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By Email

27 July 2017

(Total No. of Page(s): 2+1)

Mr. Guy Freeman

Email Address: Guy Freeman <foi+request-157-eb88e0fe@accessinfo.hk>

Dear Mr. Freeman,

**Access to Information (Application No. AIO/6/5/107)
Internal Review of Freedom of Information Request –
Executive Review Panel Report on Arson Incident**

I refer to your email dated 7 July 2017 requesting a review of our previous decision on refusal to disclose MTR Corporation Limited (MTRCL)'s Executive Review Panel Report for Arson Incident occurred on 10 February 2017 (the Report).

I have conducted a review and would like to inform you of my decision of maintaining this Department's previous view that your request for disclosure of the Report cannot be acceded to for the reason as stated in paragraph 2.14(a) of the Code on Access to Information (the Code).

The Report was provided by MTRCL to this Department and MTRCL does not consent to the disclosure. In accordance with paragraph 2.14.10 of Guidelines on Interpretation and Application for the Code (copy of relevant page attached), there is no obligation to release information if such release would render the Government liable to an action for breach of confidence unless there is an overriding public interest in disclosure. Based on legal advice, it is not considered that there is a compelling public interest in disclosure which outweighs the harm and prejudice that would result, in particular, since there is already an Executive Summary of the Report published for the public. The

Executive Summary has covered the cause of the incident and recommendations on mitigation measures for similar events.

Thank you for your enquiry on the subject. Please note that, according to paragraph 1.26 of the Code, you may complain to The Ombudsman if you believe that this Department has failed to properly apply any provision of the Code.

Yours faithfully,



(Harry H. C. LAI)
for Director of Electrical and Mechanical Services

^{cc}
cfc/lcw/mkl/

Government, as opposed to where it is volunteered. It is obviously preferable that the basis upon which the information is held should be explicit at the time of supply or preparation, and forms, questionnaires, etc. used for the collection of information should therefore make this clear.

2.14.8 The provision *will not* apply where the information is already in the public domain, has become widely known, or is available upon inspection of a register or another document which is open for public inspection.

2.14.9 This provision *will* apply where the release of the information sought would be likely to prejudice the future supply of such information and this would have a material effect on the conduct of the department's business.

2.14.10 There is no obligation to release information if such release would render the Government liable to an action for breach of confidence unless there is an overriding public interest in disclosure. Such cases will not be common and generally would involve circumstances such as where the information would reveal a risk to public health, public safety or to the environment. However, the public interest in disclosure must be compelling and clearly override the interest in preserving confidentiality. It would be unusual for the public interest in disclosure to be such that it would outweigh the harm of exposing the Government to liability to pay damages.

2.14.11 In view of the legal constraints that apply to the disclosure of third party information without the consent of the supplier, departments should have regard to any recent legal advice they have received. If in doubt specific advice should be sought.

(b) Information provided in confidence by a third party if disclosure to the subject of the information would harm his or any other individual's physical or mental health, or should only be made to him by an appropriate third party.

2.14.12 Government may frequently have information relating to a person's medical condition, whether the person is a civil servant, an applicant for employment, or in other circumstances. This information should be regarded as having been provided to the Government in confidence and may not be disclosed if disclosure would likely cause serious harm to the physical or mental health of the subject or any other individual. This is in line with section 59(1)(a) of the Personal Data (Privacy) Ordinance.

2.14.13 The provision will also apply to information provided by other professionals such as para-medical workers or social workers if disclosure to the subject would be detrimental to his or any other individual's health.