentioned in paragraph 6 above should be adhered to in handling requests for review.

Non-Code Requests

16. Whereas requests made under the Code would be processed in accordance with the Code and related departmental administrative procedures,

non-Code requests (i.e. requests which do not make specific reference to the Code or are not made in the specified application form under the Code) should be handled in the usual manner as they have been dealt with. However, non-Code requests should be considered on the same basis as that applicable to requests under the Code, i.e. in deciding the release or otherwise of the requested information, consideration should be made in accordance with the provisions of the Code. In line with the spirit of the Code, departments should, as far as possible, adhere to the same target response times specified in the Code.

17. In case a non-Code request should be refused, departments should, as far as possible, give reasons for refusal in accordance with the provisions in Part 2 of the Code. Where applicable, departments should add a footnote to the reasons given to the effect that the reasons are in line with those in the Code, quoting the relevant paragraph number of the Code as well. Departments should also advise the requestor of the review and complaint channels.

Access to Information Officer

18. Each department should designate its own Access to Information Officer (AI Officer) who will be responsible for promoting and overseeing the application of the Code, co-ordinating internal efforts in meeting the requirements of the Code, ensuring that the various procedures are complied with and organising in-house training on the Code, etc. The responsibilities of an AI Officer are set out in **Annex B**. Each department should also provide the AI Officer with appropriate guidelines, including the department's internal circular on the Code and a set of detailed guidelines for implementation of the Code to facilitate the AI Officer in discharging his/her duties.

The Guidelines on Interpretation and Application

19. The Guidelines contain useful information on the interpretation and application of the Code to assist departments in implementing the Code. They, however, cannot cover every eventuality. Officers handling requests made under the Code should exercise their judgement in individual cases in accordance with the principles of the Code and the guidance given in the Guidelines.

Internet Publication

20. The Code and the Guidelines have been published on the Internet as a component of the GovHK, and can be accessed at <http://www.access.gov.hk>. Departments should include a brief introduction on the Code in its website and build a hyperlink to the above-mentioned website (<http://www.access.gov.hk>).

Circulation

21. Departments are requested to re-circulate this eCircular on an annual basis to all officers involved in implementing the Code.

Advice on the Code

22. Any request for legal advice (on a specific case or of a general nature) should be addressed to :

Deputy Law Officer (Civil Law) (Advisory)
 Department of Justice
 (Telephone : ~~2867-20983918~~ 4337 Fax : ~~2869-06703918~~ 4521)

23. Any request for advice on the interpretation of the Code and on procedural or general matters should be referred to the AI Officer of the department concerned who, if in doubt, should contact Senior Executive Officer (Constitutional and Mainland Affairs)⁴ (Telephone : 2810 2562; Lotus Notes address : &CMAB/SEO[CMA]⁴; Internet email address : seocma4@cmab.gov.hk) of the Constitutional and Mainland Affairs Bureau.

24. General Circular No. 5/2009 dated 4 May 2009 is hereby cancelled.

(Miss Helen TANG)
 for Director of Administration

c.c. Judiciary Administrator

DEPARTMENTS TO WHICH THE CODE APPLIES

Agriculture, Fisheries and Conservation Department	Hong Kong Police Force
All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility	Housing Department
Architectural Services Department	Immigration Department
Audit Commission	Independent Commission Against Corruption
Auxiliary Medical Service (department)	Information Services Department
Buildings Department	Inland Revenue Department
Census and Statistics Department	Innovation and Technology Bureau
Civil Aid Service (department)	Innovation and Technology Commission
Civil Aviation Department	Intellectual Property Department
Civil Engineering and Development Department	Invest Hong Kong
Civil Service Bureau	Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service
Commerce and Economic Development Bureau	Labour Department
Companies Registry	Labour and Welfare Bureau
Constitutional and Mainland Affairs Bureau	Land Registry
Correctional Services Department	Lands Department
Customs and Excise Department	Legal Aid Department
Department of Health	Leisure and Cultural Services Department
Department of Justice	Marine Department
Development Bureau	Office of the Commissioner of Insurance
Drainage Services Department	Office of the Communications Authority
Education Bureau	Offices of the Chief Secretary for Administration and the Financial Secretary
Electrical and Mechanical Services Department	Official Receiver's Office
Environment Bureau	Planning Department
Environmental Protection Department	Post Office
Financial Services and the Treasury Bureau	Radio Television Hong Kong
Fire Services Department	Rating and Valuation Department
Food and Environmental Hygiene Department	Registration and Electoral Office
Food and Health Bureau	Secretariat, Commissioner on Interception of Communications and Surveillance
General Office of the Chief Executive's Office	Secretariat of the Public Service Commission
Government Flying Service	Security Bureau
Government Laboratory	Social Welfare Department
Government Logistics Department	Student Financial Assistance Agency
Government Property Agency	Trade and Industry Department
Highways Department	Transport and Housing Bureau
Home Affairs Bureau	Transport Department
Home Affairs Department	Treasury
Hong Kong Auxiliary Police Force	University Grants Committee, Secretariat
Hong Kong Monetary Authority	Water Supplies Department
Hong Kong Observatory	Working Family and Student Financial Assistance Agency

Responsibilities of Access to Information Officer

An Access to Information Officer of a department is responsible for promoting and co-ordinating efforts within the department concerned in meeting the requirements of the Code. Specifically, he/~~she~~ is responsible for :

- (~~1~~a) ensuring that an administrative system, including an internal circular on the Code and a set of detailed guidelines for the implementation of the Code, is in place and up-to-date;
- (~~2~~b) ensuring that all requests for information under the Code are handled promptly and speedily in accordance with the requirements of the Code;
- (~~3~~c) ensuring that the administrative procedures for handling requests as set out in the Code are being observed;
- (~~4~~d) ensuring that all requests are met within the response time limits, as set out in the Code, and bringing to the attention of the senior management those cases where such targets cannot be met;
- (~~5~~e) where appropriate, making recommendations for a decision by the relevant division/unit head on the release/refusal of release of information to which the provisions in Part 2 of the Code may apply;
- (~~6~~f) ensuring that all staff concerned are aware of their roles and responsibilities in the adoption of the Code;
- (~~7~~g) assisting the reviewing officer in handling requests for review;
- (~~8~~h) overseeing the maintenance/compilation of statistics relating to requests for information under the Code; and
- (~~9~~i) co-ordinating staff training on all aspects of the Code.