

**Code on Access to Information (“the Code”)
Precedent Cases**

Case 1 (paragraph 1.14 of the Code)

A member of the public requested to obtain statistics about the provision of temporary fresh water for flushing in a particular district.

The requested records/statistics are not readily available. Substantial resources will be required to create the records (including the extra charges required by the contractor to extract the requested records/statistics from the computer system and the in-house staff cost to handle the work). The department therefore did not entertain the request. The applicant lodged a complaint with The Ombudsman.

The Ombudsman commented that paragraph 1.14 of the Code does not oblige departments to acquire information not in their possession. In addition, substantial resources had to be diverted from other more urgent work for the provision of the requested records/statistics. The Ombudsman considered that the department had acted according to the Code and no maladministration was found.

Case 2 (paragraphs 1.16 to 1.18 and 2.10 of the Code)

A member of the public requested Department X to provide copies of two documents given to Department X by Department Y relating to the applicant's application for rates exemption of his small house. Department X advised the applicant to approach Department Y direct and sent him an application form for obtaining the information under the Code.

The applicant then sent the application form to Department Y. Department Y refused the request after nearly two months on the ground that disclosure would inhibit the frankness and candour of discussion within Government (paragraph 2.10(b) of the Code). The applicant lodged a complaint with The Ombudsman.

The Ombudsman commented that Department Y had refused the request with a valid reason compatible with Part 2 of the Code. However the department had taken unduly long time to process the request. Moreover, Department X should have coordinated a reply to the applicant.

Case 3 (paragraph 2.6 of the Code)

A member of the public requested to obtain a copy of the examination report of his vehicle which was involved in a traffic accident.

The concerned traffic accident case had entered into judicial process. The department therefore refused the request on the ground of paragraph 2.6(a) of the Code, i.e. information the disclosure of which would harm or prejudice the administration of justice, including the conduct of any trial and the enforcement or administration of the law.

The applicant lodged a complaint with The Ombudsman.

The Ombudsman accepted the department's explanation to withhold the examination report.

Case 4 (paragraph 2.10 of the Code)

A member of the public requested to obtain minutes of meeting of an advisory committee comprising unofficial members (“Committee”).

The department was of the view that disclosure of the minutes of meeting would inhibit the frankness and candour of discussion in the Committee meetings. The request was therefore refused on the ground of paragraph 2.10(b) (Internal discussion and advice) of the Code. The department had also consulted Committee members who indicated their unwillingness to disclose the minutes relating to their discussion.

The applicant lodged a complaint with The Ombudsman.

The Ombudsman accepted the department’s explanation which was considered reasonable. There was no breaching of the Code by the department concerned.

Case 5 (paragraph 2.14 of the Code)

The applicant requested to obtain the minutes of meeting of a statutory body (a third party). At the relevant meeting, the statutory body decided to impose a condition for approving planning projects. The department refused the request and advised the applicant that according to the statutory body concerned, the requested information was classified confidential and hence could not be disclosed. The applicant lodged a complaint with The Ombudsman.

The Ombudsman commented that in accordance with the spirit of paragraphs 1.20.6 and 1.23.6 of the Guidelines on the Code, the department should have ascertained whether the statutory body still wanted to maintain confidentiality of the minutes of meeting held some years ago. Furthermore, the applicant's request was related to its representations against a development project, a subject of considerable controversy and community concern. While the public interest involved might not be substantial enough to warrant automatic release of the minutes, it was certainly not negligible. In this light, the case for maintaining confidentiality of the minutes was not so "clear and overwhelming" that the request could be refused without consulting the statutory body.

Case 6 (paragraph 2.15 of the Code)

The Chairman-elect of a Rural Committee requested the department to provide copies of the financial statements previously submitted by the Rural Committee to the department.

The department agreed to provide the past financial statements but advised that since they contained the names and post titles of the then Chairman Mr A and the then Secretary Mr B, and that that was personal data of Mr A and Mr B, it would have to delete such data before providing the financial statements to the Rural Committee. The Chairman-elect opined that as Mr A and Mr B were representing the Rural Committee when they submitted the financial statements to the department, the information should not be deleted. He was dissatisfied with the department's deletion of the data and lodged a complaint with The Ombudsman.

The Ombudsman opined that:

- a. While the names and post titles of Mr A and Mr B were personal data, the financial statements in the possession of the department came from the Rural Committee. As such, if the department was to provide copies of the financial statements to the Rural Committee, there would be no issue of revealing personal data (including the names and post titles of Mr A and Mr B) contained in the financial statements.
- b. As Mr A and Mr B were former Chairman and Secretary of the Rural Committee, which were public offices, their names and post titles were in effect in the public domain.
- c. The purpose of the Rural Committee's annual submission of financial statements to the department with names and titles of the Chairman and Secretary was to ensure the Rural Committee's accountability to the department regarding its use of public funds. As the Chairman-elect, the applicant would be able to better understand the financial situation of the Rural Committee in the past years by obtaining complete copies of past financial statements from the department, which could be considered relevant to the exercise of his duties. In other words, the Chairman-elect's request for financial statements with the names and post titles of the then office-bearers in effect met the requirements as laid down in Data Protection Principle 3 in the Personal Data (Privacy) Ordinance and paragraph 2.15(a) of the Code.

In view of the above reasons, The Ombudsman was of the view that the department should provide complete copies of the financial statements to the Rural Committee. The full record was subsequently provided to the Rural Committee.

Case 7 (paragraph 2.15 of the Code)

A member of the public made a complaint against the manner of a number of government officers that handled a dispute case involving the applicant. The complaint was resolved and the applicant subsequently requested the department to provide the government officers' names or their staff numbers.

The department refused the request on the ground of paragraph 2.15 of the Code as it was thought that consent was required from the government officers concerned. The applicant lodged a complaint with The Ombudsman.

The Ombudsman commented that according to paragraph 2.15(a) of the Code, the department should disclose the government officers' names or staff numbers to the applicant because such disclosure is consistent with the purpose for which the information was collected. The requested information was subsequently made available to the applicant.

Case 8 (Internal documents)

A member of the public requested to obtain records on visits to his home during the period from 2008 to 2011.

The request was refused on the grounds that the requested information was internal computer records of the department and that the information involved the personal data of other persons. The applicant lodged a complaint with The Ombudsman.

The Ombudsman commented that the department had not handled the applicant's request for information in accordance with the Code, because:

- (1) that the requested information was internal computer records of the department is not one of the reasons under Part 2 of the Code; and
- (2) if the records on home visits involved the personal data of other persons, the department should consider other means such as to obliterate the personal data of the other persons and release the records to the applicant.

The information was subsequently provided to the applicant with the personal data of the other persons obliterated.

Case 9 (Purpose of the request)

A member of the public requested to obtain documents kept by the department that could prove that he and his family members were the registered inhabitants of a squatter hut so as to recognise his right to occupy the land.

The department refused the request as the records are for planning purposes. Neither the squatter registration number nor the registration of the inhabitants conferred on any person or recognised his/her right to occupy the land. The applicant then lodged a complaint with The Ombudsman because the department refused to provide the requested information.

The Ombudsman commented that it is true that the requested records could not prove the applicant's right of occupancy of the squatter hut. However, under the Code, it was not necessary or appropriate for the department to consider the purpose of the request. It was, therefore, improper for the department to refuse the request on the ground that the information sought would not serve his purpose. The Ombudsman advised that the department should have simply confirmed to the applicant that his name was on the list of registered inhabitants of the squatter hut, with a rider that such information could not prove his right to occupy the land.

Case 10 (paragraph 2.10 of the Code)

A member of the public requested the department to disclose its comments on a planning application given to a statutory body. The department provided the applicant with the main points of the comments. Afterwards, upon the applicant's further request for the exact wordings of the comments given by the department to the statutory body, the department gave him extracts of the comments given.

The applicant's request for the "exact wordings" of the information was refused on the ground of paragraph 2.10(b) of the Code concerning internal discussion and advice. The department considered that disclosure of the exact wordings of all the comments would inhibit the frankness and candour of discussion within the Government in processing the planning application in this case and in the future. Nevertheless, according to paragraph 1.13 of the Code (i.e., the information may be given by providing a summary of the relevant record or part thereof), the department provided the extracts of its comments instead. The applicant lodged a complaint with The Ombudsman because he was dissatisfied that the department did not provide him with the exact wordings of its comments given to the statutory body.

The Ombudsman noted that paragraph 2.10(b) of the Code had been quoted by the department which considered the disclosure of the relevant information would inhibit the frankness and candour of discussion within the Government because during the scrutiny process, the department's comments on a planning application might have changed from time to time in the light of new information furnished by the applicant or public opinions. In this connection, if the department was requested to disclose the comments it had made at different stages of the scrutiny process, it would inhibit the frankness and candour of discussion within the Government in processing similar planning application in future. Nevertheless, the department had provided a summary of its comments in accordance with paragraph 1.13 of the Code.

The Ombudsman accepted the department's explanation. In fact, in considering the planning application, the statutory body had not requested the department to provide the full text of its comments for reference. The Ombudsman considered that the department's concern of disclosing the comments at different stages of the scrutiny process would inhibit the

frankness and candour discussion within the Government in processing similar applications in future was understandable.

Case 11 (paragraph 2.15 of the Code)

A member of the public requested to obtain copies of schedule(s) of financial statement and other related documents relating to the financial assistance received by his deceased brother which was administered by the government official(s) for a specified period, as well as information on the bank account including the account number used by the government official(s) to administer the financial assistance received by his deceased brother.

The applicant lodged a complaint with The Ombudsman alleging that despite the provision of his brother's death certificate and Confirmation Notice issued by another department under the Probate and Administration Ordinance (Chapter 10 of the Laws of Hong Kong) to the department, his request was refused on grounds of privacy. The applicant held that his request had been unreasonably refused by the department.

The Ombudsman considered that the main points at issue in this case were:

- (1) whether the applicant had provided the department with documents to substantiate that he was the "appropriate person" of his deceased brother mentioned in paragraph 2.15 of the Code;
- (2) whether the department had refused to provide the applicant with the requested information.

On issue (1), although the applicant had provided a copy of the Confirmation Notice to the department when he made the request for information for the second time, his relationship with his deceased brother was not explicitly indicated in the Confirmation Notice. Even The Ombudsman did not know that the applicant's relationship with his deceased brother was already confirmed by the department which issued the Confirmation Notice on the basis of the two affidavits submitted by the applicant until it made an enquiry with that issuing department. In other words, though the applicant was an "appropriate person" of his deceased brother, who could have access to his deceased brother's information, the Confirmation Notice alone was not sufficient as proof of the applicant's relationship with his deceased brother.

On issue (2), the staff member of the department had never turned down the applicant's request for information at the two meetings with the applicant.

He only pointed out to the applicant that staff member A was the officer who administered the account of his deceased brother, and advised the applicant to put up a written application with regard to his not-so-simple request for information. His handling of the applicant's request was not unreasonable. On the basis of the above analysis, The Ombudsman considered the complaint unsubstantiated.

Case 12 (Provision of summary of document)

A member of the public requested to obtain policy guidelines on Short Term Tenancies of government land.

The department provided information on the relevant guidelines in the form of a summary and did not consider that it had rejected the applicant's request. The applicant lodged a complaint with The Ombudsman as he considered that the department had refused to provide him with the relevant departmental guidelines.

The Ombudsman commented that it was improper for the department to reject the applicant's request for the full policy guidelines without giving any one of the reasons specified in Part 2 of the Code.

Case 13 (Unsatisfactory with the departments' responses)

A member of the public requested to obtain details on the review of tobacco control strategy especially in relation to the expansion of no smoking areas.

After receiving the departments' replies which the applicant considered to be evasive responses to his questions on the review of tobacco control strategy, he lodged a complaint with The Ombudsman for the departments' violation of the Code.

After examining in detail the correspondences between the applicant and the two departments, The Ombudsman was of the view that the departments concerned had responded to the applicant's questions and therefore had not violated the Code; it was only that the applicant had different views in respect of the departments' replies.

To sum up, The Ombudsman considered that there was no evidence of maladministration on the part of the departments concerned in handling the applicant's enquiry. The Ombudsman reiterated that the applicant's disagreement with the replies or views of the departments did not mean that the departments had not made any replies.

Case 14 (paragraph 2.14 of the Code)

A member of the public requested to obtain a copy of an investigation report provided to the department by a management company.

Upon receiving the request, the department approached the management company, which refused to give consent for the department to disclose the investigation report to the applicant.

The request was refused on the ground of paragraph 2.14 of the Code concerning third party information. The applicant subsequently lodged a complaint with The Ombudsman because his request for provision of the investigation report was not acceded to.

The Ombudsman commented that as the information provided by the management company to the department was third party information, as stated in paragraph 2.14 of the Code, the department could not disclose the same without the consent of the third party.

Case 15 (paragraph 1.14 of the Code)

A member of the public requested an officer of the department to sign on a document tendered by the applicant as acknowledgement of receipt. The applicant claimed that the document was related to a case reported by her to the department some time ago. The officer refused to sign on the document and suggested to make a written record of the receipt instead. The applicant queried whether the department had any guideline to the effect that “the department will not sign or stamp on letters provided by members of the public”. The officer explained that there was no such guideline.

The applicant later complained to The Ombudsman that the department had refused her request and thus had failed to comply with the Code.

The Ombudsman commented that the department did not have an order or guideline on whether the department would sign or stamp on letters provided by members of the public, and thus the department did not breach the Code.

Case 16 (paragraph 2.9 of the Code)

A member of the public requested to obtain the department's internal guidelines on inspection of identity proof of candidates attending recruitment examinations.

The request was partially refused. There was a set of "Briefing Notes for Working Staff" in which the operation and execution of the recruitment examinations were laid down in detail. The Briefing Notes also provided guidelines to the Inspection Team in checking the identity proof of candidates. In accordance with paragraph 2.9(c) of the Code, the disclosure of the "Briefing Notes for Working Staff" as a whole would harm or prejudice the proper and efficient conduct of the operations of the department. Therefore, with reference to paragraph 1.13 of the Code, a transcript of the relevant part of the "Briefing Notes for Working Staff" covering the guidelines to the Inspection Team was provided to the applicant. The applicant subsequently lodged a complaint with The Ombudsman against the department's non-compliance of the Code.

Following inquiries, The Ombudsman was satisfied with the department's explanation that it was justified to meet the information request partially under paragraph 2.9(c) of the Code. The Ombudsman however advised that the department should inform the applicant of the reason for partial refusal and the channels of review/appeal in accordance with paragraph 2.1.2 of the Code's Guidelines.

Case 17 (paragraph 2.15 of the Code)

A member of the public requested to obtain details of a guesthouse licence application by a third party.

The request, made verbally, was refused on the ground of paragraph 2.15 of the Code concerning privacy of the individual.

The applicant lodged a complaint with The Ombudsman against the department's refusal to disclose the details of the third party's licence application.

The Ombudsman commented that the information requested involved the privacy of the licence applicant. The department's refusal to disclose the information was in accordance with paragraph 2.15 of the Code concerning the privacy of the individual.

Case 18 (paragraph 2.15 of the Code)

A member of the public requested to obtain the names of three officers whose performance was the subject of his complaint.

The department refused the request for the reason of privacy of the individual. The applicant therefore lodged a complaint with The Ombudsman against the department for not providing him with the requested information in accordance with the Code.

The Ombudsman commented that the department had failed to handle the request for information properly. In its reply to the applicant, the department cited “privacy of the individuals” as reason for refusing the applicant’s request but failed to quote the relevant paragraph number in the Code, and did not advise the applicant of the review and complaint channels. More importantly, the reason cited was not applicable in the applicant’s case, because it was the policy of the Government that all staff in contact with the public in the performance of their duties should identify themselves by name and the bureaux/departments concerned. The three officers performing duties at the material time should identify themselves upon request. The department had no reason to withhold their names.

The Ombudsman also considered that the department could have processed the applicant’s request earlier. While the department had processed the request within 51 calendar days, The Ombudsman held the view that departments should process requests for information as soon as possible. The 51 calendar days specified in paragraph 1.18 of the Code was the maximum time allowed for cases in exceptional circumstances.

Case 19 (paragraphs 1.16 to 1.18 of the Code)

A law firm, acting on behalf of a member of the public (“the applicant”) who was injured in an accident in a government venue, requested the department to provide the investigation report and/or any information available including but not limited to the CCTV tape(s) in respect of the applicant’s accident to claim damages for personal injuries.

The department sought legal advice a number of times on the provision of the requested information. The department issued three interim replies to the law firm during the time. A substantive reply containing the accident report and CCTV tapes in respect of the incident was provided to the law firm some months later.

The applicant lodged a complaint with The Ombudsman. It was alleged that the department’s delay in providing the requested information might hinder the applicant’s claim for damages.

The Ombudsman considered that as liability for compensation was involved, it was understandable that the department concerned had taken a longer time to seek legal advice a number of times.

However, according to paragraphs 1.16 to 1.18 of the Code, if the department concerned was unable to give a response to the law firm acting on behalf of the applicant within the target response time, an explanation should be given. Failing to do so, the department concerned had failed to comply with the provisions of the Code.

Case 20 (paragraph 2.14 of the Code)

A member of the public requested via a trade union association to obtain asbestos investigation reports including laboratory test results (“the information”) for certain transformer sub-stations that were submitted by a utility company to the department to comply with asbestos control requirements under the Air Pollution Control Ordinance (“the Ordinance”).

The information was owned by the utility company and submitted to the department on a basis of confidentiality for the purpose of complying with regulatory requirements under the Ordinance. The said reports also carried a statement on the cover saying they must not be released to another party without prior consent of the utility company.

The department refused to release the said information on the ground of paragraph 2.14(a) of the Code that they are provided by a third party under an explicit understanding that they would not be further disclosed. The department then advised the applicant to directly approach the utility company for the information. The applicant lodged a complaint with The Ombudsman.

The Ombudsman commented that the department concerned should first ask the utility company whether it agreed to disclose the requested information to the applicant. Even if the company eventually refused to disclose, consideration should also be given by the department concerned to whether such information should still be provided to the applicant on grounds of public interest. The department had not fully complied with the provisions of the Code.

In response to the comments of The Ombudsman, the department concerned sought legal advice as to whether there was public interest in this case justifying the disclosure. After duly considered the legal advice, it was concluded that the public interest in disclosure in this particular case did not override the harm and prejudice that would result from the breach of confidentiality. The department finally upheld and advised The Ombudsman its decision of not releasing the said information.

Case 21 (All available information have been provided to the applicant)

A member of the public requested to obtain the relevant planning documents, consultation documents and government gazettes prepared in 1983 on the policy for hillside burials in relation to burial grounds traditionally shared by the applicant's village and his neighbouring village.

The department furnished all relevant records surviving to the applicant, and elaborated on the history of the demarcation of the burial grounds to the applicant.

The applicant lodged a complaint with The Ombudsman because he believed that the department had withheld records which might explain the rationale of the allocation of burial grounds in 1983.

The Ombudsman commented that the department had provided the applicant with all existing and relevant government documents, meeting minutes and maps. The Ombudsman concluded that the department had complied with the Code.

Case 22 (paragraphs 2.15 and 2.18 of the Code)

A member of the public requested to conduct a land search by the name of her deceased father who did not possess a Hong Kong Identity Card (“HKIC”). With a view to obtaining search results of properties registered in the name of the applicant’s deceased father, a solicitors’ firm acting for the applicant submitted two search applications with the department’s Owner’s Properties Information Check (“OPIC”) service in December 2011 and July 2014 respectively.

Under the OPIC service, an applicant acting in proper capacity may search for information on properties registered in the name of a deceased person. The production of HKIC or other identification document together with the death certificate of the deceased person and documentary proof of the applicant’s capacity in making the application are some of the necessary conditions for provision of the OPIC service.

The two applications submitted in 2011 and 2014 were rejected respectively for failure to produce any identification document of the deceased.

Paragraphs 2.1, 2.15 and 2.18 of the Code provide that a department may refuse to disclose information, or refuse to confirm or deny the existence of the requested information if it would infringe the privacy of a person or constitute a contravention of any law.

The applicant lodged a complaint with The Ombudsman against the department’s refusal of her application for land search results by the name of her deceased father.

The Ombudsman commented that the information provided by the solicitors was not sufficiently specific to positively identify the properties, if any, owned by the applicant’s deceased father. If the department conducts an OPIC search by the Chinese name or English name of the deceased only, the search results might include the information of some other person(s) having the same name. In the absence of any identification document of the deceased, there was no effective way to eliminate the irrelevant results and the likelihood of infringing on the privacy of some other person(s) whose name(s) was/were identical to that of the deceased, which would result in contravention of section 20(1)(b) of the Personal Data (Privacy) Ordinance

(“PDPO”). The department therefore could not accede to the solicitors’ search request.

It was evident that the statutory purpose of allowing public searches of the department’s records was to provide information on the legal ownership of specific properties identified by the searcher. The department’s records were never meant to freely provide the public with information on what properties any particular individual owned. On a restrictive basis, the property owner himself/herself, or his/her legal representative in case he/she was deceased, could search the department’s records by his/her name and identity document number to ascertain what properties he/she owned.

Unfortunately, the solicitors were unable to provide any identification document of the deceased. The Ombudsman accepted the department’s explanation that disclosing the OPIC search result of properties without having definitely established the deceased’s identity would run the risk, however small, of infringing on the privacy of some other person(s), hence breaching the PDPO.

Paragraph 2.18(a) of the Code provides that departments may refuse to disclose information if such disclosure would constitute a contravention of any law which applies in Hong Kong. Paragraph 2.18.1 of the Guidelines on Interpretation and Application of the Code (“the Guidelines”) also provides that any legislation which restricts or prohibits disclosure of information takes precedence over the Code. The department’s refusal of the solicitors’ search request for the reason given above is in line with the Code and the Guidelines.

Case 23 (paragraph 1.14 of the Code)

A member of the public, through his legal representative, requested the department to provide information in respect of his intended claim for compensation against a company. The department provided the legal representative of the applicant with copies of all available documents as requested.

Prior to receiving the data request, the department had referred the applicant to an independent statutory board for medical examination.

The applicant lodged a complaint with The Ombudsman against the department because the documents provided did not include the medical reports and documents about the medical examination conducted by the independent statutory board on him.

The Ombudsman commented that as the department did not keep the medical reports and documents on the applicant's medical examination, it naturally could not provide the applicant with such information. Hence, there was no breach of the Code on the part of the department. Besides, the department had already provided the information in its possession to the applicant's legal representative which was relevant to the applicant's claim for compensation. It was believed that the applicant's discontent arose out of misunderstanding.

Case 24 (paragraph 1.14 of the Code)

A member of the public requested the department to provide a copy of a traffic study concerning a multi-storey car park. The department replied that there was no such “traffic study” report. After a lapse of six months, the member of the public wrote to the department again quoting the minutes of a District Council meeting where a “traffic assessment” was mentioned. The department then explained that it had only conducted a “traffic assessment” mainly covering the adequacy of the car parking supply in the area through on-site observations and reference to the traffic survey data that were collected as part of a regular monitoring exercise; that was not a “traffic study”. At a public consultation forum thereafter, the department informed the applicant again that there was no “traffic study” report in its possession but only a “traffic assessment” was conducted.

The applicant lodged a complaint with The Ombudsman because the department did not provide a copy of the “traffic study” and processing of the request was delayed.

The Ombudsman commented that the department had failed to comply with the timeliness of response to the information request, as the letter in reply to the original request was sent to a wrong fax number resulting in non-delivery. The mistake was not found until an internal investigation by the department was later conducted.

The department also failed to handle the request for information properly. The “traffic assessment” conducted by the department was obviously relevant to the proposed car park project and a “study” on the subject matter. The department should have taken the initiative to clarify with the applicant what “traffic study” was requested.

Case 25 (paragraph 2.14 of the Code)

A member of the public requested to obtain tenancy agreement for renting a government quarters unit; and all data from the quarters management contractor and the department's records on handling noise nuisance complaints lodged by the applicant; and the department's documents given to the alleged nuisance creator.

The request was partially refused on the ground of paragraph 2.14(a) of the Code concerning third party information. The third parties (i.e. the outsourced property management agent and the alleged nuisance creator) had not given consent for the department to release the information.

The applicant lodged a complaint with The Ombudsman because he was not satisfied that his request for the full version of investigation reports prepared by the department's outsourced property management agent ("the PMA") on his noise nuisance complaints was not acceded to.

The Ombudsman initially commented that the PMA (and also its staff) as well as the alleged nuisance creator in this case could reasonably be regarded as "third party" in the context of the Code. The Ombudsman noted that both the PMA and the occupant above had refused to consent to releasing information to the applicant. The Ombudsman also did not see any overriding public interest in disclosure in the applicant's case. As such, The Ombudsman considered it reasonable for the department to apply paragraph 2.14 of the Code for non-disclosure of the reports made by the PMA and some of the reports and file notes made by itself containing third party information.

The Ombudsman also considered that, from the nature of the reports the applicant requested, one would have anticipated that they contained information related to the privacy of the alleged nuisance creator. Hence paragraph 2.15 of the Code concerning privacy of the individual could also be a ground for non-disclosure.

Given the complicated nature of this case and the actions involved (e.g. processing of voluminous information and the time required in seeking legal advice), The Ombudsman considered the extra time taken for the department's response to the applicant understandable.

The applicant made new representations to The Ombudsman raising his disagreement with The Ombudsman's decision. He disagreed that the information which PMA owned and provided to the department was "third party information" under the Code.

On review of the case, The Ombudsman noted that the relevant contract between the department and the PMA expressly provided that the Government owed no obligation of confidence to the contractor in relation to the contract. As such, it was not justified to refuse disclosure of the requested information on the ground that the information concerned was provided by the PMA under an understanding that it would not be further disclosed. In addition, on seeking legal opinion, it was agreed that the PMA in this case was an agent of the department carrying out some functions of the latter and should not be simply regarded as "third party" in the circumstances.

Taking into account the new findings by The Ombudsman and further legal advice, the department accepted that the information provided to it by the PMA in this case should not be withheld on the basis of paragraph 2.14 of the Code concerning third party information. Accordingly, the department released to the applicant the information provided by the PMA to the department regarding investigation of the noise nuisance complaint of the applicant, with the personal data of and other information provided to the PMA by the tenant complained against and other unrelated individuals obliterated.

Case 26 (paragraphs 1.16 to 1.18 of the Code)

A member of the public requested for the department's internal guideline on case exhibit handling, via a written request made to another government department. After four months, the department sent a final reply to the applicant providing the information that he requested.

The applicant lodged a complaint with The Ombudsman because the department had failed to reply to his request for information.

The Ombudsman commented that the department had failed to provide the requested information to the applicant within the target response time according to paragraphs 1.16 to 1.18 of the Code. The department should observe the time frame stipulated in the Code in handling information requests.

Case 27 (paragraphs 1.16 to 1.18 of the Code)

A member of the public asked for information on the department's investigation power regarding offences under the Accreditation of Academic and Vocational Qualifications Ordinance, Non-Local Higher and Professional Education (Regulation) Ordinance, Non-Local Higher and Professional Education (Regulation) Rules and Film Censorship Regulations. The department replied to the applicant on the same day.

The applicant made a follow up enquiry on the same issue and a reply was sent to the applicant by the department 13 days later, inviting the applicant to make reference to its first reply.

The applicant lodged a complaint with The Ombudsman because the department had failed to provide the requested information within the 10-day target response time and failed to provide a satisfactory answer to his query.

The Ombudsman commented that the department had failed to provide the requested information to the applicant within the target response time according to paragraphs 1.16 to 1.18 of the Code, and the department could provide a more detailed reply to the applicant.

Case 28 (paragraph 1.2 of the Code)

A member of the public requested information on precedent appeal cases concerning improper handling of exhibits which was discovered by the court.

The organization replied to the applicant that it could not provide any legal advice and the applicant was suggested to search for the required information from the organization's website.

The applicant lodged a complaint with The Ombudsman because he was dissatisfied that although the applicant had indicated that he could not access the internet in jail, he was suggested to search for the required information from the organization's website. The applicant also complained that the required information could not be found online with the suggested method.

On one of the allegations made by the applicant, The Ombudsman was of the view that the organization had already explained to the applicant why it could not provide the information on precedent cases, and had apologised to the applicant for overlooking the fact that he was being imprisoned and as a result of which a more detailed explanation was not given. The Ombudsman considered that the organization had not contravened the Code. As for the other allegation made by the applicant, The Ombudsman had successfully gained access to the relevant information by using the method suggested by the organization in its reply letter to the applicant.

Case 29 (paragraph 2.14 of the Code)

A member of the public requested to obtain copies of all correspondence between the department and an airline regarding investigation of an aviation incident after which the airline terminated his employment.

The requested information contained third party information. The third party was consulted and expressed their preference not to release the requested information. The request was refused on the ground of paragraph 2.14(a) of the Code concerning third party information.

The applicant lodged a complaint with The Ombudsman alleging that the department had breached the Code by unreasonably refusing his request for copies of the correspondence between the department and the airline.

The Ombudsman commented that it was reasonable for the department to seek the views of the airline in processing the applicant's request for information. In the replies of the airline to the department, it expressed the view that the decision to release the information or not rested with the department, though the airline preferred not to release the information for the reason that releasing the information would lead to identification of the specific flight and crew that could be construed as a possible breach of the Personal Data (Privacy) Ordinance. From the response of the airline, The Ombudsman considered it inappropriate for the department to refuse disclosure based on paragraph 2.14 of the Code because it was clear that the airline did not have an understanding that the information it provided would not be further disclosed. Even if it did, the airline had not refused to give consent. The Ombudsman further commented that if the department had doubts on the privacy issues, it should seek legal advice.

The Ombudsman also commented that the request was first received by email on 27 March 2014. The applicant was asked to fill in an application form on 4 April 2014, which was received by the department on 28 April 2014. The department formally refused the request on 13 May 2014. The Ombudsman considered that 27 March 2014 was the date the applicant made the request and it could have been processed within 21 days. The Ombudsman concluded that it was inappropriate for the department to refuse disclosure based on paragraph 2.14 of the Code. They urged the department to release the requested information unless there were other valid

reasons as set out in Part 2 of the Code for refusing disclosure.

Taking into account the view of The Ombudsman, the department obtained legal advice that the department should clarify with the airline about its stance on the information disclosure. Upon being further consulted, the airline finally indicated explicitly its objection for disclosure. The department then provided a redacted version of correspondence between the department and the airline to the applicant, with all personal data provided by the airline removed. The Ombudsman subsequently confirmed that the case was closed.

Case 30 (paragraph 2.9 of the Code)

A member of the public requested to obtain a copy of operational manuals of service centre A and service centre B of a department.

The department refused the request on the ground of paragraph 2.9(c) of the Code (Management and operation of the public service) as the disclosure of the requested information may lead to abuse of the service and hinder the effective operation of the service centres.

The applicant lodged a complaint with The Ombudsman.

The Ombudsman considered that it is not unjustifiable for the department to refuse the disclosure of the operational manuals as it might harm or prejudice the proper and efficient conduct of the operations of the service centres. In fact, the department had provided the information briefs of the service centres to the applicant.

However, The Ombudsman commented that the department should address to the other enquiries from the applicant although the operational manuals concerned could not be provided.

Case 31 (paragraph 2.13 of the Code)

A member of the public requested for a feasibility study report on land development.

The request was refused on the grounds of paragraph 2.13(a) of the Code, i.e. 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. As the requested report had not been finalised and might contain incomplete information at the time of the request, the disclosure of which could be misleading. A complaint was then lodged with The Ombudsman.

Having considered the complaint, The Ombudsman agreed with the department on refusal of disclosure of the feasibility study report in accordance with paragraph 2.13(a) of the Code because the report had not been finalised at the time when the applicant made the information request. Moreover, The Ombudsman was of the view that even if the department had added footnotes into the report to explain the incompleteness of the information therein, the applicant would still be misled on the subject matter by reading such report which contained incomplete/unconfirmed information. The Ombudsman also commented that, although the department was unable to disclose the report to the applicant, the Government had already held consultations, including conducting briefings to the District Council with an aim of informing members of the public of the progress and preliminary result of the study. This is in line with the spirit of the Code on provision of information owned by the Government to members of the public as far as possible so as to enhance their understanding on government services.

Case 32 (paragraph 2.16 of the Code)

A member of the public requested to obtain tender documents received by a department in a tender exercise in relation to a land lot in Ma Wan.

The request was refused on the ground of paragraph 2.16 (Business affairs) of the Code. The applicant then lodged a complaint with The Ombudsman because he considered that the department had unreasonably refused to provide the requested documents.

The Ombudsman considered that the tender documents concerned had the financial information, development plans, innovative design and etc. of two companies. If the requested information was disclosed, it might harm the competitive or financial position of the companies. The Ombudsman also did not see the public interest in disclosure of the information would outweigh the harm or prejudice that could result.

However, as the department had exceeded the target response times of the Code in the handling the request, The Ombudsman urged the department to strictly comply with the provisions of the Code in responding information requests timely.

Constitutional and Mainland Affairs Bureau
July 2021