

Department/Organisation: Constitutional and Mainland Affairs Bureau (“CMAB”)

Case concluded in: February 2016

CMAB refused to provide records and details of the Government’s discourse with various political groups and Legislative Council (“LegCo”) Members on the 2015 political reform package

The Event

Mr A requested CMAB to provide any of the records and details of the Government’s discourse with various political groups and LegCo Members on the 2015 political reform package that had not been included in the report published by the Bureau on constitutional development consultation. CMAB cited paragraph 2.10(b) of the Code on Access to Information (“the Code”), i.e. disclosure would inhibit the frankness and candour of discussion within the Government and advice given to the Government, as the reason for refusing to provide him with such information.

Our Findings

The information requested by Mr A actually included:

- (1) the content of the Government’s discussions with certain political parties, political groups and individuals (including LegCo Members) conducted on a confidential basis during the consultation period;
- (2) the content of the discussions with LegCo Members and political groups, or views received from them, when Government officials attended various events (such as conferences, forums, ceremonies and publicity events) during the consultation period; and
- (3) the content of Government officials’ discussions with individual groups on other occasions.

We agreed that CMAB could invoke paragraph 2.10(b) of the Code to withhold Type (1) information. If CMAB disclosed to the public the content of those discussions, it would breach the mutual understanding of confidentiality with the parties concerned. Consequently, that would probably inhibit the frankness and candour of advice given to the Government in future by LegCo Members, political groups and other individuals.

As for CMAB’s refusal to provide Mr A with Type (2) information, we considered it also in line with paragraph 2.10(b) of the Code. That was because at the time of those events, the Government had made it clear that its report on constitutional development consultation would only publish those views submitted in writing through the channels listed in the consultation paper. Therefore, the views expressed by participants

(including LegCo Members and political groups) in those events could not be regarded as views formally submitted to the Government on the political reform package and the participants who had expressed those views might not consent to the Government's subsequent full disclosure of such informal views. Should the Government fail to take this into account and rashly disclose those views, it would most likely inhibit the frankness and candour of advice to be given to the Government in future by those individuals.

Regarding Type (3) information, CMAB told this Office that summaries of Government officials' discussions with individual groups were available in those groups' publications or media reports. CMAB seemed to suggest that members of the public could themselves search those publications or media reports for the information, thus CMAB did not have to provide them with the information. However, paragraph 1.14 of the Code stipulates that in such circumstances, Government departments should, where possible, direct the information requestors to the appropriate sources of information. We believed that since the political reform package was such an important subject to the Government, CMAB must have systematically kept all Type (3) information. Hence, CMAB should at least have advised Mr A on the specific sources of all the information he was looking for.

Outcome

CMAB accepted our views.