



Hong Kong General Chamber of Commerce
香港總商會 1861

香港總商會

香港金鐘道統一中心廿二樓

Hong Kong General Chamber of Commerce

22/F United Centre,

95 Queensway, Hong Kong

Tel (852) 2529 9229

Fax (852) 2527 9843

Email chamber@chamber.org.hk

www.chamber.org.hk

Our Ref: SN/2

Helping Business since 1861

5 March 2019

Ms Anita Ng
Secretary
Access to Information Sub-committee
The Law Reform Commission
4th Floor, East Wing, Justice Place
18 Lower Albert Road
Central
Hong Kong

Dear Ms Ng

**Response by Hong Kong General Chamber of Commerce to the
Law Reform Commission's Consultation Paper on Access to Information**

Hong Kong General Chamber of Commerce welcomes this opportunity to comment on the above consultation paper "CP". We agree that access to information held by Government and other public bodies in Hong Kong is a matter which merits review, in the interests of ensuring transparency and good governance. We wish to express our views on the following specific issues that are raised in the CP, namely:

- the need to justify on a cost versus benefits analysis whether there needs to be (a) legislation to replace the existing Code on Access to Information ("the Code") and (b) any changes to the content of the existing Code (whether the answer to (a) is yes or no);
- which public bodies should be covered?;
- charging of fees; and
- vexatious and repeated applications.

2. In presenting our views on these three issues, we shall provide our answers to the relevant CP recommendations.

/.....P.2

The need to justify on a cost versus benefits analysis whether there needs to be (a) legislation to replace the existing Code on Access to Information (“the Code” and (b) any changes from the existing Code provisions

3. From the feedback we have received from our members, the existing Code provisions generally work well. Consistently with our view of legislation or regulation generally, it should only be introduced if the benefits of doing so exceeds the costs, and it should be proportionate- i.e. sufficient to address the need to achieve the objective, but not more.

4. As with our views on the Commission’s Consultation Paper on Archives Law, we believe that, with the increasing public access to information that is being proposed, there is a corresponding need to strengthen protection of commercially sensitive business information. Currently, the Code only provides for a *discretion* on the part of the Government or other public body to reject an access request where confidential business affairs are concerned. This needs to be turned into a *legal obligation* and given statutory force, in the same way that individuals are protected under the Personal Data (Privacy) Ordinance.

5. Moreover, confidential business information should not be subject to a lower level of protection than personal data (qualified as opposed to absolute exemption) as is currently proposed by the CP.

6. The Commission cites Article 16 of the Hong Kong Bill of Rights (which includes the right to seek information) to support legislating for access to information, but it should also be noted that Article 14 of the same Bill protects the right to privacy, and therefore justifies equivalent legislative protection for individuals and businesses alike.

7. Another reason for which a Law on Access to Information might be required would be (a) if the internal government rules and guidelines were being widely disregarded and (b) it could be shown that a law backed up with more severe penalties would improve compliance. Thus far, we have seen no evidence to support either of these propositions.

8. **Our response to Recommendation 1 is therefore: A law should be introduced to prohibit (in absolute terms, subject only to the exceptions that apply to private individuals under the PDPO) Government and other public bodies from disclosing confidential business information. The definition of confidential business information for this purpose could be based on paragraph 2.16 of the Code (“Business Affairs”).**

9. **Our response to Recommendation 20 is therefore: Given our response to Recommendation 1 above, the question of rights of a business to object to the disclosure of its confidential information should not arise, as such disclosure would be subject to an absolute prohibition.**

Which public bodies should be covered?

10. Any access to information regime, to be logical and fair, should apply to **all** public bodies, as well as government departments and bureau. The current situation, whereby only ICAC and HKMA are covered, is insufficient. It should be reasonably practicable for the Hong Kong government to achieve a suitable definition of “public body” for the purpose, and then either specify the bodies which fulfil this definition, or (if the definition is sufficiently specific) leave it to the bodies themselves to assess whether they are covered by the definition. A case-by-case approach, as suggested by the Commission, would in our view involve inevitable disagreements and allegations of inconsistency, as well as consuming unnecessary public resources in seeking to resolve such disputes.

11. Our answer to Recommendation 5 is therefore: We do not agree with the case-by-case approach to the scope of application of the access to information regime, as suggested by the Commission. A definition of “public body” should be drafted and included in the regime, whether statutory or non-statutory. A list of bodies falling within the definition should be specified by the GRS or, if the definition is sufficiently specific, the bodies can self-assess whether they fall within it.

Charging of Fees

12. In the same way that there is no proposal to charge for access to archived information under the current parallel consultation paper, there should be no charge for current information. The current discretion under the Code for the authority to refuse access to “information which could only be made available by unreasonable diversion of a department’s resources”, combined with the new proposed exception for vexatious and repeated applications (with which we agree- see below) provide a sufficient safeguard against waste of public resources. In any event, as the CP observes, experience from other jurisdictions shows that the proportion of costs recovered from fees is “very low”, and a fee-charging regime, especially one based on the number of “man-hours” expended, would inevitably lead to disputes.

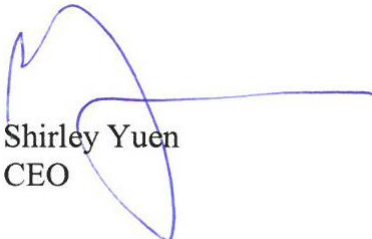
13. Our response to Recommendation 7 is therefore: No fee should be charged for access to information requests.

Vexatious and Repeated Applications

14. We agree with Recommendation 9.

15. We hope that the Sub-committee finds our comments useful to its deliberations on introducing an Access to Information Law for Hong Kong.

Yours sincerely


Shirley Yuen
CEO