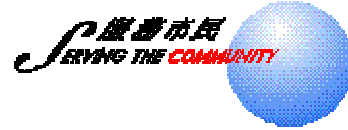


# Code on Access to Information



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## INTRODUCTION

The Government exists to serve the community well within available resources. To this end, it recognises the need for the community to be 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.

This Code defines the scope of information that will be provided, sets out how the information will be made available either routinely or in response to a request, and lays down procedures governing its prompt release.

The Code authorises and requires civil servants, routinely or on request, to provide information unless there are specific reasons for not doing so. These reasons are set out in Part 2 and will normally be referred to if a request for information is refused.

Requests for information will be handled as promptly and helpfully as possible and if necessary, members of the public may be approached to clarify their requests or the request may be directed to the most appropriate department. Procedures will be kept as simple as possible.

The Code also sets out procedures for review or complaint if a member of the public considers that the provisions of the Code have not been properly applied.

The Code is available on the Internet as a component of the Gov HK. It can be accessed at <http://www.access.gov.hk>

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## *PART 1*

### SCOPE

#### **Government departments**

*1.1* The Code applies to all government departments (*1*) as listed at [Annex A](#).

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(1) The term "department" includes any department, bureau, force, service, unit, secretariat, or other agency of the Government.

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## **Courts, tribunals and inquiries**

1.2 The Code does not apply to information held by courts, tribunals or inquiries. The existing legal rules governing disclosure of information in the context of proceedings before courts, tribunals and inquiries are not affected by the Code.

1.3 The Code does, however, apply to information other than that stated in paragraph 1.2 which is held by all registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility, and secretariats and similar offices of other tribunals and inquiries.

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## **PROVISION OF INFORMATION**

### **Information to be published or made available routinely**

1.4 Each year departments will publish -

- details of their organisation
- information on the services they provide
- their performance pledges and the extent to which they have been met.

They will also publish, or make available for inspection at appropriate locations -

- a list of their [records](#) by category
- a list of information either published or otherwise made available, whether free or on payment
- the procedures and any charges for access to information not routinely published.

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1.5 Whenever a service for the public is introduced or changed the department responsible will publish sufficient information to explain the nature of the new service or change, and who will be affected by it.

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## **Information to be provided on request**

1.6 Each department will also, on request, provide additional information relating to its policies, services, decisions and other matters falling within its area of responsibility, except that requests for information in the areas listed in Part 2 may be refused.

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## **Legal obligations and restrictions**

1.7 The Code does not affect statutory rights of access to information. Equally the Code does not affect legal restrictions on access to information whether these are statutory prohibitions, or obligations arising under common law or international agreements which apply to Hong Kong.

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## **PROCEDURES**

### **Access to Information Officer**

1.8 Each department will designate an Access to Information Officer who will be responsible for promoting and overseeing the application of the Code.

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## **Requests for information**

*1.9* Requests for information may be made orally or in writing.

*1.10* Oral requests will usually suffice where the information sought can be provided readily and simply, for example by oral replies or provision of leaflets or standard forms. Civil servants may, however, ask for an oral request to be confirmed in writing where necessary or appropriate.

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*1.11* Written requests may be made by letter or by the application form at [Annex C](#), and should be addressed to the Access to Information Officer of the department concerned.

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## **Responses to requests for information**

*1.12* Responses to requests for information will be given as quickly as possible.

*1.13* Where a request, whether written or oral, cannot adequately be met by an oral reply or provision of a standard leaflet, form, etc., the information may be given by -

- providing a copy of the relevant record or part thereof
- providing a transcript of the relevant record or part thereof
- affording a reasonable opportunity to inspect, hear or view the relevant record or part thereof, or
- providing a summary of the relevant record or part thereof.

So far as possible, information will be provided in the form in which it exists. Where disclosure of certain information in a record is to be refused, access will normally be provided to the remaining part of the record.

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*1.14* The Code does not oblige departments to -

- acquire information not in their possession
- create a record which does not exist
- provide on request information which is already published, either free or at a charge, or
- provide information available through an existing charged service.

In these circumstances an applicant for information will, where possible, be directed to the appropriate source of the information.

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1.15 However, if a department receives a written request for information which is held by another department, it will transfer the request to that department and so advise the applicant.

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## **Target response times**

1.16 Where possible, information will be made available within ten days (2) of receipt of a written request. If that is not possible the applicant will be so advised by an interim reply within ten days of receipt of the request. The target response time will then be twenty-one days from receipt of the request.

(2)Whenever the term "days" is used in the Code this means "calendar days".

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1.17 If a request is to be refused, the applicant will be so informed within the timeframe set out in paragraph 1.16 above.

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1.18 Response may be deferred beyond twenty-one days only in exceptional circumstances, which should be explained to the applicant. Any deferral should not normally exceed a further thirty days.

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1.19 These targets may be extended if necessary to accommodate the third party procedures set out in paragraphs 1.20 - 1.23, or where the applicant fails to pay any charges levied in accordance with paragraph 1.24.

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## THIRD PARTY INFORMATION

### Procedures and timeframe

1.20 Where information requested is held for, or was provided by, a third party under an explicit or implicit understanding that it would not be further disclosed, but a civil servant considers that the public interest may require disclosure, he will so advise the third party and invite the latter to consent to, or make representations against disclosure. The third party will be asked to respond within thirty days or such reasonable longer period as he may be granted on request.

1.21 On receipt of consent from the third party, the information may be disclosed.

1.22 If the third party makes representations against disclosure, or fails to respond within the stipulated time, a decision will be taken as to whether the information should be disclosed on the ground that the public interest in disclosure outweighs any harm or prejudice that would result. The third party will be advised of the decision.

1.23 If the decision is that the information should be disclosed, the third party will be notified that disclosure will be made at the expiry of thirty days from the date of the notification.

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## CHARGES

1.24 Processing requests for information uses resources and departments may therefore require payment for this service. Any [charges](#) levied will reflect the cost of providing the information, and the information will not be released until the requisite payment has been made.

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## **REVIEW**

1.25 Any person who believes that a department has failed to comply with any provision of the Code may ask the department to review the situation. The target response times set out in paragraphs 1.16 to 1.19 above also apply to requests for review.

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1.26 Any person who believes that a department has failed to properly apply any provision of the Code may also complain to The Ombudsman. The Ombudsman's address is -

30/F, China Merchants Tower  
Shun Tak Centre  
168-200 Connaught Road Central  
Hong Kong

Telephone : (852) 2629 0555  
Fax : (852) 2882 8149

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## ***PART 2***

### **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.

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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.

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## **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.

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## **External affairs**

2.4 (a) Information the disclosure of which would harm or prejudice the conduct of external affairs, or relations with other governments or with international organisations.

(b) Information received in confidence from and conveyed in confidence to other governments, courts in other jurisdictions, and international organisations.

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## **Nationality, immigration and consular matters**

2.5 (a) Information relating to immigration or nationality cases.

(b) Information the disclosure of which would harm or prejudice the administration of nationality, registration of persons, immigration or consular matters, or the performance of consular functions as an agent for other governments.

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## **Law enforcement, legal proceedings and public safety**

2.6 (a) 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.

(b) Information the disclosure of which would harm or prejudice the conduct or impartial adjudication of legal proceedings or any proceedings conducted or likely to be

conducted by a tribunal or inquiry, whether or not such inquiry is public or the disclosure of the information has been or may be considered in any such proceedings.

(c) Information which relates to proceedings which have been completed, terminated or stayed, or which relates to investigations which resulted in or may have resulted in proceedings, whether any such proceedings are criminal or civil.

(d) Information which would be privileged from production in legal proceedings on the ground of legal professional privilege.

(e) Information the disclosure of which would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders, or the security of any detention facility or prison.

(f) Information the disclosure of which would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property.

(g) Information the disclosure of which might endanger the life or physical safety of any person (whether or not such person is in Hong Kong), or identify the source of information or assistance given in confidence for security purposes, or for the enforcement or administration of the law.

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## **Damage to the environment**

2.7 Information the disclosure of which would increase the likelihood of damage to the environment or to rare or endangered species and their habitats.

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## **Management of the economy**

2.8 Information the disclosure of which would harm or prejudice the conduct of monetary policy, the maintenance of stability in financial markets, or the ability of the Government to manage the economy.

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## **Management and operation of the public service**

2.9 (a) Information the disclosure of which would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by a department.

(b) Information the disclosure of which would harm or prejudice the competitive or financial position or the property interests of the Government.

(c) Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department.

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

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## **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.

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## **Public employment and public appointments**

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

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## **Improper gain or advantage**

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

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## **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.

(b) Information held only for preparing statistics or carrying out research, and which relates to individuals, companies or products which will not be identified in reports of that research, or in published statistics.

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## **Third party information**

2.14 (a) Information held for, or provided by, a third party under an explicit or implicit understanding that it would not be further disclosed. However such information may be disclosed with the third party's consent, or if the public interest in disclosure outweighs any harm or prejudice that would result.

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

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## **Privacy of the individual**

2.15 Information about any person (including a deceased person) other than to the subject of the information, or other appropriate person, unless -

(a) such disclosure is consistent with the purposes for which the information was collected, or

(b) the subject of the information, or other appropriate person, has given consent to its disclosure, or

(c) disclosure is authorised by law, or

(d) the public interest in disclosure outweighs any harm or prejudice that would result.

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## **Business affairs**

2.16 Information including commercial, financial, scientific or technical confidences, trade secrets or intellectual property the disclosure of which would harm the competitive or financial position of any person.

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## **Premature requests**

2.17 Information which will soon be published, or the disclosure of which would be premature in relation to a planned announcement or publication.

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## **Legal restrictions**

2.18 Information the disclosure of which would constitute -

(a) a contravention of any law which applies in Hong Kong, or

(b) a breach of any obligation arising under common law or under any international agreement which applies to Hong Kong.

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## **Annex A**

## **Departments to which the Code applies**

(Please click on the name of the department for contact information of its Access to Information Officer.)

[Agriculture, Fisheries and Conservation Department](#)

[All registries and administrative offices of courts and tribunals for which the Judiciary](#)

[Administrator has responsibility](#)

[Architectural Services Department](#)

[Audit Commission](#)

[Auxiliary Medical Service \(department\)](#)

[Buildings Department](#)

[Census and Statistics Department](#)

[Civil Aid Service \(department\)](#)

[Civil Aviation Department](#)

[Civil Engineering and Development Department](#)

[Civil Service Bureau](#)

[Commerce and Economic Development Bureau](#)

[Companies Registry](#)

[Constitutional and Mainland Affairs Bureau](#)

[Correctional Services Department](#)

[Customs and Excise Department](#)

[Department of Health](#)

[Department of Justice](#)

[Development Bureau](#)

[Drainage Services Department](#)

[Education Bureau](#)

[Electrical and Mechanical Services Department](#)

[Environment Bureau](#)

[Environmental Protection Department](#)

[Financial Services and the Treasury Bureau](#)

[Fire Services Department](#)

[Food and Health Bureau](#)

[Food and Environmental Hygiene Department](#)

[General Office of the Chief Executive's Office](#)

[Government Flying Service](#)

[Government Laboratory](#)

[Government Logistics Department](#)

[Government Property Agency](#)

[Highways Department](#)

[Home Affairs Bureau](#)

[Home Affairs Department](#)

[Hong Kong Auxiliary Police Force](#)

[Hong Kong Monetary Authority](#)

[Hong Kong Observatory](#)

[Hong Kong Police Force](#)

[Housing Department](#)

[Immigration Department](#)

[Independent Commission Against Corruption](#)

[Information Services Department](#)

[Inland Revenue Department](#)

[Innovation and Technology Commission](#)  
[Intellectual Property Department](#)  
[Invest Hong Kong](#)  
[Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service](#)  
[Labour Department](#)  
[Land Registry](#)  
[Lands Department](#)  
[Labour and Welfare Bureau](#)  
[Legal Aid Department](#)  
[Leisure and Cultural Services Department](#)  
[Marine Department](#)  
[Office of the Commissioner of Insurance](#)  
[Office of the Telecommunications Authority](#)  
[Offices of the Chief Secretary for Administration and the Financial Secretary](#)  
[Official Receiver's Office](#)  
[Planning Department](#)  
[Post Office](#)  
[Radio Television Hong Kong](#)  
[Rating and Valuation Department](#)  
[Registration and Electoral Office](#)  
[Secretariat of the Independent Police Complaints Council](#)  
[Secretariat of the Public Service Commission](#)  
[Secretariat, Commissioner on Interception of Communications and Surveillance](#)  
[Security Bureau](#)  
[Social Welfare Department](#)  
[Student Financial Assistance Agency](#)  
[Television and Entertainment Licensing Authority](#)  
[Trade and Industry Department](#)  
[Transport and Housing Bureau](#)  
[Transport Department](#)  
[Treasury](#)  
[University Grants Committee Secretariat](#)  
[Water Supplies Department](#)

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## **Annex B**

### **Definition of Record**

**Record** may include a document in writing and -

(a) any book, map, plan, graph or drawing;

(b) any photograph;

(c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever;

(d) any diskette, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

(e) any film, negative, tape, microfilm, microfiche, CD-ROM or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(f) anything whatsoever on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them.

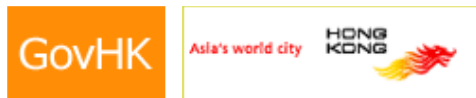
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Last revision date: 8 April 2009