

CONTROLLING OFFICER'S REPLY

FSTB(Tsy)136

(Question Serial No. 4916)

Head: (76) Inland Revenue Department

Subhead (No. & title): ()

Programme: Not Specified

Controlling Officer: Commissioner of Inland Revenue (WONG Kuen Fai)

Director of Bureau: Secretary for Financial Services and the Treasury

Question:

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

1) Concerning the applications for access to information under the Code received by the Inland Revenue Department (IRD) from October 2018 to present, in which only some of the required information was provided, please state in table form: (i) the content of the requests for which only some of the required information was provided; (ii) the reasons for providing some of the information only; (iii) whether the decisions on withholding some of the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Code's Guidelines on Interpretation and Application (the Guidelines)); (iv) whether the decisions on withholding some of the information were made subject to a "harm or prejudice test", i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, 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 decisions on withholding some of the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines)	(iv) whether the decisions on withholding some of the information were made subject to a "harm or prejudice test", i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, 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 decisions on withholding some of the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines)	(iv) whether the decisions on withholding some of the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details

2) Concerning the applications for access to information under the Code received by the IRD from October 2018 to present, for which the required information was not provided, please state in table form: (i) the content of the requests refused; (ii) the reasons for refusal; (iii) whether the decisions on withholding the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines); (iv) whether the decisions on withholding the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details.

From October to December 2018

(i) Content of the requests refused	(ii) Reasons for refusal	(iii) whether the decisions on withholding the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines)	(iv) whether the decisions on withholding the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details

2019

(i) Content of the requests refused	(ii) Reasons for refusal	(iii) whether the decisions on withholding the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines)	(iv) whether the decisions on withholding the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details

3) Any person who believes that a department has failed to comply with any provision of the Code may ask the department to review the situation. Please advise this Committee on, in each of the past 5 years, (i) the number of review cases received; (ii) the number of cases, among the review cases received that year, in which further information was disclosed after review; and (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 that 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 the Code's Guidelines, 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	Number of applications which were withdrawn since the applicants did not accept the charge and indicated that they did not wish to proceed with the applications
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 request	Number of requests for information which were refused under the exemption provisions in Part 2 of the Code	Number of applications which were withdrawn since the applicants did not accept the charge and indicated that they did not wish to proceed with the applications
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	Number of applications which were withdrawn since the applicants did not accept the charge and indicated that they did not wish to proceed with the applications
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(s)

(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(s)

5) Please tabulate the numbers of cases in the past 5 years, among those 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 during the handling process. For cases on which advice had been sought, was the advice fully accepted in the end? For cases where the advice of the Privacy Commissioner for Personal Data was not accepted or only partially accepted, what were the reasons?

Date	Subject	Particular exemption provision in Part 2 of the Code under which requests for information were refused	Whether the advice of the Privacy Commissioner for Personal Data was fully accepted	Reason(s) 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.: 486)

Reply:

1 & 2) The Inland Revenue Department (IRD) processes applications for access to information in accordance with the Code on Access to Information (the Code). Where a decision is made not to provide all or part of the information requested, the IRD will explain to the applicant in writing the reasons for the refusal, citing the relevant paragraphs in Part 2 of the Code. From October 2018 to September 2019, among the applications for access to information under the Code processed by the IRD, the details of the requests (1) for which only some of the required information was provided; and (2) which were refused, are stated below:

(1) Requests for which only some of the required information was provided

Content of the requests for which only some of the required information was provided	Reasons for providing some of the information only	Whether the decisions on withholding some of the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines on Interpretation and Application (the Guidelines))	Whether the decisions on withholding some of the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from the disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details
October to December 2018			
Nil			
January to September 2019			

<p>Content of the requests for which only some of the required information was provided</p>	<p>Reasons for providing some of the information only</p>	<p>Whether the decisions on withholding some of the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines on Interpretation and Application (the Guidelines))</p>	<p>Whether the decisions on withholding some of the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from the disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details</p>
<p>Application for access to the tax information submitted to the IRD by a company before and after the applicant became a partner of that company</p> <p>(Note: The applicant was not an authorised representative prior to becoming a partner)</p>	<p>Paragraph 2.18 of the Code – “Legal restrictions”</p>	<p>Yes</p>	<p>The disclosure was prohibited by section 4 of the Inland Revenue Ordinance (IRO) (Cap. 112).</p>
<p>Request for access to a copy of a letter sent to the IRD by a person (the sender) on a specified date and request for the information about the applicant’s appointment of a tax representative</p> <p>(Note: The applicant was not an authorised representative of the sender)</p>	<p>Paragraph 2.18 of the Code – “Legal restrictions”</p>	<p>Yes</p>	<p>The disclosure was prohibited by section 4 of the IRO (Cap. 112).</p>
<p>Request for access to information on double stamp duty related to acquiring multiple residential properties under a single instrument for 2013-14</p> <p>(Note: Some of the requested information</p>	<p>Paragraph 2.10 of the Code – “Internal discussion and advice”</p>	<p>Yes</p>	<p>The IRD had weighed the public interest in disclosure of the information against the harm or prejudice that could result from the disclosure, and considered that the harm which might be caused by disclosing certain part of the requested information to be extremely serious.</p>

Content of the requests for which only some of the required information was provided	Reasons for providing some of the information only	Whether the decisions on withholding some of the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines on Interpretation and Application (the Guidelines))	Whether the decisions on withholding some of the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from the disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details
involve internal discussion on government policy)			
Request for access to the information on the exemption of stamp duty granted to a certain type of institutions	Paragraph 2.14 of the Code – “Third party information”; and paragraph 2.15 of the Code – “Privacy of the individual”	Yes	The IRD had weighed the public interest in disclosure of the information against the harm or prejudice that could result from the disclosure, and considered that the harm which might be caused by disclosing certain part of the requested information to be extremely serious.

(2) Requests which were refused

Content of the requests refused	Reasons for refusal	Whether the decisions on withholding the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines)	Whether the decisions on withholding the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from the disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details
October to December 2018			

Content of the requests refused	Reasons for refusal	Whether the decisions on withholding the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines)	Whether the decisions on withholding the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from the disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details
Request for access to statistical data on financial account information exchanged between Hong Kong and other tax jurisdictions under the arrangement of “automatic exchange of financial account information in tax matters” (including the numbers of financial accounts involved, and the amounts and types of assets involved)	Paragraph 2.4 of the Code – “External affairs”; and paragraph 2.9 of the Code – “Management and operation of the public service”	Yes	The IRD had weighed the public interest in disclosure of the information against the harm or prejudice that could result from the disclosure, and considered that the harm which might be caused by disclosing the requested information to be extremely serious.
January to September 2019			
Request for access to profits tax information of a corporate business from its incorporation to its deregistration and dissolution (Note: The applicant was not an authorised representative)	Paragraph 2.18 of the Code – “Legal restrictions”	Yes	The disclosure was prohibited by section 4 of the IRO (Cap. 112).
Request for access to profits tax information of a corporate business from its incorporation to its deregistration and dissolution	Paragraph 2.18 of the Code – “Legal restrictions”	Yes	The disclosure was prohibited by section 4 of the IRO (Cap. 112).

Content of the requests refused	Reasons for refusal	Whether the decisions on withholding the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines)	Whether the decisions on withholding the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from the disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details
(Note: The applicant was not an authorised representative)			
Request for access to profits tax information of a corporate business from its incorporation to its deregistration and dissolution (Note: The applicant was not an authorised representative)	Paragraph 2.18 of the Code – “Legal restrictions”	Yes	The disclosure was prohibited by section 4 of the IRO (Cap. 112).
Request for access to profits tax information of a corporate business from its incorporation to its deregistration and dissolution (Note: The applicant was not an authorised representative)	Paragraph 2.18 of the Code – “Legal restrictions”	Yes	The disclosure was prohibited by section 4 of the IRO (Cap. 112).
Request for access to information of a company on records of the Tax Reserve Certificates (TRCs) purchased by the company and balance of the related TRC account (Note: The applicant was not an authorised representative)	Paragraph 2.18 of the Code – “Legal restrictions”	Yes	The disclosure was prohibited by section 4 of the IRO (Cap. 112).

Content of the requests refused	Reasons for refusal	Whether the decisions on withholding the information were made at the directorate (D1 or D2) level (according to paragraph 1.8.2 of the Guidelines)	Whether the decisions on withholding the information were made subject to a “harm or prejudice test”, i.e. whether the public interest in disclosure of such information outweighed any harm or prejudice that could result from the disclosure (according to paragraph 2.1.1 of the Guidelines); and if so, the details
Request for access to information (including the name/address/telephone number and fax number) on businesses which were issued the business registration certificate during a specified period (Note: The applicant was not an authorised representative)	Paragraph 2.18 of the Code – “Legal restrictions”	Yes	The disclosure was prohibited by section 4 of the Business Registration Ordinance (Cap. 310).

Note: Pursuant to the Official Secrecy Provision under section 4 of the IRO, the IRD is prohibited from disclosing any information on tax cases to unauthorized third party.

3) Any applicant who is dissatisfied with the IRD’s decision may request a review under the Code. From January 2015 to September 2019, the numbers of cases received by the IRD from applicants for departmental review in accordance to the Code are listed below:

Year in which review cases were processed	Number of review cases received	Number of cases, among the review cases received that year, in which further information was disclosed after review
2015	1	0
2016	0	0
2017	0	0
2018	4	0
2019 (up to 30 September 2019)	1	0

The above review decisions were made by directorate officers of a rank level above D2.

4) When processing the applications for access to information under the Code, the IRD will provide a reply within the target response time set out in the Code. From January 2015 to September 2019, the breakdowns of the applications received by response time (Note 1) are listed below:

(a)(i) Within 10 days from date of receipt of a written request:

Year in which applications for access to information were processed	Number of cases in which the information requested was provided	Number of cases in which the information requested could not be provided since third party information was involved	Number of cases in 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 cases in which the requests for information were refused under the exemption provisions in Part 2 of the Code (Note 2)	Number of cases in which the applications were withdrawn since the applicants did not accept the charge and indicated that they did not wish to proceed with the applications
2015	786	0	0	3	0
2016	903	0	0	7	0
2017	852	0	0	10	0
2018	970	1	0	6	0
2019 (up to 30 September 2019)	996	0	0	9	0

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

Year in which applications for access to information were processed	Number of cases in which the information requested was provided	Number of cases in which the information requested could not be provided since third party information was involved	Number of cases in 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 cases in which the requests for information were refused under the exemption provisions in Part 2 of the Code (Note 2)	Number of cases in which the applications were withdrawn since the applicants did not accept the charge and indicated that they did not wish to proceed with the applications
2015	11	0	0	1	0
2016	7	0	0	0	0
2017	4	0	0	2	0
2018	10	0	0	2	0
2019 (up to 30 September 2019)	6	0	0	0	0

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

Year in which applications for access to information were processed	Number of cases in which the information requested was provided	Number of cases in which the information requested could not be provided since third party information was involved	Number of cases in 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 cases in which the requests for information were refused under the exemption provisions in Part 2 of the Code (Note 2)	Number of cases in which the applications were withdrawn since the applicants did not accept the charge and indicated that they did not wish to proceed with the applications
2015	1	0	0	0	0
2016	0	0	0	0	0
2017	0	0	0	0	0
2018	0	0	0	0	0

2019 (up to 30 September 2019)	0	1	0	1	0
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Note 1: Some cases may involve more than one category

Note 2: Include cases in which the requests for information were refused in part or in whole under the exemption provisions in Part 2 of the Code

(b) In the past 5 years, there were 2 cases for which the IRD was unable to provide a reply within 21 days from the date of receipt of the request. The details of the information requested are as follows:

Date of receipt of the application for access to information	Subject of information requested	Specific reason(s)
29 July 2015	Personal tax information of the applicant	The applicant's proof of identity (as requested by the IRD) was not received until the 24 th day after the date of receipt of the application. (Note: The IRD replied to the applicant in relation to the tax information requested on the 29 th day after the date of receipt of the application i.e. 26 August 2015.)
5 March 2019	Information on stamp duty exemption granted to a certain type of institutions	The handling process took time given the complexity of the information requested and that third party information was involved. (Note: The IRD replied to the applicant in relation to the information requested on the 35 th day after the date of receipt of the application i.e. 8 April 2019.)

(c) In the past 5 years, there was no case in which the IRD was unable to provide a reply within 51 days from the date of receipt of the request.

5) In the past 5 years, there was no case in which the IRD had to seek advice from the Privacy Commissioner for Personal Data in relation to the requests received under the Code.