

Our Ref.: (25) in PCPD/CR(A)7/155/5

15 October 2021

CONFIDENTIAL

(By Email: 19226004@life.hkbu.edu.hk)

Dear Zou Xiang Wei,

We refer to your email dated 2 October 2021 addressed to the Privacy Commissioner for Personal Data requesting for information relating to the “Smart Prison” under the Code on Access to Information.

2. Our response in respect of the information requested by you is set out below:

Information requested	Our response
“Q1. Have the Correctional Service Department (CSD) consulted the privacy commission about the Smart Prison Programme regarding the privacy rights of the PICs (Person in Custody)?”	The Correctional Services Department has sought our comments on certain initiatives relating to the Smart Prison.
“Q2. Based on the above questions, In what ways is the CSD treated differently in the Personal Data (Privacy) Ordinance? Does the department enjoy any privilege when handling the personal data of PICs? If yes, how about installing CCTV in the toilets watching the prisoners while they are using the toilet?”	The Office of the Privacy Commissioner for Personal Data is an independent statutory body set up to monitor, supervise, promote and enforce compliance with the provisions of the Personal Data (Privacy) Ordinance (Cap.486) (PDPO). The PDPO including the six Data Protection Principles contained in Schedule 1 of the PDPO and the exemptions contained in Part 8 of the PDPO, is applicable to all data users

	including the Correctional Services Department.
<i>“Q3. Do your department receive any complaints about Smart prison? Can you give us some example cases, and how you reflect the complaints to CSD?”</i>	No. We have not received any complaints relating to the “Smart Prison”.

3. We would also like to draw your attention to paragraph 2.10(b)¹ of the Code on Access to Information which states that a department may refuse to disclose information the disclosure of which would inhibit the frankness and candour of discussion within the Government, and advice given to the Government.

4. Should you have any queries, please contact the undersigned at 3423 6609.

Yours sincerely,

(Natalie POON)

Access to Information Officer
for Privacy Commissioner for Personal Data, Hong Kong

¹ Please refer to the annex for details.



Part 2

INTRODUCTION

PART 1

PART 2

Information which may be refused

Defence and security

External affairs

Nationality,
immigration and
consular matters

Annex A

Annex B

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Download The Code

Information which may be refused

2.1 A department may refuse to disclose information, or may refuse to confirm or deny the existence of information, in the categories and for the reasons set out below, which will normally be referred to if a request is refused.

More on Interpretation and Application

2.2 References in this Part to "harm" and "prejudice" include both actual harm and prejudice and the risk or reasonable expectation of harm and prejudice. In such cases, the department will consider whether the public interest in disclosure of the information outweighs any harm or prejudice that could result.

More on Interpretation and Application

Defence and security

- 2.3
- a. Information the disclosure of which would harm or prejudice Hong Kong's defence.
 - b. Information the disclosure of which would harm or prejudice Hong Kong's security.

More on Interpretation and Application

External affairs

- d. Information which could only be made available by unreasonable diversion of a department's resources.

More on Interpretation and Application

Internal discussion and advice

- 2.10 a. Papers prepared for, and records of meetings and deliberations of the Executive Council.
- b. Information the disclosure of which would inhibit the frankness and candour of discussion within the Government, and advice given to the Government. Such information may include -
- i. records of discussion at any internal government meeting, or at any meeting of a government advisory body;
 - ii. opinions, advice, recommendations, consultations and deliberations by government officials or advisers to the Government.

More on Interpretation and Application

Public employment and public appointments

- 2.11 Information which would harm or prejudice the management of the public service.

More on Interpretation and Application

Improper gain or advantage

- 2.12 Information the disclosure of which could lead to improper gain or advantage.

More on Interpretation and Application

Research, statistics and analysis

- 2.13 a. Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication or commercial value.

Internal discussion and advice

2.10.1 It is a well established convention, both in Hong Kong and elsewhere, that internal government discussion leading to policy decision must be afforded a degree of protection if the frankness and candour of that discussion is not to be inhibited by it being subjected to excessive public scrutiny. The same considerations apply to opinions and advice tendered to the Government by its advisory bodies and others such as consultants.

(a) Papers prepared for, and records of meetings and deliberations of the Executive Council.

2.10.2 This provision is based on the need for the proceedings of the Executive Council to be conducted in confidence, rather than on the sensitivity of any particular issue considered by the Council. It covers all ExCo related material, including drafts of papers. However, information is not protected simply because it happens to have been included in or attached to a paper considered by ExCo : much factual or statistical information may be included in ExCo submissions by way of background information; whether or not such information should be disclosed should be considered against other provisions under which certain information may properly be withheld from disclosure.

(b) Information the disclosure of which would inhibit the frankness and candour of discussion within the Government, and advice given to the Government.

2.10.3 It is important that civil servants involved in the decision-making process be able to express views and tender advice without being concerned that these views and advice will be subject to public debate and criticism. The same considerations apply to discussion, opinions, advice, etc., tendered by members of the Government's advisory bodies, and to opinions, advice, etc. tendered by individuals, whether paid (e.g. consultants) or otherwise, and groups having particular expertise which the Government may consult in considering various issues.

2.10.4 This provision does not, however, authorise the withholding of all such information - only to the extent that disclosure might inhibit frankness and candour. Thus, for example, information on the views or advice of an advisory body, consultant or other individual or group may be divulged if there is no such risk. In this connection, it would be prudent and courteous to seek the views of individual advisory bodies, etc. on the extent to which they would wish their advice, etc., to be regarded as confidential.

2.10.5 In so far as advice, opinions, etc., of other individuals are concerned, departments should also have regard to paragraph 2.14 of the Code which provides protection for information given in confidence by a third party.