

CONTROLLING OFFICER'S REPLY

FHB(FE)259

(Question Serial No. 4881)

Head: (49) Food and Environmental Hygiene Department
Subhead (No. & title): (-) Not specified
Programme: (-) Not specified
Controlling Officer: Director of Food and Environmental Hygiene (Miss Vivian LAU)
Director of Bureau: Secretary for Food and Health

Question:

Regarding the work in relation to the Code on Access to Information, will the Government advise this Committee on the following:

1) Concerning the requests for information under the Code on Access to Information received by the Food and Environmental Hygiene Department 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 of how the requests have been handled eventually.

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
			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) Concerning the requests for information under the Code on Access to Information received by the Food and Environmental Hygiene Department 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 of how the requests have been handled eventually.

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	(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
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		Interpretation and Application)	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 since 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 since 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 since the requests had to be transferred to another department which held the information under	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 since they did not accept the charge

			request		
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 since 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 since 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.: 450)

Reply:

(1)

Of the requests for information under the Code on Access to Information (the Code) received by the Food and Environmental Hygiene Department from October to December 2018, 1 was provided with partial information. The information sought is as follows:

(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.
The cut score for the written examination for recruitment of Health Inspectors II in 2017	Having regard to paragraph 2.11 of the Code, the withheld information was “information which would harm or	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or

	prejudice the management of the public service”.		prejudice that could result from disclosure.
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Of the requests for information under the Code received by the Department from January to September 2019, 7 were provided only with partial information. The information sought is as follows:

(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.
Court summons	Having regard to paragraph 2.6(c) of the Code, the withheld information was “information which related to proceedings which had been completed, terminated or stayed, or which related to investigations which had resulted in or might have resulted in proceedings, whether any such proceedings were criminal or civil”.	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could result from disclosure.
Contact information of tea suppliers	Having regard to paragraphs 2.13(b), 2.14(a) and 2.15 of the Code, the withheld information was “information held only for preparing statistics	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could

	or carrying out research, and which related to individuals, companies or products which would not be identified in reports of that research, or in published statistics”, “third party information” and related to “privacy of the individual”.		result from disclosure.
Questions of the written recruitment examinations for Health Inspectors II and passing marks in the past 5 years	Having regard to paragraphs 2.9(c) and 2.11 of the Code, the withheld information was “information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department” and “information which would harm or prejudice the management of the public service”.	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could result from disclosure.
Information on a complaint case	Having regard to paragraphs 2.11 and 2.15 of the Code, the withheld information was “information which would harm or prejudice the management of the public service” and related to “privacy of the individual”.	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could result from disclosure.
Tenderers participated in the tender exercises in 2017 and 2018 and contract specifications of the tenders accepted	Having regard to paragraphs 2.9(d) and 2.16 of the Code, the withheld information was “information which could only be made available by unreasonable diversion of a department’s	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could result from disclosure.

	resources” and “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”.		
Information on a case of contravention of the Public Health and Municipal Services Ordinance	Having regard to paragraph 2.6(d) of the Code, the withheld information was “information which would be privileged from production in legal proceedings on the ground of legal professional privilege”.	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could result from disclosure.
Information on a trial case	Having regard to paragraph 2.15 of the Code, the withheld information was related to “privacy of the individual”.	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could result from disclosure.

(2)

Of the requests for information under the Code received by the Department from October to December 2018, 2 were refused. The information sought is as follows:

(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.
Information on the Fixed Penalty Notices issued by staff of the Department	Having regard to paragraph 2.6(d) of the Code, the withheld information was “information which would be privileged from production in legal proceedings on the ground of legal professional privilege”.	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could result from disclosure.
Plans submitted by shops in their applications for licences	Having regard to paragraph 2.14(a) of the Code, the withheld information was related to “third party information”.	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could result from disclosure.

Of the requests for information under the Code received by the Department from January to September 2019, 1 was refused. The information sought is as follows:

(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.
Feasibility studies on public market sites	Having regard to paragraph 2.10(b)(ii) of the Code, the withheld information was “information the disclosure of which would inhibit the	Yes	A “harm or prejudice test” was conducted. The public interest in disclosure of such information did not outweigh the harm or prejudice that could

	frankness and candour of discussion within the Government, and advice given to the Government”.		result from disclosure.
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(3)

The Department received 9 review cases from January 2015 to September 2019. The information sought is 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	The decisions on review were made at D3 level
2016	2	0	The decisions on review were made at D3 level
2017	3	1	The decisions on review were made at D1 or D3 level
2018	0	N.A.	N.A.
2019 (January to September)	2	1	The decisions on review were made at D3 level

(4a)

Information on the response times to the requests for information under the Code received by the Department from January 2016 to September 2019 (including cases where only partial information was provided) is 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 since the requests had to be transferred	Number of requests for information which were refused under the exemption provisions in Part 2 of the Code on Access to	Number of applications which the applicants indicated that they did not wish to proceed with and withdrew since they

			to another department which held the information under request	Information	did not accept the charge
2019 (as at September)	239	0	44	0	0
2018	266	0	59	0	0
2017	291	0	62	0	0
2016	241	0	69	0	0

Within 10 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 since 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 since they did not accept the charge
2019 (as at September)	161	0	0	1	0
2018	204	0	0	2	0
2017	190	1	0	2 [^]	0
2016	119	0	0	1	0

[^] Including the number of requests for information which were refused under the provision of “third party information” in Part 2 of the Code.

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

Year	Number of requests for which the information	Number of requests involving third party	Number of requests for which the information	Number of requests for information which were	Number of applications which the applicants
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	requested was provided	information for which the information requested could not be provided	requested could not be provided since the requests had to be transferred to another department which held the information under request	refused under the exemption provisions in Part 2 of the Code on Access to Information	indicated that they did not wish to proceed with and withdrew since they did not accept the charge
2019 (as at September)	77	0	0	6	0
2018	124	0	1	3	0
2017	77	0	0	4	0
2016	39	2	0	5 [^]	0

[^] Including the number of requests for information which were refused under the provision of “third party information” in Part 2 of the Code.

(4b)

All requests for access to information were handled according to the time limits stipulated in the Code. As required by the Code, information should be provided within 10 calendar days from date of receipt of a request by the Department. If that is not possible, the time limit may be extended to 21 days and be further extended up to 51 days from date of receipt of the request.

From January 2015 to September 2019, there were 386 cases in which final replies were given by the Department to applicants within 22 to 51 days from date of receipt of requests. The information requested was mainly related to enforcement and prosecution actions, records of irregularities by restaurants, testing reports on food, water seepage investigation reports and investigations on environmental hygiene issues. The reasons for taking longer time to handle the cases include the need to seek legal advice, the complexity of information requested and the necessity of notifying third parties and giving them a reasonable time to consider either consent to disclosure of information or objection with representation.

(4c)

From January 2015 to September 2019, there were 7 cases in which final replies were given by the Department to applicants after 51 days from date of receipt of requests. The information requested was mainly related to the structural plans of public toilets, plans of shops and food premises, water seepage cases and food compliance under relevant legislation. The reasons for taking longer time to handle the cases include the need to seek legal advice, notify third parties and give them a reasonable time to consider either consent to disclosure of information or objection with representation.

(5)

There was no need to seek advice from the Privacy Commissioner for Personal Data on any of the cases in which requests for information were refused under provisions in Part 2 of the Code from January 2015 to September 2019.

- End -