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Fighting for transparency

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Pressure is mounting on Chief Executive Donald Tsang to enact legislation governing citizen access to crucial government documents, including the financial arrangements for Hong Kong Disneyland, West Kowloon Cultural District and Cyberport.

For more than a decade, pro-democracy activists and politicians have sought to strip the government's veil of secrecy, with little success.

But an increasingly assertive populace, frustrated by a series of secretive deals between the government and business - and impatient at the slow pace of electoral reform - may force the government to act.

Legislators, activists and researchers have become increasingly frustrated over the past few years with the government's refusal to disclose key financial documents governing so-called "public-private partnerships," such as Hong Kong Disneyland, the proposed West Kowloon Cultural District and, most controversially, the technology-park-turned-real estate development known as Cyberport.

But the debate over secrecy goes far beyond commercial dealings. A heated exchange took place in the Legislative Council Tuesday between lawmakers and Secretary for Security Ambrose Lee, who refused to discuss internal guidelines on covert surveillance.

Lee's refusal followed a series of court setbacks for the government and controversial executive guidelines to try to lay the legal groundwork for covert surveillance, which is a seemingly common practice in Hong Kong.

Now, with Tsang set to make his first policy address, the pro-democracy Article 45 Concern Group has renewed calls for a freedom of information law that would give the public a right to information held by public bodies.

The group wants such a law mentioned in Tsang's speech and actual legislation put forward in the coming year

It's not just the pro-democracy politicians who are calling for freedom of information. In the last Legco session, the pro-Beijing Democratic Alliance for the Betterment and Progress of Hong Kong backed a non-binding motion tabled by the Democratic Party's James To.

Urging the government to enact legislation on freedom of information, the motion was passed after amendments were made by former DAB chairman Jasper Tsang.

"A transparent, open and accountable government is particularly important when you don't have an elected democracy, and it becomes essential that people are able to check information held by the government," said Margaret Ng, a barrister and lawmaker from the group, which wants to see concrete discussions on such a law in the next Legco session, starting this month.

Currently, 400 government committees make important decisions behind closed doors and without records. Hong Kong has no "sunshine laws" such as in North America and Western Europe to force disclosure, meaning that information of public interest is often discovered only through leaks.

The current Code on Access to Information, criticized as ineffective, is a vestige of the British colonial government and a constant source of irritation for lawmakers and journalists.

"[Under the code], basically what you get is government publicity material. And that is precisely the material you do not want," said Ng.

But advocates of a freedom of information law face an intransigent government. "We do not think that now is the most appropriate moment to enact legislation on freedom of information," said a spokesman for the chief executive's office.

"However, we have an open mind as to whether the public should be given a statutory right to know through legislation. We will regularly review the existing Code on Access to Information, take reference from overseas experience and consider enacting legislation on freedom of information in due course.

"Neither do we think that enacting legislation on freedom of information is necessarily the most effective means of protecting the freedom of the press or the freedom of information."

According to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information - principles which are endorsed by the United Nations Commission on Human Rights - a freedom of information law, is imperative "so as to discourage governments from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms."

With the government bound by Article 23 of the Basic Law to enact a security law to prohibit "theft of state secrets," legal analysts also fear that a wide-ranging, ambiguous definition of what constitutes a state secret would allow the government to withhold information that, while it might be potentially embarrassing, would be essential to the public interest.

Such laws are "part and parcel and ought to be looked at together," said Audrey Eu, also of the concern group.

In fact, while Legco can force disclosure from the government under its Powers and Privileges ordinance, it can only do so on a majority vote.

Given that pro-democrat legislators command only 25 of the 60-member Legco, a majority is difficult to ensure.

A civil-society organization, the People's Panel on West Kowloon, is demanding information on the multibillion-dollar project.

"There is no official channel for us to press for information," said Cyd Ho, a member of the panel and a former legislator, "so actually, there is no way for the public to monitor the government."

In the years leading up to the handover, Christine Loh, then a legislator, was a leading advocate of a Freedom of Information law.

In 1995, the government announced a Code on Access to Information, which it described as "a pragmatic administrative framework for the public to access government information."

It puts the burden on government officials to release information "unless there are valid reasons to withhold it."

Loh, now the head of the think-tank Civic Exchange, said that on the surface, the code and the law she advocated have the "same elements," but she draws an important distinction: with a code, she says, "you do not have a right to information."

A celebrated advocate of corporate and government transparency, David Webb, recently documented his failed attempts through the code to seek the directors' report and audited financial statements for each accounting period since incorporation of the government-owned Hong Kong Cyberport Management Company Ltd and its subsidiaries.

"We know that these documents exist, because they are required by the Companies Ordinance. They should hardly be state secrets - there is no national security or foreign policy implication to these documents, nor is there any privacy ordinance implication, as they relate to companies, not individuals. It's not like asking for immigration records or personal tax returns," wrote Webb on his Web site.

His request was refused three times for different reasons, which were upheld by the Ombudsman, who said such information was "commercially sensitive" and bound by confidentiality. The Ombudsman did, however, force an apology from the government because its reasons for refusal were not clear.

"The West Kowloon Cultural District is basically Cyberport mark two," said Alan Leong, chairman of the Legco subcommittee on the purported culture hub.

"Nobody now remembers what Cyberport is - but they remember Residence Bel-Air," the luxury residences that sit alongside the cyber facilities. Given the worth of public assets in West Kowloon, "we ask for all the financial information. We ask for feasibility studies. We ask for the data on which they based their planning of a 75,000 square meter exhibition hall. All these we have not got successfully from the government."

"The whole planning process has fallen short of what one expects from an open, accountable government," said Leong, who described his work as "trying to discover the government's latest thinking."

A freedom of information law, by contrast, provides the grounds for the public to force the government to release certain information, said Doreen Weisenhaus, who teaches media law and journalism at the University of Hong Kong.

"The code is essentially ineffective for a journalist. It has no teeth," said Weisenhaus.

Added Loh: "Essentially, what information you get is at the discretion of the government."