DEVB(PL)226

CONTROLLING OFFICER'S REPLY

(Question Serial No. 4846)

Head: (82) Buildings Department

Subhead (No. & title): (-) Not Specified

<u>Programme</u>: (1) Buildings and Building Works

<u>Controlling Officer</u>: Director of Buildings (YU Tak-cheung)

Director of Bureau: Secretary for Development

Question:

Regarding the requests for information under the Code on Access to Information received by the Buildings Department (BD) from October 2018 to present for which only some of the required information has been provided, please state in table form: (i) the content of the requests for which only some of the required information has been provided; (ii) the reasons for providing some of the information only; (iii) whether the decision on withholding some of the information was made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines on Interpretation and Application); (iv) whether the decision on withholding some of the information was made subject to a "harm or prejudice test", i.e. whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines on Interpretation and Application)? If yes, please provide the details.

From October to December 2018

(i) Content of	(ii) Reasons	(iii) Whether the	(iv) Whether the decision
the requests	for providing	decision on	on withholding some of the
for which only	some of the	withholding some of	information was made
some of the	information	the information was	subject to a "harm or
required	only	made at the	prejudice test", i.e. whether
information		directorate (D1 or	the public interest in
was provided		D2) level (according	disclosure of such
		to paragraph 1.8.2 of	information outweighs any
		the Guidelines on	harm or prejudice that
		Interpretation and	could result from
		Application)	disclosure (according to
			paragraph 2.1.1 of the
			Guidelines on
			Interpretation and
			Application). If yes,
			please provide the details.

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(i) Content of	(ii) Reasons	(iii) Whether the	(iv) Whether the decision
the requests for	for providing	decision on	on withholding some of the
which only	some of the	withholding some of	information was made
some of the	information	the information was	subject to a "harm or
required	only	made at the	prejudice test", i.e. whether
information		directorate (D1 or	the public interest in
was provided		D2) level (according	disclosure of such
		to paragraph 1.8.2 of	information outweighs any
		the Guidelines on	harm or prejudice that could
		Interpretation and	result from disclosure
		Application)	(according to paragraph
			2.1.1 of the Guidelines on
			Interpretation and
			Application). If yes,
			please provide the details.

Regarding the requests for information under the Code on Access to Information received by BD from October 2018 to present for which the required information has not been provided, please state in table form: (i) the content of the requests refused; (ii) the reasons for refusal; (iii) whether the decision on withholding the information was made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines on Interpretation and Application); (iv) whether the decision on withholding the information was made subject to a "harm or prejudice test", i.e. whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines on Interpretation and Application)? If yes, please provide the details.

From October to December 2018

(i) Content of	(ii) Reasons	(iii) Whether the	(iv) Whether the decision
the requests	for refusal	decision on	on withholding the
refused		withholding the	information was made
		information was	subject to a "harm or
		made at the	prejudice test", i.e. whether
		directorate (D1 or	the public interest in
		D2) level (according	disclosure of such
		to paragraph 1.8.2 of	information outweighs any
		the Guidelines on	harm or prejudice that could
		Interpretation and	result from disclosure
		Application)	(according to paragraph
			2.1.1 of the Guidelines on
			Interpretation and
			Application). If yes,
			please provide the details.

2019

(i) Content of	(ii) Reasons	(iii) Whether the	(iv) Whether the decision
the requests	for refusal	decision on	on withholding the
refused		withholding the	information was made
		information was	subject to a "harm or
		made at the	prejudice test", i.e. whether
		directorate (D1 or	the public interest in
		D2) level (according	disclosure of such
		to paragraph 1.8.2 of	information outweighs any
		the Guidelines on	harm or prejudice that could
		Interpretation and	result from disclosure
		Application)	(according to paragraph
			2.1.1 of the Guidelines on
			Interpretation and
			Application). If yes,
			please provide the details.

Any person who believes that a department has failed to comply with any provision of the Code on Access to Information may ask the department to review the situation. Please advise this Committee in each of the past 5 years, (i) the number of review cases received; (ii) the number of cases, among the review cases received in the year, in which further information was disclosed after review; (iii) whether the decisions on review were made at the directorate (D1 or D2) level.

Year in which	(i) Number of	(ii) Number of	(iii) Whether the decisions
review cases	review cases	cases, among the	on review were made at the
were received	received	review cases	directorate (D1 or D2) level
		received in the year,	
		in which further	
		information was	
		disclosed after	
		review	
2015			
2016			
2017			
2018			
2019			

4) With reference to the target response times set out in paragraphs 1.16.1 to 1.19.1 of Guidelines on Interpretation and Application of the Code on Access to Information, please advise this Committee on the following information by year in table form (with text descriptions).

(a) Within 10 days from date of receipt of a written request:

	Number of	Number of	Number of	Number of	Number of
	requests for	requests	requests for	requests for	applications
	which the	involving	which the	information	which the
	information	third party	information	which were	applicants
	requested	information	requested	refused	indicated
	was	for which	could not	under the	that they did
	provided	the	be provided	exemption	not wish to
		information	as the	provisions	proceed with
		requested	requests	in Part 2 of	and
		could not	had to be	the Code on	withdrew the
		be provided	transferred	Access to	application
			to another	Information	as they did
			department		not accept
			which held		the charge
			the		
			information		
			under		
			request		
2020					
2019					
2018					
2017					
2016					

Within 10 to 21 days from date of receipt of a written request:

	Number of	Number of	Number of	Number of	Number of
	requests for	requests	requests for	requests for	applications
	which the	involving	which the	information	which the
	information	third party	information	which were	applicants
	requested	information	requested	refused	indicated
	was	for which	could not	under the	that they did
	provided	the	be provided	exemption	not wish to
		information	as the	provisions	proceed with
		requested	requests	in Part 2 of	and
		could not	had to be	the Code on	withdrew the
		be provided	transferred	Access to	application
			to another	Information	as they did
			department		not accept
			which held		the charge
			the		
			information		
			under		
2020			request		
2020					
2019					
2018					
2017					
2016					

Within 21 to 51 days from date of receipt of a written request:

	Number of	Number of	Number of	Number of	Number of
	requests for	requests	requests for	requests for	applications
	which the	involving	which the	information	which the
	information	third party	information	which were	applicants
	requested	information	requested	refused	indicated
	was	for which	could not	under the	that they did
	provided	the	be provided	exemption	not wish to
		information	as the	provisions	proceed with
		requested	requests	in Part 2 of	and
		could not	had to be	the Code on	withdrew the
		be provided	transferred	Access to	application
			to another	Information	as they did
			department		not accept
			which held		the charge
			the		
			information		
			under		
2020			request		
2020					
2019					
2018					
2017					
2016					

(b) cases in which information could not be provided within 21 days from date of receipt of a request in the past 5 years:

Date	Subject of information	Specific reason
	requested	

(c) cases in which information could not be provided within 51 days from date of receipt of a request in the past 5 years:

Date	Subject of information requested	Specific reason

5) Please state in table form the number of those, among the cases in which requests for information were refused under the exemption provisions in Part 2 of the Code on Access to Information, on which the Privacy Commissioner for Personal Data was consulted when they were being handled in the past 5 years. For cases on which advice had been sought, was it fully accepted in the end? For cases where the advice of the Privacy Commissioner for Personal Data was not accepted or was only partially accepted, what are the reasons?

Date	Subject	Particular	Whether the	Reasons for
		exemption	advice of the	refusing to
		provision in	Privacy	accept or only
		Part 2 of the	Commissioner	partially
		Code on	for Personal	accepting the
		Access to	Data was fully	advice of the
		Information	accepted	Privacy
		under which		Commissioner
		requests for		for Personal
		information		Data
		were refused		

Asked by: Hon CHAN Tanya (LegCo internal reference no.: 411)

Reply:

1) Regarding the requests for information under the Code on Access to Information (the Code) received by the Buildings Department (BD) for which only some of the required information was provided, the requisite information is tabulated as follows –

From October to December 2018

(i) Content of the requests for which only some of the required information was provided (1)	(ii) Reasons for providing some of the information only (2)	(iii) Whether the decision on withholding some of the information was made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines on Interpretation and Application on the Code (Guidelines)) (3)	(iv) Whether the decision on withholding some of the information was made subject to a "harm or prejudice test", i.e. whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines). If yes, please provide the details. (4)
Personal data shown in specified forms, documentary records and letters issued by BD (Nine requests)	Paragraph 2.15 of the Code	No	Yes
Third party information and personal data shown in inspection report (One request)	Paragraphs 2.14 and 2.15 of the Code	No	Yes
Particulars of an informant (One request)	Paragraph 2.14 of the Code	Yes	Yes

Statistics on notices issued and compliance status under Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) in 2012 and 2012 to 2013 (One request)	Paragraph 2.13 of the Code	No	Yes
Internal instructions on BD's enforcement action against unauthorised building works (UBWs) (One request)	Paragraph 2.9 of the Code	Yes	Yes
Third party information and internal discussion marked in inspection report (One request)	Paragraphs 2.10 & 2.14 of the Code	Yes	Yes

From January to September 2019 (5)

Personal data shown	Paragraph 2.15	No	Yes
in specified forms,	of the Code		
documentary records			
and letter issued by			
BD			
(34 requests)			
Third party	Paragraphs	No	Yes
information and	2.14 and 2.15		
personal data shown	of the Code		
in specified forms			
and letter issued by			
BD			
(<u>One request</u>)			

Personal data and	Paragraphs	Yes	Yes
internal file records	2.10 and 2.15	105	100
of an investigation	of the Code		
on building defect			
(One request)			
Internal file records	Paragraph 2.10	Yes	Yes
of an investigation	of the Code		
concerning UBWs			
(One request)			
Monthly water	Paragraph 2.9	No	Yes
seepage reports in	of the Code		
19 districts			
(<u>One request</u>)			
Third party	Paragraph 2.14	Yes	Yes
information	of the Code		
contained in the			
water seepage			
investigation report			
(One request)			
Warning letters	Paragraph 2.9	Yes	Yes
issued by BD	of the Code		
regarding a target			
building under			
MWIS			
(<u>One request</u>)			

Note (1): The content of these requests was extensive, and hence only the required information that was refused is given in the table.

Note (2): Exemption provisions in Part 2 of the Code cited:

Paragraph 2.9 Management and operation of the public service

Paragraph 2.10 Internal discussion and advice

Paragraph 2.13 Research, statistics and analysis

Paragraph 2.14 Third party information

Paragraph 2.15 Privacy of an individual

Note ⁽³⁾: According to paragraph 1.8.2 of the Guidelines, decisions were made at the directorate (D1 or D2) level for complex cases. For simple and straightforward cases such as the release of information about personal data, third party information, or information which was not available, decisions were made by non-directorate officers.

- Note ⁽⁴⁾: BD has followed the Guidelines and reviewed the information requested under the Code. No public interest was identified for the disclosure of the required information in these cases.
- Note (5): The statistics from October 2019 onwards is still under preparation.
- 2) For the requests for information under the Code received by BD for which the required information was not provided, the requisite information is tabulated as follows –

From October to December 2018

(i) Content of the requests refused	(ii) Reasons for refusal ⁽¹⁾	(iii) Whether the decision on withholding the information was made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines) (2)	(iv) Whether the decision on withholding the information was made subject to a "harm or prejudice test", i.e. whether the public interest in disclosure of such information outweighs any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines). If yes, please provide the details. (3)
Forms and letters issued by BD with personal data (Two requests)	Paragraph 2.15 of the Code	Yes	Yes
Plan submission records for a development under construction (One request)	Paragraph 2.14 of the Code	Yes	Yes
Specified form and supervision plan for a development under construction (Two requests)	Paragraph 2.14 of the Code	No	Yes

Internal discussion	Paragraph 2.10 of	Yes	Yes
of Building	the Code		
Committee			
(One request)			

From January to September 2019 (4)

MWIS inspection record by third	Paragraph 2.14 of the Code	No	Yes
party	the code		
(One request)			
BD's record of	Paragraph 2.14 of	No	Yes
legal proceedings	the Code		
about a private			
premises			
(One request)			
Contractor's	Paragraph 2.14 of	Yes	Yes
investigation report	the Code		
with third party			
information			
(One request)			
MBIS investigation	Paragraph 2.14 of	Yes	Yes
report by third	the Code		
party			
(One request)			
Defect	Paragraph 2.15 of	Yes	Yes
investigation	the Code		
records with			
personal data			
(One request)			
Names of target	Paragraph 2.9 of	Yes	Yes
buildings under	the Code		
MWIS			
(One request)			
All records of	Paragraph 2.9	No	Yes
reports received by	of the Code		
BD about a private			
building			
(One request)	D 1 2.0	3 7.	1 7.
All UBWs records	Paragraphs 2.9	Yes	Yes
of a private estate	and 2.13 of the		
(One request)	Code		

All reports and	Paragraphs 2.9	Yes	Yes
enquiries on a	and 2.14 of the		
village house	Code		
received by BD			
(One request)			
All investigation	Paragraphs 2.6,	Yes	Yes
records and staff	2.14, 2.15 and		
particulars of the	2.16		
consultant	of the Code		
appointed by BD			
for defect			
investigation			
(One request)			
Breakdown of fees	Paragraphs 2.9,	No	Yes
for BD's consultant	2.14 and 2.16 of		
for water seepage	the Code		
investigation			
(One request)			

Note (1): Exemption provisions in Part 2 of the Code cited:

Paragraph 2.6 Law enforcement, legal proceedings and public safety

Paragraph 2.9 Management and operation of the public service

Paragraph 2.10 Internal discussion and advice

Paragraph 2.13 Research, statistics and analysis

Paragraph 2.14 Third party information

Paragraph 2.15 Privacy of an individual

Paragraph 2.16 Business affairs

Note ⁽²⁾: According to 1.8.2 of the Guidelines, decisions were made at the directorate (D1 or D2) level for complex cases. For simple and straightforward cases such as the release of information about personal data, third party information, or information which was not available, decisions were made by non-directorate officers.

Note ⁽³⁾: BD has followed the Guidelines and reviewed the information requested under the Code. No public interest was identified for the disclosure of the required information in these cases.

Note ⁽⁴⁾: The statistics from October 2019 onwards is under preparation.

3) For the requests for information under the Code received by BD for which cases have been reviewed in the past five years up to end of September 2019, the requisite information is tabulated as follows –

Year in which review cases were received	(i) Number of review cases received	(ii) Number of cases, among the review cases received in the year, in which further information was disclosed after review	(iii) Whether the decisions on review were made at the directorate (D1 or D2) level
2015	2	0	Yes
2016	0	0	Not applicable
2017	0	0	Not applicable
2018	0	0	Not applicable
2019	1	1	Yes

4) The number of requests for information under the Code processed within the target response time frames set out in paragraphs 1.16.1 to 1.19.1 of the Guidelines in the past four years up to end of September 2019 are tabulated as follows –

Within 10 days from date of receipt of a written request

Year	Number of requests for which the information requested was provided	Number of requests involving third party information for which the information requested could not be provided		Number of requests for information which were refused under the exemption provisions in Part 2 of the Code	
2016	120	1	2	1	0
2017	176	2	6	3	0
2018	275	4	12	12	0
2019 (2)	252	2	1	8	0

Within 11 to 21 days from date of receipt of a written request:

Year	Number of requests for which the information requested was provided	Number of requests involving third party information for which the information requested could not be provided	Number of requests for which the information requested could not be provided as the requests had to be transferred to another department which held the information under request	Number of requests for information which were refused under the exemption provisions in Part 2 of the Code	Number of application s which the applicants indicated that they did not wish to proceed with and withdrew the application as they did not accept the charge
2016	301	1	0	3	0
2017	366	4	0	11	0
2018	480	3	0	25	0
2019 (2)	346	3	0	20	0

Within 22 to 51 days from date of receipt of a written request:

Year	Number of requests for which the information requested was provided	Number of requests involving third party information for which the information requested could not be provided	Number of requests for which the information requested could not be provided as the requests had to be transferred to another department which held the information under request	Number of requests for information which were refused under the exemption provisions in Part 2 of the Code	Number of applications which the applicants indicated that they did not wish to proceed with and withdrew the application as they did not accept the charge (1)
2016	256	1	0	2	0
2017	289	2	0	3	0
2018	137	3	0	12	0
2010	13/	3	U	12	U _

Note (1): BD does not compile statistics on the number of applications withdrawn because the applicants did not accept the charge.

Note (2): The statistics from October 2019 onwards is under preparation.

BD does not compile statistics on cases in which the required information could not be provided within 21 and 51 days from date of receipt of a request.

5) BD does not compile statistics on the number of cases in which requests for information were refused under the exemption provisions in Part 2 of the Code on which the Privacy Commissioner for Personal Data was consulted.