

Watchdog raps officials' secrecy

Ombudsman faults government secrecy

The government is guilty not only of failing on many fronts to give the public access to official information, but of doing little to improve the situation, a year-long Ombudsman's investigation concluded yesterday.

The inquiry was launched last February to study the effectiveness of the Code on Access to Information, an administrative guide that has been criticised as failing to uphold the public's right to information since being put forward in 1995, to deflect demands for a freedom of information law.

The report cited examples of day-to-day importance to Hongkongers, such as the government's refusal to release the results of some tests for melamine in dairy products, or the salaries paid to new political appointees. It faulted the government for "considerable misunderstanding and unfamiliarity with the procedural requirements of the code after well over a decade of implementation."

"Some [departments] have refused requests for information without giving any reason, or with reasons not specified in the code; others have misused the reasons specified in the code. Some have failed to inform requesters of the avenues of review and complaint to our office, while others have overlooked their responsibility to co-ordinate replies involving multiple departments," it said.

Even so, civil rights advocates faulted the report for failing to call for a freedom-of-information law, pointing out that regional neighbours South Korea, Japan, Thailand and India are among those with such laws. The code has long been faulted by such critics and by the Hong Kong Journalists Association as being a tool to justify government secrecy rather than facilitate the release of public information. Unlike a freedom-of-information law, it does not grant a general right to know along with a judicial remedy. Part one of the code says the government will make available as much information as possible. But the second part gives authorities the right to "refuse to disclose information", and "refuse to confirm or deny the existence of information" on a wide range of subjects. It lists 16 categories of information that need not be disclosed, including "internal advice and discussion", "public employment and public appointments", and "research, statistics and analysis".

Requests are made to specific departments, but the code does not oblige departments to acquire information that other departments have.

In releasing the report, Ombudsman Alan Lai Nin said: "The code aims to make access of information more transparent. But we observe some departments are using various methods not to publicise information, which is contradictory to the principle of the guidelines."

He said the office decided to look into the problem last year after receiving 41 complaints regarding the code, which made up 43 per cent of all such complaints it has received since 1994. "I will not speculate on whether the departments are finding reasons to reject [the requests] on purpose. I believe there are occasions when they misinterpret the code," Lai said.

As an example of an insufficient understanding of the code, the report cited the Food and Environmental Hygiene Department's initial refusal of a request for the exact level of melamine in food samples that had passed government inspections. It released information only on products that fell below the standard.

The department rejected the request in order to "avoid confusion among the public", to ensure its relationship with food manufacturers was not harmed, and to prevent a libel case against it. But those are not reasons listed in the code for denying information, Lai noted. In any case, the publication of accurate information is a complete defence against libel, he noted.

Other cases highlighted by the report showed ignorance, unfamiliarity with procedural requirements and insufficient understanding of the code.

In 2008, the South China Morning Post went through the code's procedures to ask for disclosure of the salaries of new political appointees. The request was originally rejected as personal data, although the Ombudsman's report said the reasons for refusal should have been better explained. Three days later, the appointees in question disclosed their own salaries.

The Home Affairs Bureau provided no training in administering the code between 1997 and 2004, although the Constitutional and Mainland Affairs Bureau stepped up training after it became responsible for the code in 2007, the report said. After 1997, there was "no positive media publicity for 11 years" on how Hongkongers could access information, although the bureau improved publicity in 2008 after the Ombudsman's pre-investigation inquiry.

However, advocates of a freedom-of-information law yesterday expressed disappointment that the Ombudsman's report did not call for such a law. The Hong Kong Journalists Association issued a statement repeating its call for a freedom-of-information law, arguing that the Ombudsman's report not only showed up the deficiencies of those administering the code but highlighted why a mere code was not sufficient.

David Webb, an advocate of corporate and government transparency who uses his website to publish information unavailable through mainstream government sources, said of the code: "I've basically given up using it." In 2004, the government had to apologise to Webb after consistently finding different reasons to refuse disclosure of information relating to the Cyberport property development in Pok Fu Lam.

"The government only does the absolute minimum for what is required of it," he said. "For example, replies always take the maximum time period of 21 days.

"What Hong Kong needs is a law, and the Ombudsman's failure to address this is unfortunate."

Democratic Party vice-chairwoman Emily Lau Wai-hing, a former journalist, noted that Hong Kong society, with its greater awareness of rights and demands for transparent government, deserved a freedom-of-information law. "What we have now has no teeth. I urge anyone who has been refused access to information to report it, so we can follow up on this issue. Other countries in the region all have such laws now; it's about time we pushed forward too." While freedom-of-information laws can vary, they generally create a right to know and an affirmative legal duty to release records, and provide independent judicial review of any denial of a request.

According to the bureau, 25,125 requests have been handled since 1995, with 563 of them partially met and 576 completely refused.

A spokesman for the Constitutional and Mainland Affairs Bureau said it accepted the report. "We will step up promotion and training within the government," he said, with measures such as more timely training, the monitoring of complaints and increased co-ordination between departments.

However, he said the government had "no plan to enact legislation on freedom of information. Experience so far demonstrates that the Code on Access to Information provides of an effective framework for the public to access a wide range of information held by the government."