

GOVERNMENT SECRETARIAT - HEALTH & WELFARE BRANCH (HWB)

Case No. OMB 1966/95

Complaint against HWB - insufficient consultation on the building of a primary health care centre & nursing home at close proximity to existing residential developments

The complainant lodged a complaint on behalf of a Concern Group formed by the residents of a private housing estate (the estate) in East Kowloon against the HWB for not having sufficiently consulted the residents on the building of a primary health care centre and nursing home (the project) near their estate and for improper planning and wrongful choice of the site for the project. This Office had investigated the first point regarding insufficient consultation but not the second as it was a policy matter outside the jurisdiction of the Ombudsman.

2. The residents felt aggrieved by the building of the project mainly because of its closeness to their homes and they perceived that the project would have significant adverse effects on the environment, hygiene, security, transport and fire access. They were not satisfied, among other things, that they had not been consulted on the project, including the selection of its site and the expansion of scope of the services it would provide.

3. The project started out as a General Out-patient Clinic to be developed in conjunction with a Neighbourhood Community Centre (NCC) in 1983. Its scope was expanded in October 1993 to include general out-patient services, student health services, a day treatment centre for skin diseases, sexually transmitted diseases including Human Immunodeficiency Virus Infection, a general radiography centre and nursing home for the elderly. The Social Services Committee (SSC) of the District Board (DB) concerned was informed of the expanded scope of the project in March 1995 when the Department of Health (DH) tabled an Information Paper on the project. In July 1995, the project was upgraded to Category A in the Public Works Programme. HWB opined that DH had followed the government policy and procedures in duly consulting the DB on this project as it was a local matter likely to affect the livelihood, living environment or well-being of the residents within a district. However, the complainant alleged that the residents only came to know about the expansion of the scope of the project indirectly in July 1995, by which time the project was already upgraded to Category A.

4. Although the HWB opined that the project would not cause any adverse impact on the environment, hygiene, security, transport and fire access of the surrounding areas, this Office is of the view that, given the distance of the project to the residential blocks, the residents would indeed be affected at least by the visual impact of this 11-storey polyclinic and nursing home and should therefore be duly consulted.

5. In determining whether the consultation was adequate, this Office has taken into consideration the government policy and procedures for public consultation as set out in Government Secretariat General Circular No. 2/95 and 8/95 as well as the following yardsticks -

- (a) Was there adequate consultation with the affected individuals and groups all the way from before the project was planned, developed, modified as necessary and implemented?
- (b) Was the consultation done in a proper and timely way?
- (c) Was the way in which the final decisions were arrived at made clear from the outset to the affected persons?

6. Based on the above yardsticks, this Office has the following findings and observations -

- (a) There is no evidence to show that wide and substantive public consultation on this project had been conducted. The format of the “consultation” on this project, which has been done mainly through the SSC of the DB since 1987, is questionable because -
 - (i) the “consultation” so conducted was actually information giving;
 - (ii) no comprehensive consultation paper had ever been produced for that purpose;
 - (iii) only brief progress on the clinic as an item among a number of works projects had been provided to the SSC of the DB since 1987; and
 - (iv) a brief Information Paper, instead of a comprehensive consultation paper, was presented to the SSC in March 1995 about the expansion of the scope of the service from a clinic to a multi-purpose health service building. However, no reference had been made to the exact location of the enlarged project.
- (b) The Secretary for Health & Welfare (SHW) opined that although the paper presented to the SSC in March 1995 was designated as Information Paper, a representative from the DH was also present at the meeting to facilitate discussion and respond to views from members. The process of attending the meeting, presenting the paper in person and answering questions from members was actually a consultation process; and
- (c) Regarding the point that the DB had actually been consulted despite the designation of the paper as an Information Paper, this Office maintains that, if the intention was to consult, the Information Paper should not be couched and presented as such. According to the basic requirements and guidelines for the conduct of public consultation set out in the Government Secretariat General Circular No. 8/95, the Information Paper could not meet the requirement for consultative documents because it had not stated clearly the options available, the pros and cons of each option and the points on which the DB’s advice was sought. Furthermore, the paper was merely tabled at the SSC meeting in March 1995. If SHW intended this to be consultation, the content, format and process of such would definitely need much improvement. The attendance of the DH representative, his

presentation of the paper and even answering questions at the SSC meeting cannot be taken as evidence of substantive consultation if the SSC had not been specifically invited to advise or form a view on the building of the project at that particular location and on the services provided. There is no evidence to show that any of these had been done as reflected in the minutes of the SSC meeting.

7. The subject of investigation in this case is whether the residents of the estate had been sufficiently consulted on the project, apart from “consulting” the DB. The choice of consultative machinery and extent of consultation depends on the nature of the matter to be consulted. The fact that the residents only came to know about the expansion of the scope of the services indirectly and at a very late stage after the project had been upgraded to Category A for implementation quite clearly points to the inadequacy of the consultation process in this particular case.

8. The Ombudsman is of the view that the Government Secretariat General Circulars set out the important role and functions of the DBs in the overall District Administration Scheme. They however do not preclude other representative bodies e.g., the Area Committees, Mutual Aid Committees and residents’ groups such as the Owners’ Corporations of buildings etc. and even individual persons from being consulted, particularly on matters that directly affect them. In fact, General Circular No. 8/95 does stipulate that the methods of public consultation should be flexible and vary according to the nature of the matter to be consulted. The HWB sees the project as a district project, the implementation and the consultation of which has been taken care of by the DH. The Ombudsman takes the view that as the HWB oversees the work of DH, the HWB should also be accountable for the consultation conducted by the DH at the district level. The Ombudsman therefore concludes that the complaint against the HWB for not having sufficiently consulted the residents is **substantiated**.

9. In connection with this complaint, the Ombudsman has recommended that the HWB considers taking into account the yardstick on fair and proper consultation as set out in this Office’s Administrative Fairness Checklist and the guidelines on public consultation issued by the Government Secretariat in future consultation exercises. The Ombudsman has also written to the Director of Administration asking him to review the guidelines on public consultation in the light of similar complaints previously announced by this Office.