

EXECUTIVE SUMMARY

Direct Investigation Effectiveness of Administration of Code on Access to Information

Background

It is Government's declared policy to be as open and transparent as possible. Since 1995, the Code on Access to Information ("the Code") authorises, and requires, civil servants to provide Government-held information to the public unless there are specific reasons under the Code for not doing so. Until 30 June 2007, the Home Affairs Bureau ("HAB") was responsible for administration of the Code. Since then, the Constitutional and Mainland Affairs Bureau ("CMAB") has taken charge.

2. This direct investigation examines:
 - (a) Government action to ensure understanding of and compliance with the Code among its officers;
 - (b) Government mechanism to monitor departments' compliance with the Code; and
 - (c) Government measures to promote public awareness of the Code.

The Code

3. The Code embraces all Government departments and two public bodies. It comprises two parts. Part 1 covers the scope of the Code, application procedures, target response times, avenues for departmental review and for complaint to The Ombudsman; while Part 2 sets out 16 categories of information to which public access may be refused, including:

- (a) information relating to investigations which resulted in or may have resulted in criminal or civil proceedings;
- (b) information the disclosure of which would inhibit the frankness and candour of discussion within Government and advice given to Government;

- (c) information held for, or provided by, a third party under an explicit or implicit understanding that it would not be further disclosed;
- (d) information about other persons, including deceased persons, unless:
 - disclosure is consistent with the purposes for which the information was collected; or
 - the subject of the information, or other appropriate person, has given consent to its disclosure; or
 - disclosure is authorised by law; or
 - the public interest in disclosure outweighs any harm or prejudice that would result.

4. Each department should designate an Access to Information Officer (“AIO”) for promoting and overseeing the application of the Code, coordinating in-house staff training as well as ensuring compliance with provisions and procedures. Their ranks range from Executive Officer II to Directorate Officer at D1 level.

5. Government has since 1995 drawn up Guidelines to help departments interpret and apply the Code. Salient points of the Guidelines include:

- (a) Information *will* be released unless there are good reasons under Part 2 of the Code to withhold disclosure. Even if the information requested falls within Part 2, it *does not necessarily imply that the request should be refused*.
- (b) Requests made with, or without, specific reference to the Code (“Code and non-Code requests”) should be considered on the same principles.
- (c) The purpose of the request, or the applicant’s refusal to reveal the purpose, should not be a reason for withholding information.
- (d) In refusing a request, the department concerned must inform the applicant of the reasons for refusal, quoting the relevant reasons in Part 2, the avenues of internal review and complaint to The Ombudsman.

- (e) For requests for information involving multiple departments, the department receiving the request should be responsible for coordinating the reply to the applicant.

Our Observations

Case Studies

6. The cases in **Chapter 4** of the report illustrate deficiencies among certain departments, displaying considerable misunderstanding of the provisions and unfamiliarity with the procedural requirements of the Code after well over a decade of implementation. Some have refused requests for information without giving any reason or with reasons not specified in the Code; others have misused the reasons specified in the Code. Some have failed to inform requesters of the avenues of departmental review and complaint to our Office, while others have overlooked their responsibility to coordinate replies involving multiple departments.

Inadequate Training

7. HAB had provided no training for AIOs from 1997 to 2004 and for other departmental supporting staff during 2002 to 2007.

8. CMAB has stepped up training. Nevertheless, AIOs are not trained at the most appropriate time, i.e. just before or immediately after they assume their posts, to enable them to effectively discharge their responsibilities. CMAB should, therefore, organise more (and timely) training to AIOs and other staff, as well as facilitating more in-house training by various departments.

Inadequate publicity

9. Since the announcements through press releases and broadcasts over radio and television in 1995, 1996 and 1997, there had been no positive media publicity for 11 years. In this regard, we appreciate CMAB enhancing publicity since late 2008 in response to our pre-investigation inquiry.

10. The Government homepage features the Code (bilingually) and the Guidelines (in English only). We consider a Chinese version of the Guidelines necessary to facilitate public understanding.

11. We also note that departments' homepages already provide the public with instructions on access to information under the Code. However, some of the homepages are not hyperlinked to the webpage on the Code and the Guidelines and do not even contain a brief introduction of the Code to highlight the public's right to information. These deficiencies should be rectified.

Inadequate promotion within Government

12. During the decade 1997 to June 2007, only two general circulars and one memorandum were issued to remind departments of the provisions of the Code.

Need to update departmental guidelines

13. Some departments have drawn up internal circulars/guidelines on the Code, modelled on a 1996 sample, but without any monitoring or updating by HAB. This may well mean a diversity of guidelines, possibly inconsistent with the Code. In this connection, CMAB has just issued an updated sample circular.

Inactive monitoring of compliance

14. HAB had not carried out any updating of the format of the quarterly return on Code-related requests. Since taking over in 2007, CMAB has revised the format of the return to include more details and cases for effective monitoring.

Inadequate extension to public bodies

15. As more public bodies come into existence to provide services to the public, it is essential that they be brought under the same spirit of the Code and advance the principle and policy of transparency of public administration. CMAB should, therefore, follow up with public bodies within The Ombudsman's purview which have yet to adopt the Code or some similar guide.

Recommendations

16. The Ombudsman commends CMAB on its enhanced efforts in promoting awareness of the Code over HAB's meagre contribution.

17. Nevertheless, The Ombudsman makes 11 recommendations to CMAB for more effective administration of the Code, including:

- (a) to organise more, and timely, training for AIOs;
- (b) to work with departments to organise more training for other staff;
- (c) to add a Chinese version of the Guidelines to the Government webpage on the Code;
- (d) to require all departments' homepages to introduce the Code briefly and to be hyperlinked to the webpage on the Code;
- (e) to provide advice to departments to ensure that departmental guidelines are clear, correct and up-to-date; and
- (f) to follow up with other public bodies within The Ombudsman's purview for them to adopt the Code or some similar guide.

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