

CONTROLLING OFFICER'S REPLY

DEVB(PL)226

(Question Serial No. 4846)

Head: (82) Buildings Department

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

Programme: (1) Buildings and Building Works

Controlling Officer: Director of Buildings (YU Tak-cheung)

Director of Bureau: Secretary for Development

Question:

- 1) 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 the requests for which only some of the required information was provided	(ii) 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.

2019

(i) Content of the requests for which only some of the required information was provided	(ii) 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.

- 2) 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 the requests refused	(ii) 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.

2019

(i) Content of the requests refused	(ii) 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.

- 3) 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 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			
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 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 on Access to Information	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
2020					
2019					
2018					
2017					
2016					

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

	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 on Access to Information	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
2020					
2019					
2018					
2017					
2016					

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

	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 on Access to Information	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
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 requested	Specific reason

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

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

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

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 of Building Committee (<u>One request</u>)	Paragraph 2.10 of the Code	Yes	Yes
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From January to September 2019⁽⁴⁾

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

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

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 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	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 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	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
2019 ⁽²⁾	70	4	0	19	0

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.