

Department/Organisation: Drainage Services Department (“DSD”)

Case concluded in: December 2013

DSD refused to provide Mr A with the investigation report on a case of road subsidence

The Event

While driving along a highway, Mr A had a traffic accident due to subsidence of the road surface. DSD was at that time carrying out some drainage works in the vicinity. Mr A repeatedly asked DSD for a copy of its investigation report on the road subsidence (“the Investigation Report”), but to no avail.

Our Findings

Having scrutinised the insurance policy for the drainage works, DSD considered that providing Mr A with the Investigation Report might constitute a breach of the insurance contract and hence absolve the insurance company from its responsibility towards any claim by Mr A. That might result in a loss of insurance protection for the Government against Mr A’s claim. DSD, therefore, refused Mr A’s request for the Investigation Report by invoking paragraph 2.9(b) of the Code on Access to Information (“the Code”).

We, however, found no specific terms in the insurance contract that constrained DSD from providing the Investigation Report to claimants. According to the Guidelines on Interpretation and Application of the Code, paragraph 2.9(b) of the Code in fact refers to situations where a Government department operates in a commercial environment in competition with the private sector or where a department is a major tenant/landlord of property. The Government may then withhold related commercially sensitive information if disclosure would be to the detriment of its interests. We considered that the Investigation Report did not belong to the category of commercially sensitive information referred to in that paragraph, and that DSD should not have used that paragraph as a reason to refuse Mr A's request.

Outcome

Mr A eventually reached a settlement with the contractor of the drainage works, and decided not to pursue his request for the Investigation Report.