

**Department/Organisation: Leisure and Cultural Services Department  
("LCSD")**

**Case concluded in: March 2017**

**LCSD refused to disclose the full text of a deed ("the Deed") that it had signed with a company ("Company A") on the management of a waterfront promenade ("the Promenade")**

*The Event*

The complainant requested LCSD to disclose the Deed, but the Department refused, citing paragraphs 2.14(a)<sup>1</sup>, 2.16<sup>2</sup> and 2.18(a)<sup>3</sup> of the Code on Access to Information ("the Code") as the reasons for refusal (respectively referred to as "Reason (I)", "Reason (II)" and "Reason (III)" below).

*Our Findings*

LCSD cited Reason (I) because it considered the Deed to be information held for a third party ("Company A") by the Government or information provided by a third party ("Company A"). We did not think that was right. The Deed actually comprised contract terms mutually agreed and signed by the Government and Company A, and was, therefore, not "third party information". Even if the Deed were "third party information", there in fact existed no explicit or implicit understanding between LCSD and Company A that it would be kept confidential. And even if there had been a consensus on its confidentiality, LCSD should have judged whether the public interest in disclosing the Deed, despite breaching such consensus, would outweigh the harm or prejudice to Company A that might result. The Government had indeed commissioned Company A to take up the management of the Promenade without a public tender exercise. Whether that was fair and whether resources had been properly used were issues of wide public concern. We considered that unless the Government had a better way to allay the public's suspicion of its "transfer of benefits", the public interest in disclosing the Deed outweighed the harm or prejudice to Company A, the Government or other parties.

Regarding Reason (II), LCSD reiterated Company A's claim that the clauses in the Deed on the financial arrangements for operating the Promenade were commercial secrets, the disclosure of which would bring the Company obvious harm. We did not agree either.

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<sup>1</sup> Paragraph 2.14(a) of the Code: 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.

<sup>2</sup> Paragraph 2.16 of the Code: 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.

<sup>3</sup> Paragraph 2.18(a) of the Code: Information the disclosure of which would constitute a contravention of any law which applies in Hong Kong.

In fact, those clauses on the financial arrangements carried no information about the operating costs and profits. Besides, Company A had already publicly admitted the long-term deficit incurred in operating the Promenade. We did not see how disclosure of the financial arrangements could bring it actual harm. Notwithstanding this, we agreed in principle that the financial arrangements were sensitive business information. If Company A insisted that such information be kept confidential, LCSD could provide a copy of the Deed to the complainant with those relevant details obliterated.

As for Reason (III), we did not agree to LCSD's view that disclosing the technical plans attached to the Deed might violate the Copyright Ordinance. According to the section of that ordinance pertaining to "public records"<sup>4</sup>, it would not constitute an infringement of copyright if the Government was to make copies of the plans. If LCSD still worried that providing the complainant with the Deed would violate that ordinance, it could invite the complainant to its office to inspect the document or have the document read out to the complainant. It could also furnish the complainant with a copy of the Deed after obliterating any plans that might involve copyright issues.

### *Outcome*

Upon our recommendation, LCSD obliterated the "sensitive" and "confidential" information (e.g. that on financial arrangements and the technical plans) and then provided the complainant with a copy of the Deed.

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<sup>4</sup> According to section 57(2) of the Copyright Ordinance, the Government may, for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work, or issue or make available copies of the work to the public without infringing any copyright in the work.