THE GOVERNMENT MINUTE

IN RESPONSE TO

THE ANNUAL REPORT OF
THE OMBUDSMAN 2021

Government Secretariat
16 March 2022

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THE GOVERNMENT MINUTE IN RESPONSE TO THE ANNUAL REPORT OF THE OMBUDSMAN 2021

Introduction

The Chief Secretary for Administration presented the Annual Report of The Ombudsman 2021 (the Annual Report) to the Legislative Council at its sitting on 7 July 2021. This Government Minute sets out the Government's response to the Annual Report. It comprises three parts – Part I responds generally to issues presented in the section *The Ombudsman's Review* of the Annual Report; Parts II and III respond specifically to the recommendations made by The Ombudsman in respect of the full investigation and direct investigation cases in the Annual Report.

Part I
– Responses to Issues presented in the section *The Ombudsman's Review* of the Annual Report

The Government notes that The Ombudsman summarised nine direct investigation and 167 full investigation cases in the Annual Report. This Minute responds to the nine direct investigation and 71 full investigation cases for which recommendations were made by The Ombudsman. The vast majority of the 194 recommendations made by The Ombudsman were accepted and have been or are being implemented by the government departments and public bodies concerned.

2. The Ombudsman also highlighted that among the total number of complaints received in 2020/21, 110 of them are about access to information, which is a record high. Yet, in comparison with the total number of requests for information made under the Code on Access to Information (the Code) handled by the Government departments, the number of complaints accounted for only about 1% of the total figure. The Government understands that the public expects to see an open and accountable Government. Government departments will continue to handle each request for information in accordance with the Code.

Part II
– Responses to recommendations in full investigation cases

Architectural Services Department

Case No. 2019/3570 – (1) Failing to properly monitor the construction work of the cover for the passageway outside an MTR station, causing delay in re-opening the passageway for public use; (2) Poor design of the cover for protection against rain and sunshine; (3) Delay in adding the sun-shield layer to the glass cover; and (4) Failing to consult the District Council on the design of the cover

Background

3. In August 2019, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Architectural Services Department (ArchSD), with regard to a district minor works project involving the construction of a cover for a passageway in a playground under the management of the Leisure and Cultural Services Department (LCSD) outside an MTR station exit, and his allegations are summarised as follows –

(a) the construction works originally scheduled for completion in April 2019, was delayed to mid July 2019 in re-opening for public use (Allegation (a));

(b) the new glass cover failed to perform its rain and sunshine protection functions (Allegation (b));

(c) ArchSD had not yet added the sun-shield layer to the glass cover when the complainant complained to the Office on 6 August 2019 (Allegation (c)); and

(d) ArchSD failed to submit the design of the cover to District Council and consult LCSD and relevant District Office on the construction works (Allegation (d)).

The Ombudsman's observations

Allegation (a) and (c)

4. The completion date of the construction works was originally scheduled for early April 2019. As the works site was located outdoors, certain works processes were affected by inclement weather, and thus the works were delayed and substantially completed in mid-May 2019. The passageway could be re-opened for public use after completion of the works. However, in response to the complainant's concern on the need to improve the sun-shading performance of the cover, ArchSD took on board the complainant's view and arranged to add a sun-shield layer to the cover with the consent of LCSD. Since the works for adding a sun-shield layer were subject to approval for additional funding and weather conditions, it was understandable that the works could not be carried out until early August 2019. Therefore, The Ombudsman considered Allegations (a) and (c) unsubstantiated.

Allegation (b)

5. As observed by the staff of the Office in a site visit, the cover could provide shelter to a large portion of the passageway. People walking through the passageway could generally avoid getting drenched. Therefore, it was inappropriate to conclude that the cover failed to perform its rain shelter function.

6. However, as the cover was not fully extended to the wall on the side adjacent to the area managed by the MTR Corporation Limited (MTRCL), rain water could come through the MTRCL's trellis. As such, the cover failed to keep the part of the passageway and the seating bench near the wall out of rain, and the seating bench there could not be used during rainy days. The situation was indeed undesirable. The Ombudsman considered that ArchSD should have liaised with MTRCL at the design stage to ensure that the cover could provide proper shelter to the whole passageway.

7. As for protection against sunshine, the original design of the cover aimed to maximise the use of natural daylight. Upon knowing the complainant's concern about the sun-shading performance of the cover, ArchSD arranged to add a sun-shield layer to the cover. The Ombudsman considered that ArchSD had taken appropriate actions in handling the issue

on the sun-shading performance of the cover. In light of the above, The Ombudsman considered Allegation (b) partially substantiated.

Allegation (d)

8. ArchSD submitted the design proposal to LCSD for consideration in October 2017, and was invited to attend the meeting of the Working Group on District Minor Works of the relevant District Council in March 2018 to respond to Members' enquiries. With the approval of the District Council on the design proposal and the additional funding required, ArchSD delivered the construction works in accordance with the approved scope of works and design. The Ombudsman considered that ArchSD had, having regard to its responsibilities, provided assistance to LCSD, the lead department for the project, in the consultation. Therefore, Allegation (d) was unsubstantiated.

9. In conclusion, The Ombudsman considered this complaint partially substantiated and recommended that ArchSD should closely follow up the progress of the discussion between LCSD and MTRCL on improving the rain protection coverage of the cover, with a view to resolving the problem of having no shelter from rain at the part of the passageway adjacent to the area managed by MTRCL as early as possible.

Government's response

10. ArchSD accepted The Ombudsman's recommendation and has taken relevant follow-up actions. After close liaison with LCSD and MTRCL, ArchSD completed the installation of additional metal flashing along the edge of the cover adjacent to the MTRCL's trellis on 15 May 2020 to prevent rain water dripping from the trellis onto the area under the cover.

Buildings Department

Case No. 2020/1946(I) – (1) Partially withholding the requested information; (2) Unreasonably levying a charge for providing the information; (3) Requesting the complainant to pay at its headquarters in person, thereby causing him undue inconvenience; (4) Failing to assign, according to the Code on Access to Information, a directorate officer one rank senior to the officer who made the original decision to consider the request for review; and (5) Failing to advise him of the channel to complain to this Office according to the Code on Access to Information

Background

11. In accordance with the Code on Access to Information (the Code), the complainant requested for a copy of Buildings Department (BD)'s internal guidelines that BD had provided to The Office of The Ombudsman (the Office) regarding a particular case (the requested information). After the complainant had made payment of the relevant photocopying fees, BD provided to the complainant one page of its internal guidelines on handling amenity features (the document).

12. The complainant alleged that –

(a) The page number, scope and target of application, its version and date, etc. of the document had not been stated. The complainant considered the document provided was incomplete (Allegation (a));

(b) The guidelines on amenity features should fall under the category of government documents normally provided free of charge and should be available for download on the Internet. In accordance with the Code, BD should not levy a charge for providing such information (Allegation (b));

(c) BD initially requested the complainant to make payment at its headquarters in person instead of issuing a general demand note which allowed various payment methods, thereby deliberately obstructing the complainant from obtaining the information (Allegation (c));

(d) Failing to comply with the requirement of the Code to assign a directorate officer one rank senior to the officer who made the original decision, to consider the request for review on the charge and the administrative arrangement of requiring the applicant to pay at a designated place (Allegation (d)); and

(e) Failing to advise the complainant the proper complaint channel to the Office as required under the Code in BD's reply to the complainant's request for review (Allegation (e)).

The Ombudsman's observations

Allegation (a)

13. BD only released part of the requested information to the complainant but not all. Yet, while BD had agreed to provide the document to the complainant, BD had not stated that there were other parts of the documents that could be relevant to the requested information, nor clearly explained its decision of withholding those parts of the documents, nor quoted the relevant provisions of Part 2 of the Code as the reason for the refusal.

14. The Office considered that, while BD had its justification to release only partially the requested information, BD had violated the Code and Clause 2.1.2(a) of the Code of Access to Information Guidelines on Interpretation and Application (the Guidelines) in handling the complainant's request for information. Hence, Allegation (a) was substantiated.

Allegation (b)

15. BD had clarified that the requested information was not one that could normally be provided free of charge or downloaded from the Internet. As such, it was not a violation of the Code for BD to charge a photocopying fee for the document. Thus, Allegation (b) was unsubstantiated.

Allegation (c)

16. BD had explained the intention of the initial payment arrangement (people tend to prefer making payment at the headquarter so as to avoid delay or error, and staff of BD could answer enquiries on site) and the

follow-up arrangement upon review (a general demand note was issued to the complainant within three days). The Office accepted BD's explanations. It would be more desirable should various payment methods be made available at the beginning. Nevertheless, upon receipt of the complaint, BD had promptly issued a general demand note to the complainant, allowing the complainant to pay by other methods. Therefore, the Office considered that there was no evidence showing BD had intentionally obstructed the complainant from obtaining the information through the payment arrangement. Hence, Allegation (c) was unsubstantiated.

Allegation (d)

17. Clause 1.25.3 of the Guidelines stipulated that any request for review should be considered by a directorate officer at least one rank senior to the officer who made the original decision. Therefore, regarding the request for review on the levy of charge, BD should still follow the above established procedures to consider the request for review, even though the objection raised by the complainant was insufficient to change the original decision. BD's claim that such act was for effective use of departmental resources was not an appropriate reason for non-compliance with the above requirement. The Office considered that, whether to levy a charge for information was one of the key issues when departments handle requests for access to information. The Code and the Guidelines have also explicitly stipulated whether and how to levy a charge. Therefore, BD should regard the complainant's objection on whether a charge should be levied as a request for review under the Code, and handle it in accordance with the procedures of a review.

18. Regarding the request for review on the payment arrangement, there was no provision in both the Code and the Guidelines on the department's administrative arrangement for payment. Therefore, the Office accepted BD's explanations. In any event, having regard to the complainant's concern on the payment arrangement, the staff of BD had readily accepted the complainant's views and promptly issued a general demand note to the complainant. The Office considered that the matter should come to an end.

19. In summary, since BD did not follow Clause 1.25.3 of the Guidelines to assign an officer of specified rank to consider the request for review on levying a charge, Allegation (d) was partially substantiated.

Allegation (e)

20. BD admitted that in the reply, it had not advised the complainant the proper complaint channel to the Office as required under the Code. As BD had admitted being negligent, Allegation (e) was substantiated.

21. Overall, The Ombudsman considered this complaint partially substantiated and recommended BD enhance staff training with a view to strengthening their knowledge on the review mechanism and the scope of application under the Code.

Government's response

22. BD accepted The Ombudsman's recommendation and had briefed its staff through various internal meetings at different levels on The Ombudsman's comments and suggestions as well as the review mechanism and scope of application under the Code. BD would continue to arrange relevant training to strengthen its staff's knowledge on the provisions and requirements of the Code. Staff were also reminded to strictly follow the requirements of the Code in handling application on request for access to information by the public.

Correctional Services Department

Case No. 2019/2952 – Unavailability of underwear laundry service for inmates

Background

23. The Complainant stated that each of the persons in custody (PICs) serving sentences in Stanley Prison was issued with two blue T-shirts and three underpants. If not wearing a T-shirt when doing exercise under the hot weather, PICs would get sunburned. However, if they wore a T-shirt, their T-shirts would be soaked with sweat, and so would their underpants.

24. Laundry service was only available every Monday and Thursday in Stanley Prison. PICs might hand over their outer clothes for washing, but underpants were not included (there was an institutional arrangement for washing underpants, but in practice, the PICs responsible for collecting laundry "would not collect" underpants). The complainant had put the outer clothes together with underpants into the laundry bag on a Monday/Thursday (the complainant was uncertain of the exact date). However, when the clothes were returned to the complainant in the evening on the same day, only the outer clothes were washed, but the underpants were unwashed.

25. PICs might hand over their bed sheets and pillow cases for washing every Wednesday. As the complainant considered that underpants should not be washed together with bed sheets and pillow cases, the complainant had never thought of handing over underpants for washing on Wednesdays. For the remaining days of a week, i.e. Tuesday, Friday, Saturday and Sunday, laundry bags would not be provided in Stanley Prison. Therefore, PICs did not know where to hand over their underpants if they wanted to have them washed.

26. To conclude, PICs in Stanley Prison were unable to have their underpants washed through normal means, so they had no choice but to wash their underpants and hang them to dry by themselves which were in breach of relevant rules.

The Ombudsman's observations

27. The Correctional Services Department (CSD) clarified that PICs may have their outer clothes and pyjamas washed twice per week and have their underpants washed daily. The Office of The Ombudsman (the Office) considered CSD's laundry arrangements not unreasonable.

28. The Office did not find any evidence indicating that laundry bags were not provided in Stanley Prison on Tuesdays, Fridays, Saturdays and Sundays.

29. The complainant claimed to have handed over underpants for washing once, but the underpants were still unwashed when they were returned. The complainant also claimed that PICs in Stanley Prison were unable to have their underpants washed through normal means, so they had no choice but to wash their underpants and hang them to dry by themselves. Due to the lack of details of the incident and independent corroboration, The Office was unable to ascertain whether the allegations were true.

30. In light of the above, the Ombudsman considered this complaint against CSD was inconclusive. The Office also visited Stanley Prison twice and interviewed randomly selected PICs, which all informed that they could hand over underpants daily for washing if needed. The Office was of the view that CSD has put in place a mechanism to accept underwear from PICs for washing every day. For the sake of maintaining personal hygiene, especially during hot summer days, CSD should consider reminding or even requiring PICs to have their underpants washed every day to ensure that they keep good personal hygiene and healthy rehabilitative living habits.

Government's response

31. CSD accepted the Ombudsman's recommendation. CSD has informed all heads of institutions of the recommendation, and relevant notices have been posted at suitable places of institutions.

Correctional Services Department

Case No. 2020/0577(I) – Refusing to provide information about the production and distribution of surgical masks between 2017 and 2019

Background

32. On 11 February 2020, the complainant lodged a complaint with The Office of The Ombudsman (the Office) against the Correctional Services Department (CSD).

33. The complainant made a request to CSD on 8 February 2020 pursuant to the Code on Access to Information (the Code) for the following information in the past three years (i.e. from 2017 to 2019) –

(a) the number of masks manufactured by CSD (commonly known as "CSI masks") each year (Information (a));

(b) the number of CSI masks sold to the Government Logistics Department (GLD) each year (Information (b));

(c) the number of CSI masks sold to non-governmental organisations (NGOs) each year (Information (c)); and

(d) the list of NGOs to which CSI masks were sold each year and the number of CSI masks sold to each of these NGOs each year (Information (d)).

34. CSD replied in writing to the complainant on 11 February 2020. Regarding Information (a) to (c), CSD stated that a monthly average of 1.1 million CSI masks were supplied to GLD in 2019, and a total number of about 120 000 CSI masks were sold to NGOs in 2019 (full year). As for Information (d), CSD stated that it could not be disclosed to the complainant as it involved third parties.

35. The complainant was dissatisfied with CSD's decision to provide Information (a) to (c) in 2019 only and refuse the provision of Information (d). Regarding Information (d), the complainant claimed that the information was related to whether the CSI masks were used appropriately, and did not involve any sensitive or personally identifiable information.

Therefore, the disclosure of such information was in the public interest and would not prejudice the related parties.

The Ombudsman's observations

Information (a) to (c)

36. CSD admitted that it missed providing Information (a) to (c) in 2017 and 2018 in its replies to the complainant on 11 February 2020. Following the intervention of the Office, CSD has taken the initiative to review the case. As a result, CSD provided the requested information to the complainant and reminded the staff concerned that extra care should be taken in handling requests for information with a view to preventing the recurrence of similar incidents.

Information (d)

37. The Office concurred with CSD that Information (d) involved third parties. Such information involved individual NGOs and the respective numbers of CSI masks supplied to those NGOs in the past three years. Whether such information is sensitive information of individual NGOs which should be kept confidential depends on whether a Confidentiality Agreement has been included in the contracts between CSD and the NGOs, and whether the NGOs have expressed their willingness to disclose the information when being consulted by CSD.

38. According to paragraph 2.14 (a) of the Code, CSD should consider whether Information (d) requested by the complainant is held by "a third party under an explicit or implicit understanding that it would not be further disclosed" before deciding on whether the information should be disclosed to the complainant. Since CSD has never disclosed Information (d) before, it is understandable that great importance is attached to the wish of the NGOs concerned that CSD would not disclose the information without consulting them. However, before receiving the draft Investigation Report prepared by the Office, CSD did not consult all the involved NGOs, but instead assumed all the other NGOs involved did not consent to disclose such information based on the verbal opinion of one NGO. The basis for the decision is considered not tenable.

39. CSD also stated that the number of CSI masks supplied to NGOs only accounted for about 1% of its annual mask production. Given the small proportion, CSD considered that Information (d) did not constitute

essential public interest. While the Office does not negate the use of "the small proportion" as a criterion by CSD, "small proportion" is only one of the criteria to determine the significance of public interest.

40. In fact, the production of CSI masks involves the use of public resources. At the time when the complainant made a request for the information, there was a dire shortage of masks in the market, coupled with media reports about suspected abuse of CSI masks. This not only aroused wide public concern or even suspicion, but also affected the public image and reputation of the relevant government departments and NGOs. While the Office agrees with CSD that the unwillingness of certain NGOs to disclose their names should be taken into account, it would be unfair to CSD and those NGOs supplied with CSI masks if clarification were not made in time, leaving the public to further speculate or even allowing false rumours to proliferate and spread further through various channels. Therefore, the Office is of the view that CSD should proactively explain to the complainant the concerns of the relevant NGOs, and consider disclosing as far as possible the number of CSI masks supplied to the NGOs without disclosing their names. The Office believes that CSD could help clarify false rumours and restore public confidence if it discloses the information as far as possible to remove the doubts of the public, upholding the principles of openness and transparency and paying regard to the willingness and interests of the concerned NGOs.

41. Overall, The Ombudsman considered that the fact that CSD missed providing the complainant with part of Information (a) to (c), and its decision to refuse the provision of Information (d) to the complainant were not in compliance with the requirements of the Code. Therefore, the complaint was considered substantiated.

42. The Ombudsman recommended that CSD to review the complainant's request for Information (d) and continue to consult those NGOs that have not given a reply regarding the complainant's request, with a view to considering if it is feasible and how to disclose Information (d) to the complainant as far as possible without disclosing the names of all or some of the concerned NGOs.

Government's response

43. CSD accepted The Ombudsman's recommendations. CSD has reviewed the complainant's request for Information (d) and consulted all the concerned NGOs. After assessment, CSD provided the relevant

information which can be disclosed to the complainant on 28 September 2020.

Correctional Services Department

Case No. 2020/0912(I) – Refusing to provide information about the production and distribution of surgical masks between 2015 and 2019

Background

44. The complainant sent two emails to the Correctional Services Department (CSD) on 15 February 2020 requesting the following information –

(a) the date from which CSD stopped supplying masks to non-governmental organisations (NGOs);

(b) the information about the sale of masks to government departments and NGOs by CSD within the past five years before the outbreak of the epidemic, including the names of government departments and NGOs to which masks have been donated or sold, the date of donation/purchase, the number of masks donated/sold and the selling prices (Information on sale of masks before pandemic);

(c) the information about the sale of masks to government departments and NGOs between the outbreak of the epidemic and the date of the request for information, including the names of government departments and NGOs to which masks have been donated or sold, the date of donation/purchase, the number of masks donated/sold and the selling prices;

(d) the procedures for the handling of the masks after production;

(e) the criteria adopted by CSD for determining whether to donate or sell masks to government departments and NGOs;

(f) the channels through which other NGOs applied for purchase or donation of masks or other CSD products before the outbreak of the epidemic;

(g) whether any NGOs have been provided with any other products manufactured by CSD? If yes, please provide the information within the past five years before the outbreak of the epidemic,

including the names of the products, a list of the NGOs to which such products have been donated or sold, dates of donation/purchase, the numbers of products donated/sold and the selling prices;

(h) the number of masks held in stock by CSD as at the date of the request for information; and

(i) the daily numbers of masks manufactured before and after the outbreak of epidemic.

45. In its written reply to the complainant on 24 February 2020, CSD stated that the masks manufactured by CSD (CSI masks) were mainly supplied to the Government Logistics Department (GLD) for distribution to government departments. In 2019, a monthly average of about 1.1 million CSI masks were supplied to the GLD, and a total number of about 120 000 CSI masks were sold to NGOs like social welfare organisations and schools in 2019 (full year). In response to the epidemic situation and the request by the GLD for increasing the production output of CSI masks, CSD ceased taking orders from NGOs and raised the monthly output of CSI masks to about 2.5 million. As for the names of the related NGOs and the numbers of masks ordered, CSD considered that it was third party information as defined by the Code on Access to Information (the Code) and therefore would not disclose it to the complainant.

46. The complainant was not satisfied with the reply from CSD and therefore lodged a complaint against CSD with The Office of The Ombudsman (the Office).

The Ombudsman's observations

47. CSD admitted that it missed providing the information requested in its reply to the complainant on 24 February 2020. Following the intervention of the Office, CSD has taken the initiative to review the case, and such response is considered desirable. Except for the Information on sale of masks before pandemic that relates to NGOs, CSD has provided all the requested information to the complainant, and advised the staff concerned that requirements in the Code should be adhered to when handling similar requests for information in future.

48. Concerning the Information on sale of masks before pandemic that relates to NGOs, the Office concurred with CSD that the information

requested involved third parties. Such information involved individual NGOs, the respective dates on which they were sold the CSI masks and the respective numbers of masks sold. Whether such information is sensitive information of individual NGOs which should be kept confidential depends on whether such a confidentiality term has been included in the contracts between CSD and the NGOs, and whether the NGOs have expressed their willingness to disclose the information.

49. According to paragraph 2.14(a) of the Code, CSD should consider whether the information requested by the complainant is held by "a third party under an explicit or implicit understanding that it would not be further disclosed" before deciding on whether the information should be disclosed to the complainant. Since CSD has never disclosed the Information on sale of masks before pandemic before, it was understandable that great prudence was exercised taking into account the wish of the NGOs concerned that CSD would not disclose the information without consulting them. However, before declining the request for such information by the complainant, CSD did not consult all the involved NGOs, but instead assumed all the other NGOs involved did not consent to disclose such information based on the verbal advice of NGOs. The basis for the decision was considered not tenable.

50. CSD also stated that the number of CSI masks supplied to NGOs only accounted for about 1% of its annual mask production. Given the small proportion, CSD considered that the information requested did not constitute essential public interest. While the Office does not negate the adoption of "the small proportion" as a criterion by CSD, "small proportion" is only one of the criteria to determine the significance of public interest.

51. In fact, the production of CSI masks involves the use of public resources. At the time when the complainant made a request for the information, there was a dire shortage of masks in the market, coupled with media reports about suspected abuse of CSI masks. This not only aroused wide public concern or even suspicion, but also affected the public image and reputation of the relevant government departments and NGOs. While the Office agrees with CSD that the willingness of the concerned NGOs should be taken into account, it would be unfair to CSD and those NGOs supplied with CSI masks if clarification were not made in time, leaving the public to further speculate or even allowing false rumours to proliferate and spread further through various channels. Therefore, the Office was of the view that CSD should proactively explain to the complainant the concerns of the relevant NGOs, and consider disclosing as far as possible the number of CSI masks supplied to the NGOs without disclosing their

names. The Office believed that CSD could help clarify false rumours and restore public confidence if it discloses the information as far as possible to remove the doubts of the public, thereby upholding the spirit of the Code and paying regard to the willingness and interests of the concerned NGOs.

52. The Ombudsman believed that the handling of the complainant's request for various pieces of information by CSD did not comply with the requirements of the Code. Therefore, The Ombudsman considered this complaint substantiated. The Ombudsman recommended that CSD to review the complainant's request for the Information on sale of masks before pandemic that relates to NGOs, and continue to consult those NGOs that have not given a reply regarding the complainant's request, with a view to considering if it is feasible and how to disclose the Information on sale of masks before pandemic to the complainant as far as possible with or without disclosing the names of all or some of the concerned NGOs.

Government's response

53. CSD accepted The Ombudsman's recommendations and has reviewed the complainant's request for the Information on sale of masks before pandemic and consulted all the concerned NGOs. After assessment, CSD provided the relevant information which can be disclosed to the complainant on 18 November 2020.

Correctional Services Department

Case No. 2020/0971(I) – Refusing to provide information about the surgical masks produced and distributed by the Department

Background

54. On 1 April 2020, the complainant who works for a media organisation as a reporter lodged a complaint with The Office of The Ombudsman (the Office) against the Correctional Services Department (CSD).

55. The complainant made a request to CSD on 13 February 2020 via email pursuant to the Code on Access to Information (the Code) for the following information about the masks manufactured by CSD (commonly known as "CSI masks") –

(a) the number of CSI masks manufactured by CSD between 1 January and 12 February 2020 (the Said Period);

(b) the number of CSI masks manufactured by CSD during the Said Period for distribution to non-governmental organisations (NGOs);

(c) the list of NGOs supplied with CSI masks by CSD during the Said Period;

(d) the number of CSI masks manufactured by CSD during the Said Period for distribution to government departments, and the respective numbers of CSI masks distributed to various government departments;

(e) the number of CSI masks manufactured by CSD during the Said Period that are still kept in stock without distributing to any parties;

(f) whether the NGOs were required to pay for the purchase of the CSI masks;

(g) the cost price of a CSI mask, the selling price of a CSI mask to NGOs and the respective selling prices to different NGOs;

(h) whether CSI masks can be provided for use by the family members of the recipients;

(i) in what year CSD started production of CSI masks;

(j) the current number of staff members of CSD engaged in mask production;

(k) the respective numbers of CSI masks manufactured by CSD in 2017 and 2018; and

(l) whether it is illegal to resell CSI masks; if yes, what the relevant penalties are.

56. In its written reply to the complainant on 18 February 2020, CSD stated that a monthly average of about 1.1 million CSI masks were supplied to the Government Logistics Department (GLD) in 2019, and a total number of about 120,000 CSI masks were sold to NGOs in 2019 (full year). In response to the epidemic situation and the request from GLD for increasing the production output of CSI masks, CSD ceased taking orders from NGOs.

57. On 19 February 2020, the complainant emailed CSD stating that the 12 pieces of information requested was not provided in CSD's reply. On 27 March 2020, CSD emailed to inform the complainant that the information requested was third party information as defined by the Code. After considering the nature of the information and related facts, CSD would not disclose the information.

58. The complainant was not satisfied with the reply from CSD since CSD did not provide the information requested in the 12 items in accordance with the Code.

The Ombudsman's observations

59. CSD admitted that the requested information was not provided in its replies to the complainant on 18 February and 27 March 2020. Following the intervention of the Office, CSD has taken remedial actions by providing the requested information to the complainant, and reminding the staff concerned that extra care should be taken in handling requests for information in future with a view to preventing the recurrence of similar incidents.

60. It was undesirable for the staff concerned of CSD not to act in accordance with the requirements of the Code when they first received the request for information made by the complainant. For this reason, The Ombudsman considered that this complaint substantiated. The subsequent remedial actions taken by CSD after reviewing the case are considered appropriate.

61. The Ombudsman recommended CSD to learn from this case and enhance training for its staff to ensure that they are in strict compliance with the requirements of the Code in handling requests for information by members of the public.

Government's response

62. CSD accepted The Ombudsman's recommendations. A relevant training seminar was held on 23 February 2021.

Correctional Services Department

Case No. 2020/1006(I) – Refusing to provide information about the production and distribution of surgical masks in 2019

Background

63. The complainant made a request to the Correctional Services Department (CSD) under the Code on Access to Information (the Code) on 8 February 2020 for the following information –

(a) a list of non-governmental organisations (NGOs) to which filter masks produced by CSD (commonly known as CSI masks) were sold in 2019, and the respective dates of purchase and numbers of CSI masks sold to them (Information (a));

(b) the production cost (including the labour cost) of a CSI mask, and the price at which a CSI mask was sold to the NGOs (Information (b));

(c) whether the sale of CSI masks constituted a reason for the availability of CSI masks on the market (Information (c)); and

(d) the channels through which CSI masks can be procured (Information (d)).

64. On 27 March 2020, CSD replied to the complainant in writing that the request was rejected since the information requested was "information held by a third party" as defined in paragraph 2.14 of the Code. On 5 April, the complainant requested CSD to review the above decision. On 24 April, CSD replied to the complainant after the review. In respect of Information (b) to (d), CSD stated that the masks produced by CSD were mainly supplied to the Government Logistics Department with a small quantity being sold to NGOs, including social welfare organisations and schools. In 2019, CSD sold a total of about 120 000 CSI masks to NGOs at the cost price of about $0.13 per mask on average. Regarding the suspected sale or use of CSI masks in the community, CSD would assist other law enforcement departments to take follow-up actions regarding those cases. With respect to Information (a), CSD stated that it could not be disclosed to the complainant as it involved third parties.

65. The complainant was dissatisfied with CSD's refusal to provide Information (a). He considered that the decision of CSD to reject the request for such information on the ground that it involved third parties was a misinterpretation of the Code.

The Ombudsman's observations

Information (a)

66. The Office of The Ombudsman (the Office) concurred with CSD that Information (a) involves third parties. Such information involves individual NGOs, the respective purchase dates and the respective numbers of CSI masks sold to them in 2019. Whether such information is sensitive information of individual NGOs which should be kept confidential depends on whether such a confidentiality term has been included in the contracts between CSD and the NGOs, and whether the NGOs have expressed their willingness to disclose the information.

67. According to paragraph 2.14(a) of the Code, CSD should consider whether the information requested by the complainant is held by "a third party under an explicit or implicit understanding that it would not be further disclosed" before deciding on whether the information should be disclosed to the complainant. Since CSD has never disclosed Information (a) before, it is understandable that great prudence was exercised taking into account the wish of the NGOs concerned that CSD would not disclose the information without consulting them. However, before declining the request for such information by the complainant, CSD did not consult all the involved NGOs, but instead assumed all the other NGOs involved did not consent to disclose such information based on the verbal opinion of one NGO. The basis for the decision was considered not tenable.

68. CSD also stated that the number of CSI masks supplied to NGOs only accounted for about 1% of its annual mask production. Given the small proportion, CSD considered that Information (a) did not constitute essential public interest. While the Office did not negate the adoption of "the small proportion" as a criterion by CSD, "small proportion" was only one of the criteria to determine the significance of public interest.

69. Although the complainant requested CSD to provide the information in his personal capacity on 8 February 2020, and did not explain specifically how the request involved public interest, the complainant stated in the email that the production of CSI masks "involves

the use of public funds" in requesting the information, and even queried in his email to CSD dated 5 April 2020 that whether "the third parties" to which the masks sold were involved in "the use of masks for making profit by unscrupulous persons". The production of CSI masks involves the use of public resources. At the time when the complainant made a request for the information, there was a dire shortage of masks in the market, coupled with media reports about suspected abuse of CSI masks. This not only aroused wide public concern or even suspicion, but also affected the public image and reputation of the relevant government departments and NGOs. While the Office agreed with CSD that the willingness of the concerned NGOs should be taken into account, it would be unfair to CSD and those NGOs supplied with CSI masks if clarification were not made in time, leaving the public to further speculate or even allowing false rumours to proliferate and spread further through various channels. Therefore, the Office was of the view that CSD should proactively explain to the Complainant the concerns of the relevant NGOs, and consider disclosing as far as possible the respective dates on which the CSI masks were supplied to the NGOs and the respective numbers without disclosing their names. The Office believed that CSD could help clarify false rumours and restore public confidence if it disclosed the information as far as possible to remove the doubts of the public, while upholding the spirit of the Code and paying regard to the willingness and interests of the concerned NGOs.

Information (b) to (d)

70. CSD admitted that it missed providing the information requested in items (b) to (d) by the complainant in its reply to him on 27 March 2020. Following the review of the case, CSD has provided to the complainant Information (b) to (d), and advised the staff concerned that they should be careful when handling similar requests for information in future in order to avoid recurrence of similar incidents.

71. The Office considered that both the process through which the decision to reject the request by the complainant for Information (a) was made, and the fact that CSD missed handling the complainant's request for Information (b) to (d) did not comply with the relevant requirements of the Code. Therefore, The Ombudsman considered this complaint substantiated and recommended CSD to review the complainant's request for Information (a), and continue to consult those NGOs that have not given a reply regarding the complainant's request, with a view to considering if it is feasible and how to disclose Information (a) to the complainant as far as possible with or without disclosing the names of all or some of the concerned NGOs.

Government's response

72. CSD accepted The Ombudsman's recommendations. CSD reviewed the complainant's request for Information (a) and consulted all the concerned NGOs. After assessment, CSD provided the relevant information which can be disclosed to the complainant on 18 November 2020.

Customs and Excise Department

Case No. 2020/2075(I) – Refusing to provide information about the quantities of personal protective equipment distributed to the Department and its stock levels in 2020

Background

73. The complainant emailed the Customs and Excise Department (C&ED) on 3 March 2020 and made a request under the Code on Access to Information (the Code) for information about different types of anti-epidemic supplies (including surgical masks (but not limited to masks manufactured by the Correctional Services Department (CSI masks)), N95 masks, protective gowns, protective coverall suits, 50ml alcohol-based handrub, 50ml alcohol-based handrub gel and bleach) –

(a) the quantities of the above anti-epidemic supplies distributed by the Government Logistics Department (GLD) to C&ED from 23 January to 29 February 2020 (Information (a));

(b) the inventory of the above anti-epidemic supplies of C&ED on 23 January 2020 (Information (b)); and

(c) the inventory of the above anti-epidemic supplies of C&ED on 29 February 2020 (Information (c))

74. On 23 April 2020, C&ED emailed and informed the complainant that the request was refused. C&ED indicated that the GLD and C&ED were doing their best at that time to procure anti-epidemic supplies through different means and channels. Given that the global demand for anti-epidemic supplies had risen sharply, the Government had faced fierce competition when procuring anti-epidemic supplies. Thus, disclosure of the related information would undermine the bargaining power of the C&ED and other Government departments in the procurement of anti-epidemic supplies. C&ED relied on paragraph 2.9 of the Code when explaining its refusal of the request.

75. C&ED received an email from the complainant on 24 April 2020 requesting for a review of the decision. On 14 May 2020, C&ED indicated to the complainant that it was still considered inappropriate to disclose the related information the avoidance of undermining the Government's

bargaining power in the procurement of anti-epidemic supplies. As such, C&ED upheld the decision of refusal.

76. The complainant opined that the requested information did not involve sensitive information such as the Government's procurement procedures, the purchase price and the names of suppliers. In addition, the quantities of anti-epidemic supplies distributed in the Government departments were related to the occupational safety and health of the staff of various departments, and the public's considerations when receiving public service which was of great public interest. Furthermore, given that the epidemic situation in Hong Kong as well as the worldwide procurement of anti-epidemic supplies had been eased, the Government had no reason to refuse the disclosure of the information to the complainant at that time. The complainant therefore lodged a complaint with the Office of The Ombudsman (the Office) against C&ED's refusal.

The Ombudsman's observations

Information (a) to (c) relating to masks

77. C&ED indicated that disclosure of information on information relating to masks in Information (a) to (c) would undermine the bargaining power of C&ED and other government departments in the procurement of masks in the commercial market. The Office noted C&ED's concern.

78. Nevertheless, The Office noticed that the Financial Services and the Treasury Bureau (FSTB), being the housekeeping bureau of GLD, publicly admitted in a press release issued on 7 February 2020 that GLD had a limited stock of about 12 million masks (of which three million were non-CSI masks) for the needs of Government departments. On 16 February, FSTB mentioned in another press release that the Government had kept the overall consumption of masks at about 8 million per month, with GLD's stock of about 12 million masks at that time, the stock kept by individual departments and CSD's production, the total stock of masks could only last for about two months. On the other hand, the Government had earlier disclosed through a press release on 26 January that the monthly production of CSI masks of CSD was 1.1 million on average.

79. The Office was of the view that it is indisputable that there was a global shortage of masks at that time, and that CSD's production of CSI masks could not meet the demand of Government departments. Moreover, the Government had made it public that its stock of masks for various

departments could only last for about two months. Given that the supply side knew fully well on the demand of the buyers, there was no sign to show that C&ED's disclosure of information relating to masks in Information (a) to (c) would further undermine the bargaining power of GLD in sourcing masks through commercial channels. As such, The Office considered that C&ED had been over cautious about the possible consequences of disclosing the requested information.

80. Besides, a critical shortage of masks and occasional rumours about the misuse of CSI masks had attracted much concern and doubts from the public. There had also been calls for the Government's explanation on the production and sale of CSI masks, rendering "masks" an issue of public interest. The Office opined that disclosure of information relating to masks in Information (a) to (c) could address the public's misunderstanding that the Government was "concealing" information on the consumption of CSI masks.

81. In light of the above, when considering whether information relating to masks in Information (a) to (c) should be disclosed, C&ED had not given due consideration to all circumstances, including the public interest involved in disclosure.

Information (a) to (c) relating to other anti-epidemic supplies

82. Unlike the information relating to masks, the information about the other anti-epidemic supplies in Information (a) to (c), including the types of anti-epidemic supplies and the supply, stock and consumption of anti-epidemic supplies by C&ED and other Government departments, had never been released.

83. The Office considered that the disclosure of the information might enable suppliers to grasp the relevant situation and project the demand of the Government for the anti-epidemic supplies more readily, which might affect the Government's ability in bargaining and negotiating for more favourable contract terms in procurement, thus adversely impacting on the procurement work of C&ED and various departments. As such, The Office considered it justify for C&ED to invoke paragraph 2.9 of the Code to refuse the complainant's request for information on the other anti-epidemic supplies in Information (a) to (c).

84. In view of the above, The Ombudsman considered that when handling the complainant's request for information, C&ED's

consideration was not comprehensive and part of its decision (i.e. decision relevant to the request for mask-related information) did not accord with the spirit of the Code. Therefore, this complaint is partially substantiated. The Ombudsman recommended C&ED to draw lessons learnt from this case and strengthen its staff training, so as to ensure its staff will carefully consider each item of request and relevant factors, and strictly comply with the requirements of the Code and its Guidelines on Interpretation and Application (the Guidelines) when handling requests for information.

Government's response

85. C&ED accepted The Ombudsman's recommendation and would strengthen relevant staff training. Officers responsible for handling data access requests by members of the public were also reminded to consider each and every request and their relevant factors carefully, and act in strict compliance with the Code and the Guidelines in future.

Department of Health

Case No. 2020/1710 – (1) Unreasonably requiring patients to make the first appointment in person; and (2) A hotline staff member being unfriendly and unhelpful

Background

86. The complainant has been diagnosed with cancer and given a referral letter by a doctor for receiving a genetic test at Department of Health (DH)'s Clinical Genetic Service (CGS). DH's website stated that new patients of CGS had to make an appointment in person. The complainant called CGS on 1 June 2020 to enquire if alternative means for making appointments would be accepted. Allegedly, the officer who answered the call (Officer A) was unfriendly and offensive in replying that the complainant might not be eligible for the test, that the relevant clinic would have to first confirm the complainant's eligibility by checking the referral letter and that the complainant or representative must come in person to submit the document instead of mailing the document to CGS.

87. The complainant considered it inconsiderate of DH to require new CGS patients to make the first appointment in person (Allegation (a)). The complainant was also dissatisfied with the attitude of Officer A (Allegation (b)).

The Ombudsman's observations

Allegation (a)

88. Traveling takes time and effort. It is especially so for chronic patients. As such, The Office of The Ombudsman (the Office) considered that visits to clinics should only be required for medical purposes as far as practicable, especially in times of pandemic like COVID-19. Moreover, with technological development it is reasonable for the public to expect that procedures such as booking of medical appointments can be streamlined.

89. For purposes like triage which can only be done through face-to-face assessment by a medical professional with the patients, it is understandable and reasonable to require patients to visit the clinics before

formal consultation. In the case of The Genetic Counselling Clinic (GCC), the Office noted that, however, patients were required to make the first appointment in person to serve the mere purpose of form-filling, submission and verification of documents. Assessment on eligibility of genetic test would only be done during the consultation on the scheduled appointment date. While the Office noted DH's concern about the risks involved in accepting alternative means of making appointment, the Office considered those risks not to be so high as to justify the inconvenience and difficulties brought about by requiring patients to come in person. In fact, DH had told the Office that some of its out-patient services do accept booking by phone/or by fax. The Office also considered the risk of lack of contact information of the patient to be negligible, as, being the one seeking medical consultation, a patient's reasonable reaction would be to contact CGS proactively if he/she has not heard from CGS after submitting documents by fax, mail or email. Besides, DH could have offered patients the option of submitting documents by other means after due explanation of the risks involved.

90. The complainant intended to make an appointment with CGS in June 2020. At that time, the arrangements for non-urgent patients whose doctor/clinic/hospital has not sent out the referral letter to CGS were to have the patient make an appointment with CGS in person instead of by mail, fax or email. The Office considered that, at that time, DH was overly cautious in requiring patients to submit documents only in person (either by the patients themselves or by their representatives).

91. Based on the above analysis, The Ombudsman considered Allegation (a) substantiated.

92. The Office was pleased to learn that DH has allowed more flexibility since September 2020 by accepting making the first appointment by fax or by registered mail if patients cannot visit CGS in person.

93. The Office also noted that in recent years, the Hospital Authority (HA) had already developed a mobile app for making appointments and DH was liaising with HA so that GCC patients may make use of the app to make appointments. The Office considered that a favourable temporary arrangement. In the long-run, DH should develop its own online portal so that patients of the Department's out-patient services can submit documents and make appointments via electronic means. So doing is convenient and risks of lost mail and communication failure can be kept to a minimum.

94. The Office was pleased to note that an enhancement project was underway to include direct electronic appointment booking by DH clients.

Allegation (b)

95. In the absence of corroborative evidence such as telephone recording, The Office was unable to ascertain what exactly was said between the complainant and Officer A or Officer A's manner during the conversation of 1 June 2020. However, The Office noted that the complainant's allegation of some of the things Officer A had told her, including that patients should make an appointment in person and that CGS would check the complainant's referral letter, in line with the actual practice of CGS. The Office therefore did not find impropriety in Officer A in making such replies.

96. Based on the above analysis, The Ombudsman considered Allegation (b) unsubstantiated.

97. In any event, DH reminded Officer A to communicate with members of the public in good manners and would provide training for improvement. The Ombudsman considered DH's follow-up actions to be proper.

98. In sum, The Ombudsman considered this complaint partially substantiated and recommended DH to –

(a) continue to liaise with HA on making it possible for GCC patients to use "BookHA" to make an appointment;

(b) keep monitoring and, if possible, speed up the implementation of the enhancement project so that DH patients can make appointments via DH's online portal early; and

(c) provide adequate training to ensure CGS staff will be aware of any updated arrangements for appointment booking and will deliver the messages to members of the public in a proper manner.

Government's response

99. DH accepted The Ombudsman's recommendation and has taken appropriate follow-up actions.

100. CGS of DH has continued to liaise with HA on the use of "BookHA" app for GCC patients to make appointments. HA indicated that the extension of "BookHA" app to cover GCC could be further discussed after the Department of Paediatrics of the Hong Kong Children Hospital (HKCH) is covered by "BookHA", which is scheduled in 2022. In the meantime, patients can make the first appointment by fax or by mail directed to CGS if they cannot come in person.

101. Although the "BookHA" app has yet to be extended to HKCH, services on the one-stop mobile platform of "HA Go" developed by HA, such as checking appointments made in HA hospitals or clinics and paying HA bills and drug charges, have already been available for patients in HKCH, including GCC patients, since August 2021. CGS will continue to arrange regular meetings with SOPD team of HKCH for the update and discussion on the arrangement.

102. Despite the ever-increasing and intense workload related to development of new IT systems on urgent basis to support public health measures against COVID-19 pandemic, development work of the new Clinical Information Management System, which includes the direct electronic appointment booking function, is progressing according to schedule. The overall project schedule will continue to be monitored closely by the existing governance structure.

103. Relevant frontline staff of CGS had been briefed about the updated arrangement for appointment booking. A briefing was held on 24 February 2021 to remind relevant frontline staff of the updated arrangement. CGS had also arranged frontline staff to attend a one-day workshop in handling confrontational situations in customer services on 23 March 2021 to improve the communication skills when delivering messages to members of the public.

Department of Health

Case No. 2020/2077(I) – Refusing to provide information about the quantities of personal protective equipment distributed to the Department and its stock levels in 2020.

Background

104. On 3 March 2020, the complainant requested via email to the Department of Health (DH) for information pursuant to the Code on Access to Information (the Code) about different types of anti-epidemic supplies (including surgical masks (but not limited to masks manufactured by the Correctional Services Department (CSI masks)), N95 masks, protective gowns, protective coverall suits, 50ml alcohol-based handrub, 50ml alcohol-based handrub gel and bleach) including –

(a) From 23 January to 29 February 2020, the respective quantities of the above anti-epidemic supplies distributed by the Government Logistics Department (GLD) to DH (Information (a));

(b) As at 23 January 2020, the respective stock levels of the above anti-epidemic supplies maintained by DH (Information (b)); and

(c) As at 29 February 2020, the respective stock levels of the above anti-epidemic supplies maintained by DH (Information (c)).

105. On 22 April 2020, DH replied to the complainant by email that due to the global surge of demand for anti-epidemic supplies and the keen competition as a result faced by the Government in procuring them, DH declined to disclose the information requested as it would undermine the Government's bargaining power in the procurement process. The complainant subsequently applied for a review of its decision on the same day by email.

106. The complainant opined that the requested information did not involve sensitive information such as the Government's procurement procedures, the purchase price and the names of suppliers. In addition, the quantities of anti-epidemic supplies distributed in the Government departments were related to the occupational safety and health of the staff of various departments, and the public's considerations when receiving public service which was of great public interest. Furthermore, given that

the epidemic situation in Hong Kong as well as the worldwide procurement of anti-epidemic supplies had been eased, the Government had no reason to refuse the disclosure of the information to the complainant at that time. The complainant therefore lodged a complaint with the Office of The Ombudsman (the Office) alleging that DH's refusal to disclose the requested information was groundless.

107. After The Office launched a full investigation into the case, DH completed the review of the case and replied to the complainant on 29 July 2020 by email, indicating that since both local and global demand for anti-epidemic supplies remained keen amid a persistently severe epidemic with community outbreaks setting in and spreading onto different strata of society, disclosure of such information was still inappropriate at the time as it might undermine the bargaining power of the Government during the procurement process. DH therefore upheld its decision against disclosure of the information requested. An explanation together with an apology to the complainant was made in the e-mail for the delay in responding.

The Ombudsman's observations

Information (a) to (c) relating to masks

108. DH indicated that disclosure of information on Information (a) to (c) relating to masks would undermine the bargaining power of GLD in the procurement of masks in the commercial market. The Office noted DH's concern.

109. However, The Office noticed that on 7 February 2020, the Financial Services and Treasury Bureau (FSTB), which was responsible for overseeing GLD, publicly admitted through a press release that the stock of masks maintained by GLD was not sufficient, with only around 12 million masks (including around 3 million non-CSI masks) for use by government departments. On 16 February 2020, FSTB further indicated through a press release that the total mask usage by government departments had been maintained at about 8 million masks per month. Taking into account the 12 million or so masks kept by GLD at that time, the stocks kept by individual departments and those produced by the Correctional Services Department (CSD), the masks available would only be sufficient for about two months. On the other hand, as early as on 26 January 2020, the Government revealed through a press release that CSD produced an average of 1.1 million CSI masks per month.

110. The Office opined that the global supply of masks was indisputably inadequate at the time. It had been made public that the production capacity of CSD was insufficient to meet government departments' operational needs and the stock was only enough for about two months. Given that the supply side knew fully well on the demand of the buyers, there was no sign to show that DH's disclosure of information relating to masks in Information (a) to (c) would further undermine the bargaining power of GLD in sourcing masks through commercial channels. Therefore, The Office considered that DH was over cautious over the possible consequences of disclosing information relating masks.

111. Furthermore, amid a severe shortage of mask supply on the market then, rumours of suspected abuse of CSI masks, while causing widespread public concern and even doubts, called for the Government to give the public a clear account of the production and consumption of these masks. As a result, the issue of "masks" became one of public interest. The Office considered that disclosure of information relating to masks in Information (a) to (c) could have helped relieve public concern about the Government "concealing" where the CSI masks went.

112. It therefore becomes evident to The Office that when considering the disclosure of information relating to masks in Information (a) to (c) to the complainant, DH clearly had not fully considered all the factors, including public interest in such disclosure, and had not given thorough consideration to its decisions.

Information (a) to (c) relating to other anti-epidemic supplies

113. As for the Information (a) to (c) relating other anti-epidemic supplies, unlike the situation with "masks", DH and other government departments had never released the supply, stock levels and usage of these items.

114. The Office considered that if such information had been disclosed, it might have made known the demand of individual departments or the whole government for those items, thus enabling suppliers to understand their situation and better estimate the Government's demand for these anti-epidemic supplies. Consequently, it might undermine the Government's ability to negotiate better contract terms and prices during the procurement and adversely affect the procurement operations of GLD. DH was therefore justified in declining to disclose information relating to other

anti-epidemic supplies in Information (a) to (c) by invoking paragraph 2.9 of the Code.

115. In summary, The Ombudsman considered that DH, in arriving at some of its decisions concerning the complainant's request for information (i.e. the one concerning the disclosure of mask-related information), had not given adequate consideration in line with the spirit of the Code. The complaint was therefore partially substantiated.

116. The Ombudsman suggested that DH should learn from experience and enhance staff training to ensure that they, when handling public requests for access to information in the future, would consider each request and the relevant factors thoroughly, and adhere strictly to the requirements of the Code and its Guidelines on Interpretation and Application.

Government's response

117. DH accepted The Ombudsman's recommendation. In order to raise staff awareness of the requirements of the Code to ensure that handling process would meet the requirements of the Code, DH would re-circulate the Code and the related guidelines and circulars every six months to all staff responsible for processing public requests for access to information, so that they could read and revisit them.

118. The persistence of the COVID-19 epidemic in the past year or so has rendered DH unable to organise training courses and case studies on the Code for its staff in 2020. However, relevant training materials (including the principles and concepts of the Code, introduction to the relevant processes, time limit for processing, and application of grounds on non-disclosure of requested information, etc.) have been uploaded to DH's intranet. These training materials were also distributed to respective DH Services/Sections by email in January 2021 so that staff members could read and revisit them online. As the COVID-19 epidemic has begun to ease, DH has resumed conducting training courses and case studies on the Code from 20 April 2021.

Food and Environmental Hygiene Department

Case No. 2019/4321 – Improperly issuing a Temporary Places of Public Entertainment Licence for an applicant to stage ritual operas

Background

119. In September 2019, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against Food and Environmental Hygiene Department (FEHD). According to the complainant, ritual operas would be staged at a Ksitigarbha temple (the Location) in a district around November each year. FEHD would issue a Temporary Places of Public Entertainment Licence (the Temporary Licence) for the event each year. The complainant said that the Location and the surrounding environment were not suitable for staging the events. Moreover, as the staging period of the events was longer than that of the usual ritual operas and the performance would not end until 11:00 p.m., the daily life of the residents nearby was seriously affected. The complainant added that the Location was on a piece of land with unauthorised slope damage. The legitimacy of the performance venue was questioned.

The Ombudsman's observations

120. After reviewing the records, the Office opined that FEHD had followed the established procedures in processing the subject applications in consultation with the relevant departments in the past years. The departments concerned did not object to the subject applications and considered the location of the temple and the surrounding environment suitable for staging ritual operas. As for the complainant's claim that the staging period of the events was too long, the Office accepted FEHD's explanation that the Temporary Licences issued to the applicant were valid for 8 to 13 days, which did not exceed the maximum one-month duration of a licence issued for a temporary structure as stipulated under the law.

121. The complainant mentioned that the performance would last till 11:00 p.m. each night, which seriously affected the daily life of the residents in the neighbourhood. The Office noted that, for the event organised in 2019, the applicant stated specifically that the performance would run from 7:00 p.m. to 10:00 p.m. every night, and FEHD had required the applicant to comply with the relevant licensing conditions, including noise control requirements. In the future, if the complainant

found that the performance caused noise nuisance, he/she could lodge a complaint directly with the Hong Kong Police Force, the Environmental Protection Department or FEHD so that the relevant departments could provide assistance in a timely manner.

122. As for the legitimacy of the performance venue questioned by the complainant, the Office accepted that as explained by FEHD, its staff did not have doubts about the land status of the site and therefore the department had not consulted the District Lands Office (DLO) in previous years. This did not constitute a breach of the related guidelines. It was not until March 2019 that FEHD learnt from DLO the subject applicant was required to obtain prior approval from DLO for temporary occupation of government land. Subsequently, FEHD consulted DLO when processing the application submitted in May 2019. FEHD issued the Temporary Licence only after confirming that DLO had raised no objection to the application and granted the applicant approval for temporary occupation of government land. There was nothing wrong with the abovementioned processing of the application.

123. Therefore, The Ombudsman considered this complaint unsubstantiated and recommended FEHD should require the applicant to provide documents proving that he/she had applied or was applying to the government department(s) concerned for using the venue to organise an event when processing similar applications in the future. FEHD should also take the initiative to contact the department(s) concerned to verify the applicant's claim.

Government's response

124. FEHD accepted The Ombudsman's recommendation and has revised the application form for the Places of Public Entertainment Licence/the Temporary Licence to require the applicant to indicate whether the venue under application is managed by a government department/on a government land, and whether the applicant has applied to the government department/authority concerned for using the venue as a place of public entertainment. If the applicant indicates or FEHD learns that the venue is managed by a government department/on a government land, FEHD will inform the department in management of the site about the use of the venue by the applicant and check if the applicant has been granted approval for using the venue.

Food and Environmental Hygiene Department

Case No. 2020/1221 – Failing to monitor a contractor's performance in refuse collection resulting in environmental hygiene problem

Background

125. The complainant lodged a complaint with the Office of The Ombudsman (the Office) about Food and Environmental Hygiene Department (FEHD)'s failure to properly handle the problem of environmental hygiene and noise nuisances caused by its outsourced cleansing service contractor (the Contractor) who occupied the pavement and roadside off a street (the Location) to collect and handle refuse.

The Ombudsman's observations

126. After examining the information provided by the complainant and the inspection records of FEHD, The Office found that the Contractor's staff did deliver by handcart the refuse they collected from streets in the vicinity to the Location and deposited the refuse on the roadside. The refuse was to be carried away by a tipper lorry or grab lorry which would later drive past the Location. These vehicles would also occupy part of the carriageway for some time to collect and handle the refuse. During the process, refuse (including domestic waste and food waste) not contained in plastic bags or contained in torn plastic bags undermined environmental hygiene. Such kind of situation happened frequently and was not an occasional problem. The Office believed that FEHD should have discovered much earlier and requested the Contractor to rectify the problem if its district environmental hygiene office (DEHO) had checked the daily performance of the Contractor at the Location (which was a blackspot in the district) and examined the inspection reports regularly in accordance with the relevant guidelines.

127. Yet DEHO did not realise the problem, nor had it seriously looked into the matter when the complainant lodged a direct complaint and provided photos as supporting evidence in March 2020. The Office considered the situation unsatisfactory as DEHO had not properly monitored the Contractor and seriously handled the complaint.

128. For the noise nuisance caused by the Contractor's staff as alleged by the complainant, FEHD had deployed staff to carry out inspections.

Although the nuisance was not found, the Contractor had been instructed to be mindful of the situation. The Office considered that FEHD had taken proper follow-up actions.

129. After intervention by the Office, FEHD had re-examined the case and taken improvement measures, including instructing and penalising the Contractor, amending the workflows and stepping up the crackdown on illegal deposit of refuse in the vicinity of the Location. The Office believed that the above measures could help improve the environmental hygiene of the Location.

130. Based on the above analysis, The Ombudsman considered that the complaint was substantiated and recommended FEHD to –

(a) remind its staff to strictly follow the guidelines on monitoring contractors, in particular supervisory staff to regularly examine inspection reports in accordance with guidelines;

(b) instruct its staff to seriously handle complaints and attend to information (e.g. the material time) provided by complainants when they are conducting investigations; and

(c) continue its close monitoring of the environmental hygiene of the Location and step up enforcement and prosecution against offenders if the problem of illegal deposit of refuse persists.

Government's response

131. FEHD accepted The Ombudsman's recommendation and has taken appropriate follow-up actions as follows –

(a) DEHO has reminded its staff to strictly follow the guidelines on monitoring outsourced contractors and required its supervisory staff to regularly examine the inspection reports prepared by frontline staff in accordance with the guidelines, so as to step up monitoring of the performance of contractors. According to FEHD's records, DEHO issued 27 default notices to the Contractor for unsatisfactory performance and deducted its contract gratuity during the period from September 2020 to January 2021;

(b) DEHO has also instructed its staff to seriously handle each complaint, attend to information (e.g. the material time) provided by complainants when they are conducting investigations, take consequential actions as appropriate and make timely reply to complainants on investigation results and follow-up actions;

(c) DEHO has been closely monitoring the environmental hygiene of the Location and stepping up blitz enforcement operations in accordance with the recommendations of the Ombudsman. During the period from September 2020 to January 2021, DEHO issued 25 fixed penalty notices to cleanliness offenders in the vicinity of the Location. According to the observations of DEHO, the problem of illegal deposit of refuse at the Location has been significantly improved. Notwithstanding this, DEHO will continue to keep in view the situation and take actions as appropriate; and

(d) Further to the above progress as reported to The Ombudsman on 25 February 2021, DEHO has continued to implement the relevant recommendations, including stepped-up monitoring of the performance of contractors and the environmental hygiene of the Location. From February to June 2021, 13 default notices were issued to the Contractor for unsatisfactory performance and contract gratuity was deducted. In the same period, DEHO initiated 40 prosecutions against cleanliness offenders in the vicinity of the Location. The environmental hygiene of the Location has been improved.

Food and Environmental Hygiene Department

Case No. 2020/1788 – Failing to take effective control against shop front extension of fruit and vegetable shops

Background

132. The complainant resided at a housing estate (Housing Estate A). Allegedly, many fruit and vegetables shops at the ground level of Housing Estate A illegally extended their business operation into public areas, thus causing obstruction to pedestrians (the Problem). Despite the complainant's complaint to Food and Environmental Hygiene Department (FEHD) on 16 March 2020, the Problem persisted.

The Ombudsman's observations

133. The Office of The Ombudsman (the Office) conducted site inspections on 5 September and 16 November 2020. The inspections revealed the following –

(a) There were 10 odd shops selling fruits and vegetables at the site. Most of the operators placed their goods at the shop front and occupied a significant portion of the pavement;

(b) The pavement was crowded with sluggish pedestrian flow;

(c) Many styrofoam boxes were placed on the pavement causing serious obstruction; and

(d) Fruits and vegetables were displayed and sold on the pavement along the fences opposite the shops, thus further aggravating street obstruction.

134. FEHD admitted that the Problem had been persistent. The Office's inspections on 5 September and 16 November 2020 also confirmed that the Problem remained. Between January and September 2020, FEHD on average issued only ten Fixed Penalty Notices (FPNs) to 10 odd shops for obstruction, and took only six arrest actions against illegal hawking each month. In view of the persistence of the Problem, FEHD should have taken more stringent enforcement actions to maximise the deterrent effect. FEHD's enforcement actions taken before October 2020

against the Problem were far from effective. The Office noted that FEHD had stepped up its enforcement actions by conducting more operations and taking more prosecution actions since September 2020. The Office considered it necessary for FEHD to continue with its stepped-up enforcement actions to resolve the Problem in a long-term manner.

135. Overall, The Ombudsman considered this complaint partially substantiated and recommended FEHD to step up enforcement actions against offenders causing street obstruction and illegal hawking, including instigating prosecution and seizing the unclaimed articles more rigorously in order to resolve the problem in a long-term manner.

Government's response

136. FEHD accepted The Ombudsman's recommendation. FEHD has been conducting a series of stepped up enforcement actions during the period since December 2020, and illegal shop extension problem at Housing Estate A has been alleviated. In order to enhance the effectiveness of the actions taken against the problem of shop extension, FEHD has deployed staff to conduct daily on-site static patrol during the peak trading period of the stalls for 2 hours from 1600 hrs to 1800 hrs.

137. Besides, FEHD has stepped up enforcement actions, mounting 99 operations including 26 and three operations jointly conducted with Hong Kong Police Force and Fire Services Department respectively, for the period from December 2020 to June 2021. During this period, 87 FPNs against obstruction were issued to the shop operators, 63 arrests with seizures were made against illegal hawkers, one arrest against obstruction, 38 seizure actions against abandoned articles and two prosecutions against obstruction to scavenging operations were taken out. FEHD will continue to keep the location under close observation and will take stringent enforcement action against persistent offenders.

Food and Environmental Hygiene Department

Case No. 2020/2017(I) – Refusing to provide information about the quantities of personal protective equipment distributed to the Department and its stock levels in 2020

Background

138. The complainant sent an email to the Food and Environmental Hygiene Department (FEHD) on 3 March 2020, requesting for the following information about various anti-epidemic supplies (including surgical masks (but not limited to masks manufactured by the Correctional Services Department (CSI masks)), N95 masks, protective gowns, protective coverall suits, 50ml alcohol-based handrub, 50ml alcohol-based handrub gel and bleach) by invoking the Code on Access to Information (the Code), including –

(a) quantity of the above anti-epidemic supplies distributed to FEHD by the Government Logistics Department (GLD) between 23 January and 29 February 2020 (Information (a));

(b) FEHD's stock level of the above anti-epidemic supplies on 23 January 2020 (Information (b)); and

(c) FEHD's stock level of the above anti-epidemic supplies on 29 February 2020 (Information (c)).

139. FEHD replied to the complainant by email on 21 April 2020, stating that given the sharp increase in global demand for anti-epidemic supplies and the keen competition in the procurement of anti-epidemic supplies faced by the Government, disclosing relevant information would undermine the bargaining power of the Government in the procurement of anti-epidemic supplies. The complainant's request for disclosure of information was therefore rejected. On the same day, the complainant made a request for review to FEHD via email. FEHD replied to the complainant on 11 May 2020, stating that it was still inappropriate to disclose the relevant information to avoid undermining the bargaining power of the Government in the procurement of anti-epidemic supplies. Hence, the decision of not providing the said information remained unchanged.

140. The complainant considered that the information requested from FEHD did not involve any sensitive information of the Government, such as procurement procedures, purchase price or names of suppliers, etc., at all. Furthermore, apart from concern for the occupational safety and health of Government staff, the quantities of anti-epidemic supplies distributed to the Government departments would also affect the general public's views on receiving services from different departments, which was of great public interest. In addition, as the local and global procurement of anti-epidemic supplies under the epidemic had gradually subsided, there were no grounds for the Government to keep refusing the disclosure of information requested at that time.

The Ombudsman's observations

Information (a) to (c) relating to masks

141. In response to the investigation of the Office of The Ombudsman (the Office), FEHD indicated that the disclosure of the Information (a) to (c) relating to masks would undermine the bargaining power of GLD in the procurement of masks in commercial sector. The Office understood FEHD's concern.

142. Nevertheless, the Office noticed that the Financial Services and the Treasury Bureau (FSTB), which GLD is under their purview, openly admitted in the press release issued on 7 February 2020 that GLD had a limited stock of 12 million masks (of which 3 million were non-CSI masks) for meeting the needs of Government departments. In another press release on 16 February 2020, FSTB pointed out that the Government had kept the monthly consumption of masks at about 8 million while GLD had a stock of about 12 million masks at that time. Together with the stock kept by various departments and the Correctional Services Department (CSD)'s production, the total stock could only last for about two months. In fact, the Government had already indicated in the press release issued on 26 January 2020 that CSD maintained a monthly average production of 1.1 million CSI masks.

143. The Office considered that the global shortage of masks was an indisputable fact and CSD's mask production could not meet the demand of Government departments. Moreover, the Government had made it public that its stock of masks for various departments could only last for about two months. Given that the supply side knew fully well on the demand of the buyers, there was no sign to show that FEHD's disclosure

of information relating to masks in Information (a) to (c) would further undermine the bargaining power of GLD in sourcing masks through commercial channels. Hence, the Office considered FEHD to be over cautious about the consequences of disclosing the requested information.

144. Besides, a critical shortage of masks and occasional rumours about the misuse of CSI masks had attracted much public concern and raised doubts. There had also been calls for the Government's explanation about the production and sale of CSI masks, rendering "masks" an issue of public interest. The Office considered that disclosure of the Information (a) to (c) relating to masks could address the public's misunderstanding that the Government was "concealing" information on the consumption of CSI masks.

145. Obviously, when deciding whether the Information (a) to (c) relating to masks should be released to the complainant, FEHD had not given due consideration to all the factors, including the public interest involved in disclosure.

Information (a) to (c) relating to other anti-epidemic supplies

146. Unlike the information about masks, the information about other anti-epidemic supplies, including their supply, stock and consumption by FEHD and other Government departments, had never been released.

147. The Office considered that disclosure of such information might reveal the quantities of the demand for anti-epidemic supplies of individual departments and the Government as a whole, which would enable the suppliers to understand the situation and better estimate the Government's demand for anti-epidemic supplies. As a result, it could undermine the Government's bargaining position in negotiating the prices and terms and conditions in purchasing anti-epidemic supplies, making adverse impact on GLD's procurement. Hence, it was justified for FEHD to invoke paragraph 2.9 of the Code to refuse the complainant's request for Information (a) to (c) relating to other anti-epidemic supplies.

148. In the light of the above analysis, The Ombudsman considered that, in handling the complainant's request for information, some decisions made by FEHD (those related to the information about masks) had not strictly adhered to the principles of the Code or given due consideration. Therefore, this complaint was partially substantiated.

149. The Ombudsman recommended that FEHD should learn from experience and strengthen its staff training to ensure that they will carefully consider each item of request and relevant factors in handling requests for information and strictly comply with the requirements of the Code and its Guidelines on Interpretation and Application (the Guidelines).

Government's response

150. FEHD accepted The Ombudsman's recommendations. To enhance its staff's understanding of the Code and the Guidelines, FEHD has uploaded to its intranet the Code, the Guidelines, administrative circulars, administrative procedures and reply templates, as well as the precedent cases and training videos provided by the Constitutional and Mainland Affairs Bureau. FEHD will also brief its new recruits through induction courses on the work-related information in its intranet, including the Code.

151. FEHD will continue to remind its staff on a regular basis that they should prudently handle the public's requests for information in accordance with the Code and the Guidelines.

Food and Environmental Hygiene Department

Case No. 2020/3222 – Failing to step up enforcement action against two unlicensed barbeque sites

Background

152. According to the complainant, two barbeque sites operating without a food business licence (the Barbeque Sites) in a district had been causing noise and odour nuisances to the residents nearby and creating environmental hygiene and illegal parking problems (collectively referred to as Unlicensed Barbeque Site Problems) for years. Food and Environmental Hygiene Department (FEHD) had followed up on the Unlicensed Barbeque Site Problems, but the illegal operation persisted. The complainant viewed with suspicion that FEHD had not exercised due diligence in conducting inspections and failed to take appropriate actions, including seizing the relevant paraphernalia, considering amending the legislation to eliminate unlicensed barbeque sites, and advising the public not to partronise the Barbeque Sites through education and publicity. FEHD was suspected of condoning the Barbeque Sites.

The Ombudsman's observations

153. The Office of The Ombudsman (the Office) opined that FEHD had taken enforcement action within its purview against operation of unlicensed food business at the Barbeque Sites. From an administrative perspective, there was no evidence that FEHD had condoned the illegal operation of the Barbeque Sites.

154. The Office noted that as the unlicensed business operation at the Barbeque Sites persisted, FEHD had stepped up enforcement and changed the methods in collecting evidence so as to arrest the operators for operating food business without a licence, which was an offence liable to heavier penalties. FEHD also conducted joint operations with the Police to arrest people suspected of operating unlicensed food premises and seized the relevant food items. The results of the operations were announced through press releases. A list of licensed food premises was uploaded to FEHD's website for general information, publicity and education.

155. In addition, FEHD sought legal advice on the feasibility of applying to the court for closure of the premises under the Public Health and Municipal Services Ordinance (Cap. 132). As the legal advice suggested that it would not be feasible to apply for a closure order for the operation of an unlicensed fresh provision shop, FEHD attempted to apply for a closure order against operation of unlicensed food premises at the Barbeque Sites. Legal advice was being sought. It could be seen that FEHD was trying to solve the Unlicensed Barbeque Site Problems in different fronts.

156. FEHD said that it had referred the noise and odour nuisances, illegal parking and other problems of the Barbeque Sites to the Environmental Protection Department and the Police for follow-up action. Nonetheless, The Office considered that the crux of the problem was operation of unlicensed food business, which was an issue that should be monitored and dealt with by FEHD. The other departments would only be responsible for handling other problems arising from this issue. Therefore, it was necessary for FEHD to explore all possible means to properly tackle the Unlicensed Barbeque Site Problems which had persisted for years.

157. FEHD gave an account of the enforcement actions taken against the Barbeque Sites since March 2018, which covered a period of almost three years. However, the illegal operation problem still persisted. It could be seen that the deterrent effect was rather limited. The fines and the cost of the seized paraphernalia did not seem to have a strong deterrent effect on the offenders.

158. The Office opined that in terms of figures, FEHD instituted less than five prosecutions against the Barbeque Sites each month in average. While FEHD was taking action to apply for a closure order, it should also increase the frequency of enforcement actions, joint operations with the Police and regular and blitz inspections to the Barbeque Sites, as well as the number of summons issued, arrests made and food items seized, so as to raise the operating cost for the operators and enhance the deterrent effect. The results of the operations should also be published through press releases.

159. Apart from uploading a list of licensed/permitted premises, FEHD should also consider posting on its web page a list of food premises (including the Barbeque Sites) which repeatedly breached the legislation to facilitate the public to search for and obtain the relevant information so that they could identify these premises and stay vigilant. This would help safeguard public health and strengthen the deterrent effect.

160. Furthermore, the Barbeque Sites were situated on lots which were Tso/Tong properties, the managers of which had deceased. This might affect FEHD's intended action to apply for a closure order. The Home Affairs Bureau (HAB) might be able to offer assistance with respect to the succession of the managers of the Tso/Tong properties on which the Barbeque Sites were located. In seeking the legal advice of the Department of Justice on obtaining a closure order, FEHD might consider referring the problems arising from the deaths of the managers of the Tso/Tong properties to HAB for follow-up action so that enforcement operations that might take place in the future would not be affected.

161. Overall, The Ombudsman considered this complaint unsubstantiated and recommended FEHD to –

(a) speed up the pace in seeking legal advice on obtaining a closure order;

(b) increase the frequency of regular and blitz inspections to the Barbeque Sites and take enforcement action decisively to strengthen efforts in combating the malpractices;

(c) study the feasibility of publishing information on food premises (including the Barbeque Sites) which persistently breached the legislation through the media and FEHD website; and

(d) liaise with HAB as soon as possible to see if it could assist in following up on the problems arising from the vacancies of the managers of the Tso/Tong properties so that future enforcement actions by FEHD would not be affected.

Government's response

162. FEHD accepted The Ombudsman's recommendation and has taken the following follow-up actions.

163. FEHD has obtained the legal advice. As the legal ownership of the Barbeque Sites is yet to be ascertained, FEHD has asked HAB and the District Officer concerned to follow up on the vacancies of the managers of the Tso/Tong properties on the relevant lots and deal with the related land issues as far as practicable. FEHD will consider applying for a closure order afterwards.

164. FEHD has increased the frequency of regular and blitz inspections to the Barbeque Sites based on actual circumstances. Apart from employing the existing legal means to step up enforcement against the irregularities of the Barbeque Sites, it also seized the related barbeque food items and paraphernalia during arrests to increase the operating cost borne on the operators and the deterrent effect. From January to December 2021, FEHD initiated 41 prosecutions against the operators of the Barbeque Sites for operating unlicensed food business at the locations concerned, including making 26 arrests. The defendants in 12 cases were sentenced to immediate imprisonment, which had stronger deterrence. During the period, FEHD and the Police conducted joint blitz operations on multiple occasions against the Barbeque Sites involved in unlicensed food business operation at the locations concerned and took stringent enforcement actions on the requirements and directions under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F). The results of the operations were announced through press releases to remind catering business operators and members of the public to strictly comply with the relevant legislation. FEHD will closely monitor the situation of the locations concerned and take stringent enforcement actions against offenders.

165. In the long run, FEHD will continue to study the feasibility of publishing information on convicted unlicensed food premises with persistent irregularities through press releases or FEHD's website.

Food and Environmental Hygiene Department and Highways Department

Case No. 2020/1400A and 2020/1400B – Failing to perform its duties in handling a complaint

Background

166. The complainant claimed that when driving along a road section at noon on 12 September 2019, the complainant's car was hit by a stone of about 15 centimetres (cm) in diameter, which was rolled up by the vehicle ahead, resulting in front-end damage of the complainant's car. The complainant then lodged a complaint against the Highways Department (HyD) through 1823, alleging that HyD had not cleared the obstacle on the road, thus posing a potential danger to drivers. HyD replied the complainant that the Food and Environmental Hygiene Department (FEHD) should be held responsible for the stone on the road section concerned. Subsequently, FEHD arranged its staff to carry out site inspection and observed multiple pavement defects and depressions along the road section concerned. FEHD then referred the complaint to HyD again, but HyD did not undertake the responsibility. The complainant was dissatisfied that HyD and FEHD had failed to perform their duties in handling the complaint.

167. The road section is a section of a non-expressway. FEHD is responsible for sweeping refuse (in general dust, dirt, abandoned articles, debris or filth, etc.) of the road section whereas the maintenance and repair work is under the purview of HyD.

The Ombudsman's observations

168. HyD and FEHD had been carrying out regular road safety inspections and scavenging operations for the road section concerned respectively. HyD had conducted a road safety inspection one day before the accident, while FEHD had conducted a scavenging operation two days before the accident, during which both departments had not found any large stones as alleged by the complainant on the road pavement, nor any pavement defect affecting road safety. None of them was also found in the records upon checking. Also, although the video record provided by the complainant showed that the complainant's car was hit by a stone rolled up by the vehicle ahead when travelling through the road section concerned,

there was no evidence that the presence of the stone was due to inadequate road safety inspection conducted by HyD and/or scavenging operation conducted by FEHD. After all, many vehicles had travelled through the road section concerned during the period between HyD's road safety inspection and the time when the complainant's car was hit by the stone. It would be impossible to verify when and why the stone was there.

169. As to whether the staff of FEHD had told the complainant that there were multiple pavement defects along the road section concerned, there was discrepancy between the statements of FEHD and the complainant. With the lack of objective corroborative evidence, it was hard for The Office of The Ombudsman (the Office) to make a judgement on the actual content of the dialogue. In any case, the regular road safety inspections conducted by HyD both before and after the accident revealed that the pavement condition of the road section concerned was generally good, and no road defect affecting road safety was observed.

170. After receiving the complainant's complaint, HyD had conducted road safety inspection for the road section concerned, processed the complainant's claim for compensation, and replied the complainant concerning the claim assessment result, while FEHD had arranged site inspection for the road section concerned and made a reply to the complainant through 1823.

171. Nevertheless, there was inadequacy in the process of complaint handling by both departments. The Office noted that the complainant had already requested compensation from HyD through 1823 in the complaint lodged on 15 October 2019. However, when HyD received the complaint referral from 1823 on 17 October 2019, it immediately referred the complaint to FEHD on the same day based on the argument that the complaint concerned road scavenging operation. It was not until 27 November 2019 that HyD contacted the complainant for the first time upon FEHD's advice that the big stone could have been related to pavement defects, after having further discussion with FEHD on the responsibility for handling the claim, which was unsatisfactory. While FEHD had arranged its staff to conduct site inspection for the road section concerned after receiving HyD's complaint referral, it had mistaken the road section concerned as high speed road, thus provide an erroneous advice to 1823 that the road scavenging operation for the road section concerned should be conducted by HyD. As such, there was negligence with FEHD's handling of the matter. In this regard, FEHD explained that as the complainant's description of the situation was quite general, it was difficult to confirm at an initial stage whether the road section concerned was a high

speed road. However, The Office considered that given its staff was not sure about the actual situation, FEHD should have verified the facts before replying 1823. In addition, both departments had referred the complaint to each other for follow up at the early stage upon receiving the complaint, which inevitably gave an impression that they were shirking their responsibilities.

172. Moreover, from the information obtained during the investigation, The Office learned from HyD that the road section concerned was not a high speed road. FEHD was responsible for clearing miscellaneous objects like refuse, sand and ballast (including relatively larger stones). HyD would only clear such obstacles identified during road safety inspections or upon receipt of requests from other departments. On the other hand, FEHD advised that the department's main duty concerning scavenging was to clear refuse dumped at public places, which generally referred to dust, dirt, rubbish, scapings or filth, etc. Given that the stone alleged by the complainant was 15 cm in diameter, the clearance of such stones was beyond the jurisdiction of FEHD, and the work should be handled by the relevant departments responsible for traffic and road safety.

173. The Office pointed out that regardless of whose responsibility it is for clearing the stone concerned, this was not related to the claim for compensation, as there was no evidence that the presence of the stone was due to inadequacy of the road safety inspection conducted by HyD and/or the scavenging operation conducted by FEHD.

174. However, as revealed in the divergent statements made by the two departments in respect of the responsible party for clearing stones from the road section concerned, the division of labour between the two departments was unclear and the two departments have different interpretations of each other's responsibilities, which was a very undesirable situation. Furthermore, The Office noticed that it was back in 2010 and 2015 when the two departments last discussed the division of labour with each other. As revealed during the investigation of this case, even though the two departments had clearly seen differences in their viewpoint when handling the case, they did not start a discussion on it, and there was indeed inadequacy in their handling with the lack of initiative.

175. Overall, The Ombudsman considered this complaint partially substantiated and recommended FEHD and HyD to further discuss the division of labour concerning the clearance of general road obstacles, and to communicate regularly and review the relevant arrangements based on actual experiences.

Government's response

176. FEHD and HyD accepted The Ombudsman's recommendations. A meeting was held in November 2020 to discuss the case and co-ordination of responsibilities between the two departments. It was confirmed at the meeting that appropriate follow-up actions would be taken by HyD if obstructions were spotted on roads during its regular road safety inspections, and by FEHD during its routine street cleansing operations. In the case where sizeable objects were to be cleared, FEHD would request assistance from HyD as necessary. Road safety would not be compromised as a result of having no one to clear road obstructions. Besides, in the light of this case, the two departments agreed to hold regular meetings in the future to review the delineation of responsibilities for routine road clearance based on practical needs and experience.

Food and Environmental Hygiene Department and Lands Department

Case No. 2020/0507A and 2020/0507B – Failing to properly tackle the obstruction of a public place by recycling cages

Background

177. According to the complainant, a recycler (the recycler) had been placing cages filled with paper cartons and refuse on a street (including the side of the carriageway and the area surrounding the leisure ground nearby) (the location) for many years. The cages occupied public places, obstructed pedestrians and caused mosquito breeding and rodent infestation (the cage problem). Despite repeated complaints by the complainant to the Food and Environmental Hygiene Department (FEHD), the cage problem persisted.

178. Subsequent to The Office of The Ombudsman (the Office)'s inquiry of FEHD on 1 April 2020 and site visits on 26 May and 5 June 2020, the Office found that the Cage Problem might also involve the Lands Department's (LandsD) jurisdiction. Having considered the details of the complaint, the complainant agreed to include LandsD as a complainee department. On 15 June 2020, the Office launched a full investigation against FEHD and LandsD.

The Ombudsman's observations

179. The Office conducted site visits on 26 May, 5 June and 29 August 2020 and had the following observations –

(a) The location was a carriageway flanked by narrow pavements on both sides, illegal parking was occasionally spotted;

(b) During non-business hours, the recycling stall (the Stall) would place empty recycling cages and tables/chairs in the alley (the Alley) and mount a canopy to cover those articles such that pedestrians could not pass through the Alley. A number of empty recycling cages were placed outside the sitting-out area nearby; and

(c) When the Stall was in business, it would place some tables/chairs, a parasol and several cages for collecting old paper cartons on the carriageway just off the Alley, causing obstruction to traffic.

FEHD

180. Information submitted by FEHD indicated that the district environmental hygiene office (DEHO) had followed up on the cage problem and maintained environmental hygiene at the location in accordance with its duties and powers.

181. Nevertheless, between February and March 2020, (i.e. prior to the Office's referral of the case), DEHO only issued verbal warnings and several Notices to Remove Obstruction to the Stall for causing obstruction to scavenging operations in the Alley with its articles, instead of taking more deterrent enforcement actions.

182. The Office's site visits revealed that the recycler had placed some recycling cages on the carriageway and filled a nearby alley (which is Government land) with furniture and miscellaneous articles. It had also mounted a canopy above the articles, thus blocking the passageway. The Office found that FEHD had only instigated two prosecutions against the recycler over the subsequent months and this was not commensurate with the severity of the problem. As a result, obstruction to scavenging operations had remained.

183. As regards the cages placed on the carriageway just off the Alley, The Ombudsman concurred with FEHD's decision to refer the problem to the Hong Kong Police Force (HKPF).

LandsD

184. LandsD explained that the Land (Miscellaneous Provisions) Ordinance is not an effective enforcement tool with respect to movable articles, including wheeled recycling cages. During the inspections, the District Lands Office (DLO) staff saw several wheeled recycling cages, chairs as well as recycling business activities there. They subsequently followed the agreement on division of responsibilities and referred the case to the relevant departments. The Office considered the referral appropriate. On the other hand, LandsD as the land administrator in Hong Kong actually has the power and duty to follow up on the case further.

185. The Office's site visits revealed that the Stall had been putting a large amount of furniture and miscellaneous items, together with articles for conducting business activities, in the Alley for a prolonged period. A canopy was even erected to cover those articles. This is virtually occupying government land for self-use, making it impossible for pedestrians to pass through the Alley. Such behavior is in fact no different from erecting illegal structures to occupy government land. Yet, LandsD just concluded the case by referring it to other government departments and stopped short of using its powers to resolve the problem. Such handling method could hardly be convincing to the public.

186. The Office considered that LandsD has the power and duty to resolve the long-standing problem of the Stall occupying the Alley, for instance, by installing metal bollards such that the Operator can no longer push the cages into or out of the Alley. Statutory notices can also be posted at the Alley to warn the Operator that occupation of government land is prohibited.

187. In light of the above analysis, The Ombudsman considered that while LandsD was not the complainant's initial complaint target and the Department had followed up on the case in accordance with established procedures, this case did reveal possible inadequacies in the current division of responsibilities among government departments and their way of following up on cases. LandsD should conduct a review and examine how to better handle the case with its powers and functions.

188. Overall, The Ombudsman considered this complaint partially substantiated.

189. The Ombudsman recommended FEHD to increase the frequency of inspection at the location and take decisive enforcement actions (including instituting prosecutions) to curb the problem if the cages of the recycler cause obstruction to scavenging operations. It should also take joint actions with other government departments when warranted.

190. The Ombudsman recommended LandsD to proactively explore ways to resolve once and for all the prolonged problem of the Stall occupying the Alley. For instance, it can install metal bollards at the entrance/exit of the Alley and take joint actions with other government departments when warranted.

Government's response

191. FEHD accepted The Ombudsman's recommendation. FEHD is concerned about the fact that the recycler has been placing cages for collecting recyclables at the location. It has followed up on the obstruction caused to its scavenging operations. Inspections have been stepped up at the location and the Alley. From November 2020 to May 2021, four special joint operations with HKPF were conducted. Cases with articles placed on the carriageway causing obstruction were referred to HKPF again for joint follow-up actions. Between September 2020 and June 2021, FEHD issued a total of 44 verbal warnings and 96 Notices to Remove Obstruction, took eight seizure actions of unclaimed articles (including recyclables, handcarts and cages/handcarts filled with recyclables) against offenders causing obstruction to scavenging operations, and instituted five prosecutions against obstruction to scavenging operations by placing of articles. In respect of the environmental hygiene problem at the location, FEHD has strengthened its pest control efforts and issued a total of 25 fixed penalty notices against offenders who breached the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK) in the vicinity. FEHD will continue to keep in view the situation of the location and its vicinity and take appropriate actions to maintain environmental hygiene.

192. LandsD accepted The Ombudsman's recommendation. The District Lands Office/Kowloon East (herein below referred to as DLO/KE) consulted the Transport Department, Highways Department, Architectural Services Department and Fire Services Department respectively about the proposed erection of metal bollards at the entrance/exit of the Alley (hereinafter called as the Proposal) and conducted local consultation in relation to the Proposal through the Wong Tai Sin District Office. After thorough consideration of the comments received, DLO/KE arranged a joint clearance operation with FEHD at the Alley on 10 May 2021 and arranged for the Architectural Services Department to erect metal bollards at the entrance/exit of the Alley. The installation works were completed on 12 May 2021. As articles occupying the Alley was discovered again in August 2021, another joint clearance operation with FEHD was carried out on 6 September 2021. DLO/KE will continue to monitor the situation of the Alley and liaise with the concerned government departments to carry out joint clearance operation when necessary.

Food and Environmental Hygiene Department, Lands Department and Highways Department

Case No. 2020/1833A (Food and Environmental Hygiene Department – (1) Ineffective enforcement against the disposal of construction materials/wastes on a pavement and shirking of responsibility; and (2) Not invoking the Summary Offences Ordinance to prosecute the offenders, nor giving specific reply to the complainant's email

Case No. 2020/1833B and 2020/1833C (Lands Department and Highways Department) – Ineffective enforcement against the disposal of construction materials/wastes on a pavement and shirking of responsibility

Background

193. According to the complainant, there was always a huge amount of construction waste piled on a pavement and at a bus stop at the location concerned (the Waste Piling Problem). In this connection, he lodged a complaint with 1823 in May 2020 and the case was referred to FEHD, the Lands Department (LandsD) and Highways Department (HyD) for follow-up actions. On 21 May 2020, the complainant sent an email to FEHD (the email of 21 May) and queried why it had not invoked the Summary Offences Ordinance to prosecute the offenders. In its reply to the complainant via 1823 on 8 June 2020, FEHD stated that the temporary storage of construction materials, which constituted unlawful occupation of Government land, fell outside its purview. Multiple referrals of the case had been made to LandsD. The complainant alleged that FEHD, LandsD and HyD had failed to take effective enforcement action against the Waste Piling Problem and kept shirking their responsibilities, and that FEHD had not invoked the Summary Offences Ordinance to prosecute the offenders, nor had it given specific reply to the complainant's email.

The Ombudsman's observations

194. In relation to the nature of the construction materials placed at the location concerned, whether they were building materials or construction and demolition (C&D) materials specified under the Circular Memorandum No. 1/2009 issued by the Environment Bureau in 2009 (the Circular), FEHD, LandsD and HyD held different views at the initial stage of the follow-up. After assessing the relevant materials and photographs, The Office of The Ombudsman (the Office) discovered that the materials placed at the location concerned included construction materials that were piled neatly such as bricks and sandbags, as well as demolished wooden door and wooden boards, and also different kinds of articles such as trolley and wooden ladder etc. The Office considered it inappropriate to group such materials into a single nature.

195. The Office noticed that a lot of the communication and discussion among FEHD, LandsD and HyD was coordinated by 1823, instead of such departments proactively solving the problem on accumulation of wastes reported by the complainant. In the opinion of the Office, as the three departments held different views on the nature of the problem upon receipt of the complaint on 6 May 2020, hence the need for multiple referrals and back-and-forth clarifications, this created an impression on the complainant that such three departments were passing the buck. In addition, since the three departments did not take the initiative to address the problem early and directly through deliberation, it eventually took nearly four months to reach a decision to launch a joint operation for addressing the problem on accumulation of wastes. Obviously, these departments did not show enough initiative.

196. Regarding FEHD's claim that it was neither the lead nor responsible department regardless of whether the materials at the location concerned were building materials or C&D materials, the Office pointed out that, in the case of articles causing obstruction to scavenging operations, FEHD may issue a "Notice to Remove Obstruction" and prosecute the offenders under the Public Health and Municipal Services Ordinance. In fact, the materials placed at the location concerned occupied large parts of the street, which seriously hampered the scavenging operations of FEHD. Rather than staying on the sidelines simply because the problem fell within the jurisdiction of other departments, FEHD should have actively liaised with other departments to remove the materials as soon as possible so that it could continue to perform its duty on street cleansing.

197. Meanwhile, although HyD is not the law enforcement authority concerning illegal deposition of C&D materials and placing of building materials on public roads, based on the Circular and consensus reached at the inter-departmental meeting in 2018, it actually has a role to play in handling the said problem and should not have remained aloof. Furthermore, as the materials placed at the location concerned actually occupied government land, LandsD could have taken enforcement action under the Land (Miscellaneous Provisions) Ordinance.

198. In view of the above, as the case straddles the jurisdiction of various departments, if the departments simply claim that the case involves the jurisdiction of other departments and refer it to other departments for follow up, this will not be a desirable solution to the problem. In the opinion of the Office, if each of the departments can approach the problem from the perspective of resolving it by way of proactive and early inter-departmental discussion, better result would definitely have been achieved while the impression of the departments passing the buck could have been avoided.

199. As for the complainant's dissatisfaction with FEHD that it had not invoked the Summary Offences Ordinance to prosecute the offenders, the Office considered FEHD's explanation not unreasonable and therefore accepted it. The explanation given by FEHD to the complainant on 8 June 2020 via 1823 had generally addressed the queries raised by the complainant in the email of 21 May.

200. Overall, The Ombudsman considered this complaint partially substantiated and recommended that FEHD, LandsD and HyD should learn lessons from the incident. When dealing with grey area issues in future, it would be advisable to take the initiative and start inter-departmental discussion as soon as possible from the perspective of solving the problem so as to resolve disputes and search for solutions as early as possible.

Government's response

201. FEHD, LandsD and HyD accepted The Ombudsman's recommendation. The three departments are working on an inter-departmental mechanism to deal with problems of piling of construction materials and C&D waste where grey areas are involved so as to facilitate the handling of similar cases and discussion by the senior officers or the headquarters of the three departments as soon as practicable.

Food and Environmental Hygiene Department and Transport Department

Case No. 2019/3334A and 2019/3334B – Failing to take proper action against two wall stalls that encroached on about half of a pavement

Background

202. In July 2019, the complainant lodged a complaint with the Office of the Ombudsman (the Office) against the Food and Environmental Hygiene Department (FEHD). The complainant pointed out that two fixed-pitch hawker wall stalls (the Two Stalls) occupied half of the footpath at the location involved, posing danger to pedestrians who had to walk out onto the carriageway (the problem of footpath encroachment by stalls).

203. In August 2018, the complainant lodged a complaint with the Buildings Department (BD) about the problem of footpath encroachment by stalls. BD replied that the Two Stalls were licensed by FEHD, and FEHD would follow up on the said problem.

204. In its email reply to the complainant in November 2018, FEHD stated that the Two Stalls were issued with a valid fixed-pitch (wall stall) hawker licence (the licence) and the locations of the Two Stalls were in compliance with the requirement of the licence. FEHD staff were despatched to conduct on-site inspections on many occasions, but no obstruction of passageway or other irregularities were found against the Two Stalls.

205. The complainant alleged that FEHD ignored the problem of footpath encroachment by stalls which endangered the safety of pedestrians.

The Ombudsman's observations

206. After conducting a preliminary inquiry into FEHD, the Office launched a full investigation of FEHD and inquired the Transport Department (TD) in November 2019. Having reviewed the relevant information, the Office also launched a full investigation of TD in respect of this case in December 2019.

207. FEHD explained that there was no plan to relocate the Two Stalls for the following reasons –

(a) Under the prevailing hawker policy, FEHD would consider relocating hawker stalls only if the fixed pitch hawker stalls obstruct staircase discharge points of adjacent buildings, or hinder road development or construction projects, traffic or environmental protection improvement work;

(b) FEHD had to balance and consider various factors;

(c) The Two Stalls had been operating for years and had contributed to the community;

(d) The Two Stalls did not violate any licence conditions and the licensees concerned were not willing to relocate their stalls; and

(e) The pavement itself was only about 1.5 metres wide. Relocating the Two Stalls would not help much to increase the width of the pavement.

208. TD explained that the distance between the buildings along the two sides of the road where the Two Stalls were located was about 9.1 metres. After deducting the width of carriageway, there remained only an about 1.6-metre wide footpath on each side of the road. Owing to the encroachment of the Two Stalls on part of the footpath, the width of the available footpath for pedestrians was only 0.7 metres, resulting in an undesirable obstruction to pedestrians.

209. Therefore, TD considered that the best way to resolve the encroachment issue was to relocate the Two Stalls and reinstate the pavement concerned. TD had written to FEHD three times requesting them to consider relocating the Two Stalls so as to resolve the encroachment issue. FEHD stated that they could not unilaterally request

to relocate the Two Stalls simply for reinstating the concerned footpath. In this regard, TD undertook to arrange meetings with FEHD to work out practicable improvement measures. In addition, TD also improved the pavements, road markings and traffic signs near the Two Stalls in 2012 and 2017.

210. The Office observed that both departments had followed up on the problem of footpath encroachment by the stalls and had their own rationale despite their different views on how to improve the situation.

211. Nevertheless, it was true that pedestrians were forced to walk on the carriageway because of insufficient space along the footpath at the subject location. The situation was worsened when the Two Stalls encroached on half of it. Under the existing policy and licence conditions, FEHD might relocate a hawker stall or refuse to renew a licence should the need arise. In view of the heavy pedestrian flows at the subject location, FEHD should actively consider relocating the Two Stalls so as to free up more space along the footpath. FEHD should also consider bringing the matter to the District Council concerned for discussion in order to reach a consensus if necessary.

212. The Ombudsman considered this complaint against FEHD and TD unsubstantiated, but both the departments have to take further follow-up actions on the problem of footpath encroachment by the stalls.

213. The Ombudsman recommended –

(a) FEHD actively consider relocating the Two Stalls and consult the District Council concerned as and when necessary; and

(b) TD continue to examine and review the traffic facilities at the location to address the issue of pedestrians being forced to walk on the carriageway.

Government's response

214. FEHD and TD accepted The Ombudsman's recommendations. FEHD has been actively studying the feasibility of relocating the Two Stalls and noted from media reports that the owners of a building adjacent to the Two Stalls had made an application to the Lands Tribunal for compulsory sale of the lot for the purpose of redevelopment. FEHD will keep in view the result of the hearing and consider proceeding with the

relocation of the Two Stalls pursuant to the existing hawker policy if it is subsequently notified by the relevant owners of the confirmed redevelopment plan of the lot. In addition, the District Council concerned will be consulted in due course when FEHD considers relocating the Two Stalls.

215. TD has kept under review the traffic conditions near the Two Stalls, and requested FEHD to consider relocating the Two Stalls so as to resolve the encroachment issue though it was not accepted by FEHD. Nevertheless, TD has continued to liaise closely with FEHD, seeking to resolve the issue satisfactorily.

216. With a view to improving the pedestrian environment as far as possible while keeping the Two Stalls in place, TD has made adjustments to the layout of the traffic signs there, including removal of some signs, and relocation of some other signs and street name-plates to the more spacious sections of the pavements nearby. Furthermore, additional "SLOW" road markings have been painted along the road about 25 metres away from the location of the Two Stalls to remind motorists to pay attention to pedestrians. The works for the above adjustments were completed in August 2020. Also, TD has already drawn up a plan for reinstating the part of the footpath concerned. If FEHD would agree to relocating the stalls and if an agreement could be reached between FEHD and the stall owners, TD would make immediate arrangements with the Highways Department for the reinstatement works after the stalls are removed.

Fire Services Department

Case No. 2020/2072(I) – Refusing to provide information about the quantities of personal protective equipment distributed to the Department and its stock levels in 2020

Background

217. The complainant emailed the Fire Services Department (FSD) on 3 March 2020 to make a request for information about various anti-epidemic supplies (including surgical masks (but not limited to masks manufactured by the Correctional Services Department (CSI masks)), N95 masks, protective gowns, protective coverall suits, 50ml alcohol-based handrub, 50ml alcohol-based handrub gel and bleach) under the Code on Access to Information (the Code) including –

(a) From 23 January to 29 February 2020, the quantities of the above anti-epidemic supplies that FSD obtained from the Government Logistics Department (GLD) (Information (a));

(b) As at 23 January 2020, the stock of the above anti-epidemic supplies in FSD (Information (b)); and

(c) As at 29 February 2020, the stock of the above anti-epidemic supplies in FSD (Information (c)).

218. On 14 April, FSD replied to the complainant by email, stating that due to surging global demand for anti-epidemic supplies, the Government was facing keen competition in the procurement. FSD considered it inappropriate to disclose the relevant information at that time, so as not to undermine the bargaining power of FSD and other government departments in procuring anti-epidemic supplies. FSD invoked paragraph 2.9 of the Code to explain the reasons for rejecting the complainant's information request.

219. On the same day, the complainant emailed FSD to request a review of the case. On 29 April, FSD replied to the complainant, stating that disclosure of the information might undermine the bargaining power of FSD in procuring anti-epidemic supplies, and accordingly FSD upheld the decision of not providing him with the above information.

220. The complainant opined that the requested information did not involve sensitive information such as the Government's procurement procedures, the purchase price and the names of suppliers. In addition, the quantities of anti-epidemic supplies distributed in the Government departments were related to the occupational safety and health of the staff of various departments, and the public's considerations when receiving public service which was of great public interest. Furthermore, given that the epidemic situation in Hong Kong as well as the worldwide procurement of anti-epidemic supplies had been eased, the Government had no reason to refuse the disclosure of the information to the complainant at that time. The complainant therefore lodged a complaint with the Office of The Ombudsman (the Office) alleging that FSD's refusal to disclose the requested information was groundless.

The Ombudsman's observations

Information (a) to (c) relating to masks

221. In responding to the investigation of the Office, FSD stated that disclosure of Information (a) to (c) relating to masks would undermine the bargaining power of FSD and other government departments in the procurement of masks through commercial channel. The Office understood FSD's concern.

222. Nevertheless, The Office noticed that the Financial Services and the Treasury Bureau (FSTB), being the housekeeping bureau of GLD, publicly admitted in a press release issued on 7 February 2020 that GLD had a limited stock of about 12 million masks (of which three million were non-CSI masks) for the needs of Government departments. On 16 February, FSTB mentioned in another press release that the Government had kept the overall consumption of masks at about 8 million per month, with GLD's stock of about 12 million masks at that time, the stock kept by individual departments and CSD's production, the total stock of masks could only last for about two months. On the other hand, the Government had earlier disclosed through a press release on 26 January that the monthly production of CSI masks of CSD was 1.1 million on average.

223. The Ombudsman was of the view that it is indisputable that there was a global shortage of masks at that time, and that CSD's production of CSI masks could not meet the demand of Government departments. Moreover, the Government had made it public that its stock of masks for various departments could only last for about two months. Given that the

supply side knew fully well on the demand of the buyers, there was no sign to show that FSD's disclosure of information relating to masks in Information (a) to (c) would further undermine the bargaining power of GLD in sourcing masks through commercial channels. As such, The Office considered that FSD had been over cautious about the possible consequences of disclosing the requested information.

224. On top of that, there were rumours in the community from time to time about suspected misuse of CSI masks amid a severe shortage of masks at that time. Apart from giving rise to widespread concerns and even doubts in the community, it also led to requests for the Government to make known publicly details of the production and sale of CSI masks, turning the "mask" issue into a matter of public interest. On disclosure of Information (a) to (c) relating to masks, the Office was of the view that not only would it not cause the public to question the Department's capability in responding to the epidemic, but it would also help clear the public's misperception that the Government was "concealing" the whereabouts of CSI masks.

225. FSD stated that disclosure of Information (a) to (c) relating to masks might breed misunderstanding among its frontline staff and make them feel anxious when performing duties, while giving rise to public skepticism about the Department's capability in responding to the epidemic. As mentioned above by the Office, it was an indisputable fact that there was a global shortage of masks, and the Government had made it clear to the public that government departments' stock of masks ran low. Even though FSD kept Information (a) to (c) relating to masks from its staff, they could still learn from government announcements or other unofficial channels that FSD was in great demand for masks. It seemed unlikely that disclosure of Information (a) to (c) relating to masks could further worsen the situation or affect the confidence of FSD staff in performing their duties.

226. The Office was of the view that given the suspicion and lack of confidence of the staff and the media, FSD's refusal to disclose the information that had been made public would not only cause more doubts and questions, but also generate mistrust or might have a negative impact on staff relationship. Conversely, giving a clear account of the situation to the staff could show that the management valued the staff; and this would help foster mutual communication and trust. Moreover, the supply of personal protective equipment in FSD was a matter of public interest considering that its personnel were required to provide forefront rescue services.

227. Therefore, FSD had not given due consideration to all the factors apparently in deciding whether Information (a) to (c) relating to masks should be released to the complainant.

Information (a) to (c) relating to other anti-epidemic supplies

228. Unlike the case of masks, Information (a) to (c) relating to other anti-epidemic supplies, including their supply, stock and consumption, had never been made public by the Government during the period when FSD was handling the complainant's request for information (from 3 March to 29 April 2020).

229. The Office considered that given the circumstances at that time, had the information been disclosed, it was likely that the demand and consumption of these supplies by individual departments and the Government as a whole would be revealed, thus allowing suppliers to grasp the situation and putting them in a better position to gauge the Government's demand for such anti-epidemic supplies. As a result, this would undermine the Government's bargaining power and its ability to secure better contract terms when it came to procurement, hence adversely affecting the procurement work in FSD and GLD. It was justifiable for FSD to refuse to provide the complainant with Information (a) to (c) relating to other anti-epidemic supplies by invoking paragraph 2.9 of the Code.

230. In view of the above, The Ombudsman considered that when handling the complainant's request for information, FSD's consideration was not comprehensive and part of its decision (i.e. decision relevant to the request for mask-related information) could not conform with the principle of the Code.

231. Therefore, The Ombudsman considered this complaint partially substantiated and recommended FSD to learn from experience and enhance staff training to ensure that in handling public requests for information in the future, every request and all relevant factors would be carefully considered, and the requirements of the Code and its Guidelines on Interpretation and Application (the Guidelines) would be strictly followed.

Government's response

232. FSD accepted The Ombudsman's recommendations. To ensure that the handling of future requests will comply with relevant requirements of the Code and the Guidelines, FSD will continue to provide necessary training for processing officers and have already included this case for case sharing in staff training.

Government Logistics Department

Case No. 2020/0957(I) – (1) Refusing to provide information about the procurement and distribution of surgical masks between 2017 and 2020; and (2) Delay in handling the request for information

Background

233. On 31 March 2020, the complainant complained to the Office of The Ombudsman (the Office) against the Government Logistics Department (GLD).

234. The complainant wrote an email to GLD dated 7 February 2020, and requested the following information about GLD's procurement and distribution of masks under the Code on Access to Information (the Code):

(a) the number of masks manufactured by the Correctional Services Department (CSD) (commonly referred to as CSI masks) that GLD received in each year since 2017 (Information (a));

(b) a list of government departments which had received masks from GLD and the respective number of masks received by individual departments in each month since June 2019 (Information (b)); and

(c) the number of masks procured by GLD worldwide each year during 2017 to 2019, and the number of masks procured worldwide in each month from December 2019 to January 2020 (Information (c)).

235. In its email to the complainant on 31 March 2020, GLD indicated that in respect of Information (a), CSD provided an average of about 1.1 million CSI masks to GLD per month during 2017 to 2019. For Information (b) and (c), GLD indicated that an average of about 1.1 million CSI masks were distributed to various government departments per month in 2019. GLD further indicated that with a sharp increase in global demand for masks, the Government faced keen competition in its procurement work. To avoid undermining the bargaining power of GLD and other government departments in mask procurement, GLD considered that it was not appropriate to further disclose relevant information. GLD therefore refused to provide the complainant with Information (b) and (c) pursuant to paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code.

236. The complainant alleged that GLD had wrongly interpreted the Code in unreasonably refusing to provide Information (b) and (c) (Allegation (a)). The complainant also alleged that GLD had breached the relevant requirements of the Code by delaying its handling of the request for information (Allegation (b)).

The Ombudsman's observations

Allegation (a)

237. In its response to the Office's investigation, GLD indicated that if Information (b) and (c) was disclosed, the bargaining power of GLD and other government departments at that time in procuring masks through commercial channels would be undermined, thus causing possible financial losses to the Government and possible harm to its effective operation. The Office understood GLD's worries.

238. However, the Office noted that the Financial Services and the Treasury Bureau (FSTB), which oversaw GLD, openly acknowledged in a press release on 7 February 2020 that GLD had a limited stock of about 12 million masks (including about 3 million non-CSI masks) at that time for meeting the needs of government departments. On 16 February 2020, FSTB issued another press release to point out that the Government had kept the total demand for masks at about 8 million per month, and that GLD's stock of about 12 million masks at that time, together with the stock kept by individual departments and the masks produced by CSD, could only last for around two months. In addition, on as early as 26 January 2020, the Government had already disclosed through a press release that CSD produced an average of 1.1 million CSI masks per month.

239. As far as the Office understood, it was an indisputable fact that there was a shortage of masks across the globe at that time. That CSD's production capacity was not sufficient to meet the consumption of government departments and that the Government's stock of masks was only sufficient to meet the departments' demand for about two months were also information available in the public domain. Given that supply side knew fully well on the demand of the buyers, disclosure of Information (b) and (c) by GLD to the complainant would not necessarily worsen the situation further and had further impacts on the bargaining power of GLD and other government departments in procuring masks through commercial channels. Hence, the Office considered that GLD

might be over cautious about the possible consequences of disclosing the requested information.

240. Furthermore, while the supply shortage of masks was acute at that time, there were rumors about suspected abuses of CSI masks circulating in the community from time to time. This had not only drawn attention and even queries from the general public, but had also led to calls for the Government to provide full details about the production and sale of CSI masks. In consequence, 'mask' issues had become a subject that involved public interest. The Office therefore considered that the disclosure of relevant information would help dispel public suspicion that the Government had 'concealed' the whereabouts of CSI masks.

241. As shown above, in considering whether to disclose Information (b) and (c) to the complainant, GLD obviously had not considered various factors in a holistic manner, including the public interest involved in the disclosure of information. It showed GLD had not been comprehensive enough in making the decision.

Allegation (b)

242. GLD had admitted that there was a delay in its reply to the complainant's request for information, and apologised in an email dated 14 April 2020 to the complainant for the delay of its reply. GLD had also reminded the staff members concerned to be cautious in handling requests for information in the future so as to prevent recurrence of similar situations.

243. Overall, the Office considered that GLD had not been comprehensive enough in making the decision of refusing the complainant's request for Information (b) and (c) and that the delay in handling the complainant's request for information was not compliant with relevant requirements. Therefore, this complaint was substantiated. The Office was pleased to learn that in view of the changes in circumstances relating to the supply of relevant items, GLD provided Information (b) and (c) to the complainant on 25 August 2020.

244. The Ombudsman recommended GLD should gain experience from the case and enhance staff training to ensure that every request and all relevant factors would be considered carefully in handling the public's requests for information in the future, and that its staff would act in strict

accordance with the requirements of the Code as well as the Guidelines on Interpretation and Application.

Government's response

245. GLD accepted The Ombudsman's recommendations and has stepped up training on the points to note when handling requests for information under the Code in the briefing sessions and retraining courses organised regularly for new recruits and in-service staff respectively. GLD has also invited relevant department to conduct a seminar on the Code for GLD's staff.

Government Logistics Department

Case No. 2020/0964(I) – Refusing to provide information about the distribution of personal protective equipment between 2017 and 2019

Background

246. On 2 April 2020, the complainant complained to the Office of The Ombudsman (the Office) against the Government Logistics Department (GLD).

247. The complainant wrote an email to GLD on 8 February 2020 and asked for information about GLD's procurement of masks (commonly referred to as CSI masks in the community) from the Correctional Services Department (CSD) in the past three years (i.e. 2017 to 2019) and to which departments the CSI masks were distributed –

(a) the number of CSI masks procured by GLD from CSD each year (Information (a)); and

(b) the number of CSI masks distributed by GLD to individual government departments each year (Information (b)).

248. In its email dated 14 February 2020 sent to the complainant via the Financial Services and the Treasury Bureau (FSTB), GLD indicated that it had procured an average of 1.1 million CSI masks from CSD every month and issued roughly the same amount to government departments per month in 2019.

249. In the complainant's email to GLD dated 16 February 2020, citing the Code on Access to Information (the Code), the complainant further requested GLD to provide information about GLD's procurement of Personal Protective Equipment (PPE) (including CSI masks, gowns or other PPE produced by CSD) from CSD in the past three years (i.e. 2017 to 2019) –

(a) the quantity of PPE provided by CSD to GLD each year (Information (c)); and

(b) the quantity of PPE distributed by GLD to individual government departments each year (Information (d)).

250. In its email to the complainant on 1 April 2020, GLD indicated that in respect of Information (c), GLD procured an average of about 1.1 million CSI masks from CSD per month and issued roughly the same amount to government departments during 2017 to 2019. GLD also procured from CSD around 130 000 gowns produced by CSD in 2017. For Information (d), GLD indicated that with a sharp increase in global demand for anti-epidemic items, the Government faced keen competition in its procurement work. Therefore, to avoid undermining the bargaining power of GLD and other government departments in the procurement of PPE items, GLD considered that it was not appropriate to further disclose relevant information at that time. Pursuant to paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code, GLD refused to provide information about Information (d) to the complainant.

251. The complainant was not satisfied with GLD's refusal to provide information about Information (d). The complainant did not understand why GLD's disclosure of information about the quantity of PPE distributed to individual government departments during 2017 to 2019 would affect GLD's procurement work in 2020. The complainant also indicated that the disclosure of information about Information (d) involved public interest, as it would help clarify rumours that some CSI masks had been leaked by public officers to the market for profits.

The Ombudsman's observations

Information (d) relating to masks

252. In its response to the Office's investigation, GLD indicated that if Information (d) relating to masks for 2017 to 2019 was disclosed, the bargaining power of GLD and other government departments at that time in procuring masks through commercial channels would be undermined, thus causing possible financial losses to the Government and possible harm to its effective operation. The Office understood GLD's worries.

253. However, the Office noted that FSTB, which oversaw GLD, openly acknowledged in a press release on 7 February 2020 that GLD had a limited stock of about 12 million masks (including about 3 million non-CSI masks) at that time for meeting the needs of government departments. On 16 February 2020, FSTB issued another press release to point out that the Government had kept the total demand for masks at about 8 million per month, and that GLD's stock of about 12 million masks at that time, together with the stock kept by individual departments and the masks

produced by CSD, could only last for around two months. In addition, on as early as 26 January 2020, the Government had already disclosed through a press release that CSD produced an average of 1.1 million CSI masks per month.

254. As far as the Office understood, it was an indisputable fact that there was a shortage of masks across the globe at that time. That CSD's production capacity was not sufficient to meet the consumption of government departments and that the Government's stock of masks was only sufficient to meet the departments' demand for about two months were also information available in the public domain. Given that the supply side knew fully well on the demand of the buyers, disclosure of Information (d) relating to masks by GLD to the complainant would not necessarily worsen the situation further and had further impacts on the bargaining power of GLD and other government departments in procuring masks through commercial channels. Hence, the Office considered that GLD might be over cautious about the possible consequences of disclosing the requested information.

255. Furthermore, while the supply shortage of masks was acute at that time, there were rumours about suspected abuses of CSI masks circulating in the community from time to time. This had not only drawn attention and even queries from the general public, but had also led to calls for the Government to provide full details about the production and sale of CSI masks. In consequence, 'mask' issues had become a subject that involved public interest. The Office therefore considered that the disclosure of information about masks for 2017 to 2019 under Information (d) would help dispel public suspicion that the Government had 'concealed' the whereabouts of CSI masks.

256. As shown above, in considering whether to disclose information about masks for the period of 2017 to 2019 under Information (d) to the complainant, GLD obviously had not considered various factors in a holistic manner, including the public interest involved in the disclosure of information. It showed GLD had not been comprehensive enough in making the decision.

Information (d) relating to PPE items

257. Unlike the case of mask, Information (d) relating to PPE for the period of 2017 to 2019, including the types, quantity supplied, stock level

and consumption of PPE in respect of GLD and various government departments, had never been made available to the general public.

258. According to GLD, the information requested by the complainant might reflect the demand of individual departments and the Government as a whole for relevant PPE as well as the urgency of the demand. The Office considered that if the information was made available to the public, suppliers might be able to get the picture of the circumstances and therefore in a better position to estimate the Government's demand for PPE items. As this might indeed affect the Government's capabilities in negotiating prices and seeking better contract terms in the course of procurement, thus causing negative impacts on GLD's procurement operations, GLD's refusal to provide the complainant with Information (d) relating to PPE for the period of 2017 to 2019 pursuant to paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code was considered justified.

259. Overall, The Ombudsman considered that in respect of GLD's handling of the complainant's request for information, some of its decisions were not fully in line with the spirit of the Code, and that GLD had not been comprehensive enough in making these decisions. Therefore, this complaint was partially substantiated. The Office was pleased to learn that in view of the changes in circumstances relating to the supply of relevant items, GLD provided information about Information (d) to the complainant on 25 August 2020.

260. The Ombudsman recommended GLD to gain experience from the case and enhance staff training to ensure that every request and relevant factors would be considered carefully in handling the public's requests for information in the future, and that its staff would act in strict accordance with the requirements of the Code as well as the Guidelines on Interpretation and Application.

Government's response

261. GLD accepted The Ombudsman's recommendations and has stepped up training on the points to note when handling requests for information under the Code in the briefing sessions and retraining courses organised regularly for new recruits and in-service staff respectively. GLD has also invited relevant department to conduct a seminar on the Code for GLD's staff.

Government Logistics Department

Case No. 2020/1426(I) – Refusing to provide information about the distribution of surgical masks between 2015 and 2019

Background

262. The complainant lodged a complaint to the Office of The Ombudsman (the Office) against the Government Logistics Department (GLD) on 28 March 2020, and provided supplementary information on 8 April 2020.

263. The complainant wrote an email to GLD on 17 February 2020 to request the following information –

(a) information about GLD's [sale of] masks to government [departments] and non-governmental organisations (NGOs), including the names of government [departments] and NGOs to which masks were passed or sold by GLD, the dates concerned, the quantity involved and the respective prices in the five years before the outbreak of the epidemic (Information (a));

(b) information about GLD's redistribution or sale of masks to government [departments], including the names of government [departments] to which masks were passed or sold by GLD, the dates concerned, the quantity involved and the respective prices during the period from the outbreak of the epidemic to the date of the complainant's email to GLD (17 February 2020) (Information (b)); and

(c) the criteria for deciding to pass or sell masks to those government [departments] (Information (c)).

264. In its email dated 8 April 2020 to the complainant, GLD indicated that before the outbreak of COVID-19, the masks it procured from the Correctional Services Department (CSD) (commonly referred to as CSI masks) would only be supplied for use by government bureaux and departments. For Information (a), GLD indicated that during 2015 to 2019, it distributed an average of 1.1 million masks to government bureaux and departments every month. It also indicated that no masks were passed or sold to NGOs before the outbreak of the epidemic. As for Information (c),

GLD indicated that masks would first be supplied to frontline staff participating in quarantine-related work, execution of quarantine orders (including medical and port health staff of the Department of Health) and maintenance of essential public services. In respect of specific information about the number of masks distributed by GLD to individual government departments in Information (a) and (b), GLD indicated that with a sharp increase in global demand for anti-epidemic items including masks, the Government faced keen competition in its procurement work. Therefore, to avoid undermining the bargaining power of GLD and other government departments in the procurement of anti-epidemic items, it was not appropriate to disclose relevant information at that time.

265. The complainant was not satisfied with the reply and considered that GLD had breached the Code on Access to Information (the Code) in unreasonably refusing to provide Information (a) and (b) regarding government [departments] that had received CSI masks, and that GLD had not provided a response or relevant information about Information (c). As such, the complainant complained to the Office against GLD.

The Ombudsman's observations

266. In its response to the Office's investigation, GLD indicated that if Information (a) and (b) regarding government departments that had received CSI masks was disclosed, the bargaining power of GLD and other government departments at that time in procuring masks through commercial channels would be undermined, thus causing possible financial losses to the Government and possible harm to its effective operation. The Office understood GLD's worries.

267. However, the Office noted that the Financial Services and the Treasury Bureau (FSTB), which oversaw GLD, openly acknowledged in a press release on 7 February 2020 that GLD had a limited stock of about 12 million masks (including about 3 million non-CSI masks) at that time for meeting the needs of government departments. On 16 February 2020, FSTB issued another press release to point out that the Government had kept the total demand for masks at about 8 million per month, and that GLD's stock of about 12 million masks at that time, together with the stock kept by individual departments and the masks produced by CSD, could only last for around two months. In addition, on as early as 26 January 2020, the Government had already disclosed through a press release that CSD produced an average of 1.1 million CSI masks per month.

268. As far as the Office understood, it was an indisputable fact that there was a shortage of masks across the globe at that time. That CSD's production capacity was not sufficient to meet the consumption of government departments and that the Government's stock of masks was only sufficient to meet the departments' demand for about two months were also information available in the public domain. Given that supply side knew fully well on the demand of the buyers, disclosure of information regarding government departments that had received CSI masks in Information (a) and (b) by GLD to the complainant would not necessarily worsen the situation further and had further impacts on the bargaining power of GLD and other government departments in procuring masks through commercial channels. Hence, the Office considered that GLD might be over cautious about the possible consequences of disclosing the requested information.

269. Furthermore, while the supply shortage of masks was acute at that time, there were rumors about suspected abuses of CSI masks circulating in the community from time to time. This had not only drawn attention and even queries from the general public, but had also led to calls for the Government to provide full details about the production and sale of CSI masks. In consequence, 'mask' issues had become a subject that involved public interest. The Office therefore considered that the disclosure of Information (a) and (b) regarding government departments that had received CSI masks would help dispel public suspicion that the Government had 'concealed' the whereabouts of CSI masks.

270. As shown above, in considering whether to disclose Information (a) and (b) regarding government departments that had received CSI masks to the complainant, GLD obviously had not considered various factors in a holistic manner, including the public interest involved in the disclosure of information. It showed GLD had not been comprehensive enough in making the decision.

271. As for Information (c), GLD had admitted that it should have expressed itself more clearly in its reply to the complainant on 8 April 2020. The Office accepted GLD's explanation. GLD might have been able to avoid this complaint if its reply had been more to-the-point.

272. Overall, The Ombudsman considered that GLD had not been comprehensive enough in making the decision of refusing to provide Information (a) and (b) to the complainant, and was not compliant with the Code's requirements on the provision of information by civil servants in accordance with established practice upon requests. Furthermore, its reply

on Information (c) could also be improved. Therefore, this complaint was substantiated. The Office was pleased to learn that in view of the changes in circumstances relating to the supply of relevant items, GLD provided Information (a) and (b) to the complainant on 25 August 2020.

273. The Ombudsman recommended GLD to –

(a) give another written reply to the complainant in respect of Information (c) and explain the circumstances concerned; and

(b) gain experience from the case and enhance staff training to ensure that every request and all relevant factors would be considered carefully in handling the public's requests for information in the future, and that its staff would act in strict accordance with the requirements of the Code as well as the Guidelines on Interpretation and Application.

Government's response

274. GLD accepted the Ombudsman's recommendations. In respect of Information (c), GLD issued another email to the complainant on 16 October 2020 to explain the circumstances concerned. GLD has also stepped up training on the points to note when handling requests for information under the Code in the briefing sessions and retraining courses organised regularly for new recruits and in-service staff respectively. GLD has also invited relevant department to conduct a seminar on the Code for GLD's staff.

Government Logistics Department

Case No. 2020/2073(I) – Refusing to provide information about the procurement of surgical masks and the distribution of personal protective equipment in 2020

Background

275. On 19 June 2020, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Government Logistics Department (GLD).

276. The complainant emailed GLD on 29 February 2020 and cited the Code on Access to Information (the Code) to request information about different types of anti-epidemic supplies (including surgical masks (but not limited to masks manufactured by the Correctional Services Department (CSI masks)), N95 masks, protective gowns, protective coverall suits, 50ml alcohol-based handrub, 50ml alcohol-based handrub gel and bleach) –

(a) the number of CSI masks procured by GLD from CSD during the period from 23 January 2020 to 29 February 2020 (Information (a));

(b) a list of government departments that received CSI masks from GLD during the period from 23 January 2020 to 29 February 2020, and the quantity received by individual departments (Information (b));

(c) the stock level of CSI masks kept by GLD as at 29 February 2020 (Information (c)); and

(d) a list of government departments that received other anti-epidemic supplies from GLD during the period from 23 January 2020 to 29 February 2020, and the quantity of each anti-epidemic item received by the departments concerned (Information (d)).

277. In its email reply dated 17 April 2020 to the complainant, GLD indicated that GLD and other government departments were making their best endeavours to procure anti-epidemic supplies through different channels and means. With a sharp increase in global demand for anti-

epidemic supplies, the Government faced keen competition in its procurement work. Therefore, to avoid undermining the bargaining power of GLD and other government departments in the procurement of anti-epidemic supplies, GLD considered that it was not appropriate to disclose relevant information at that time. Citing paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code, GLD explained to the complainant the reasons for its refusal of the above-mentioned request for information.

278. On the same day, the complainant sent an email to GLD to request a review. In its reply to the complainant on 28 May 2020, GLD indicated that as the Government was still facing keen competition in procurement work at that time, disclosing relevant information might enable suppliers to estimate the actual demand of the Government or individual departments for various anti-epidemic supplies, thus undermining the bargaining power of the Government in procuring anti-epidemic supplies. Hence, GLD maintained its decision of not providing the complainant with the above-mentioned information.

279. The complainant considered that the information requested GLD involved absolutely no sensitive information, such as the Government's procurement procedures, procurement prices or the names of suppliers. Furthermore, the quantity of anti-epidemic supplies received by government departments involved significant public interest, as it not only involved the occupational safety and health of the staff of various departments, but would also have a bearing on the consideration of the public in whether to use services provided in those departments. In addition, given that the local epidemic situation and the procurement of anti-epidemic supplies worldwide had already eased off, the Government had, at that time, no reason to maintain its refusal to disclose the information requested. As a consequence, the complainant lodged a complaint to the Office against GLD's unreasonable refusal of the request for information.

The Ombudsman's observations

Information (a) to (d) relating to masks

280. In its response to the Office's investigation, GLD indicated that if Information (a) to (d) relating to masks was disclosed, the bargaining power of GLD and other government departments at that time in procuring masks through commercial channels would be undermined, thus causing

possible financial losses to the Government and possible harm to its effective operation. The Office understood GLD's worries.

281. However, the Office noted that the Financial Services and the Treasury Bureau (FSTB), which oversaw GLD, openly acknowledged in a press release on 7 February 2020 that GLD had a limited stock of about 12 million masks (including about 3 million non-CSI masks) at that time for meeting the needs of government departments. On 16 February 2020, FSTB issued another press release to point out that the Government had kept the total demand for masks at about 8 million per month, and that GLD's stock of about 12 million masks at that time, together with the stock kept by individual departments and the masks produced by CSD, could only last for about two months. In addition, on as early as 26 January 2020, the Government had already disclosed through a press release that CSD produced an average of 1.1 million CSI masks per month.

282. As far as the Office understood, it was an indisputable fact that there was a shortage of masks across the globe at that time. That CSD's production capacity was not sufficient to meet the consumption of government departments and that the Government's stock of masks was only sufficient to meet the departments' demand for about two months were also information available in the public domain. Given that supply side knew fully well on the demand of the buyers, disclosure of Information (a) to (d) relating to masks by GLD to the complainant would not necessarily worsen the situation further and had further impacts on the bargaining power of GLD and other government departments in procuring masks through commercial channels. Hence, the Office considered that GLD might be over cautious about the possible consequences of disclosing the requested information.

283. Furthermore, while the supply shortage of masks was acute at that time, there were rumors about suspected abuses of CSI masks circulating in the community from time to time. This had not only drawn attention and even queries from the general public, but had also led to calls for the Government to provide full details about the production and sale of CSI masks. In consequence, 'mask' issues had become a subject that involved public interest. The Office therefore considered that the disclosure of Information (a) to (d) relating to masks would help dispel public suspicion that the Government had 'concealed' the whereabouts of CSI masks.

284. As shown above, in considering whether to disclose Information (a) to (d) relating to masks to the complainant, GLD obviously had not considered various factors in a holistic manner, including the public

interest involved in the disclosure of information. It showed GLD had not been comprehensive enough in making the decision.

Information (d) relating to other anti-epidemic supplies

285. Unlike the case of 'mask', Information (d) relating to other anti-epidemic supplies, including the quantity supplied, stock level and consumption of various anti-epidemic supplies in respect of GLD and various government departments, had never been made available to the general public.

286. According to GLD, the information requested by the complainant might reflect the demand of individual departments and the Government as a whole for relevant items and their consumption. The Office considered that if the information was disclosed to the public, suppliers might be able to get the picture of the circumstances and therefore in a better position to estimate the Government's demand for those anti-epidemic supplies. As this might indeed affect the Government's capabilities in negotiating prices and seeking better contract terms in the course of procurement, thus causing negative impacts on GLD's procurement operations, GLD's refusal to provide the complainant with information about other anti-epidemic supplies in Information (d) pursuant to paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code was considered justified.

287. Overall, The Ombudsman considered that in respect of GLD's handling of the complainant's request for information, some of its decisions (i.e. the decisions relating to the request for information about masks) were not fully in line with the spirit of the Code, and that GLD had not been comprehensive enough in considering the factors. Therefore, this complaint was partially substantiated. The Office was pleased to learn that in view of the changes in circumstances relating to the supply of anti-epidemic supplies, GLD provided relevant information to the complainant on 24 August 2020.

288. The Ombudsman recommended GLD to gain experience from the case and enhance staff training to ensure that every request and relevant factors would be considered carefully in handling the public's requests for information in the future, and that its staff would act in strict accordance with the requirements of the Code as well as the Guidelines on Interpretation and Application.

Government's response

289. GLD accepted The Ombudsman's recommendations and has stepped up training on the points to note when handling requests for information under the Code in the briefing sessions and retraining courses organised regularly for new recruits and in-service staff respectively. GLD has also invited relevant department to conduct a seminar on the Code for GLD's staff.

Government Secretariat - Education Bureau

Case No. 2020/2731(I) – Refusing to provide the lists of schools that had opted for creating a regular School Executive Officer post and receiving the School Executive Officer Grant, under the "One Executive Officer for Each School" policy

Background

290. On 16 June 2020, the complainant made a request to EDB in accordance with the Code on Access to Information (the Code) for the lists of schools that had opted for the following respectively under the "One Executive Officer for Each School" policy –

(a) creation of a regular School Executive Officer post within the approved non-teaching staff establishment; and

(b) disbursement of the School Executive Officer Grant (SEOG).

291. EDB informed the complainant in its reply of 27 July 2020 that as the relevant information was provided by schools, it was regarded as third party information. Such information could not be disclosed without the consent of the schools concerned. EDB thus refused the complainant's request on grounds of paragraph 2.14(a) of the Code.

292. The complainant then lodged a complaint with the Office of The Ombudsman (the Office), claiming that –

(a) EDB's decision to refuse his request for information is wrong, and pointed out that schools receiving the SEOG are required to make public their plan and details for deployment of the grant, as stated in EDB Circular Memorandum No. 37/2019 (Allegation (a)); and

(b) the content of EDB Circular No. 1/2008 referred to in the Guidelines on the Compilation of School Development Plan, Annual School Plan and School Report (the Guidelines on Compilation) issued by EDB in 2019 was obsolete (Allegation (b)).

The Ombudsman's observations

Allegation (a)

293. According to paragraph 2.14(a) of the Code, if a department invokes the said paragraph as the reason for refusal to disclose information, it should first find out whether the third party that provides the information will give consent to its disclosure. For the case in question, EDB did not further explain to the complainant in its initial reply whether the schools concerned had indicated refusal of disclosure. Moreover, EDB had issued a circular memorandum requiring schools to make public their plan and details for deployment of the grant, which inevitably left the complainant sceptical of EDB's decision. The Ombudsman noted that EDB had reviewed the case and would provide the complainant with the requested information in accordance with the Code.

294. Given that the Code has already built in a review mechanism, and that EDB, upon review, eventually decided to provide the complainant with the requested information, The Ombudsman considered Allegation (a) unsubstantiated, but there was room for EDB to improve its way of handling the case.

Allegation (b)

295. EDB explained its purpose of making reference to the circular concerned in the Guidelines on Compilation back then. Having reviewed the relevant information, EDB agreed that it was no longer necessary to refer to the circular concerned and the unnecessary content has been deleted accordingly. In view of this, The Ombudsman found Allegation (b) substantiated. The Ombudsman was pleased to learn that EDB had swiftly corrected the relevant content and reminded its staff to review the content of its circulars in a timely manner in future.

296. On balance, The Ombudsman considered the complaint partially substantiated, and recommended that EDB should strengthen staff training to ensure their understanding of and compliance with the Code in handling requests for information.

Government's response

297. EDB accepted The Ombudsman's recommendation, and has taken the following follow-up actions –

(a) At an internal meeting held in April 2021, EDB made arrangements for the relevant officer to share with section heads of relevant divisions their experience in handling the case concerned and what officers should pay special attention to when invoking the Code. The section heads have also been reminded to draw on the above experience and enhance understanding of the Code among its staff to ensure that request for information from the public will be handled properly according to the Code and relevant guidelines; and

(b) EDB will continue to circulate internal circulars related to the Code among relevant officers on a half-yearly basis and enhance the understanding of the Code and relevant guidelines among staff through different channels when necessary.

Home Affairs Department

Case No. 2020/2585(I) – Failing to provide the District Council with information about a works project

Background

298. On 29 June 2020, the complainants lodged a complaint with the Office of The Ombudsman (the Office) against the Home Affairs Department (HAD). They alleged that at the meeting of a District Council (the District Council) on 21 January 2020 and the meeting of a Working Group (the Working Group) under the District Council on 11 June 2020, HAD was asked to provide the amount of payments made, the procedures and an estimate of expenditure for terminating a works project, and the contract with sensitive information masked for a specific works project (the Project). HAD refused to provide the requested information unreasonably, allegedly making a wrong decision and failing to comply with the Code on Access to Information (the Code).

The Ombudsman's observations

Estimate on the expenditure of terminating the construction works

299. At the meeting with the complainants and four other members-elect of the District Council on 17 December 2019 and the District Council meeting on 21 January 2020, HAD explained that there was no estimate on the expenditure for terminating a works project. Given that the Government had no intention to terminate the construction works of the Project, HAD would not, in principle, estimate the financial implications of terminating contract of the Project. Technically, the amount of compensation could not be determined unilaterally, but through negotiations between the two contracting parties. The process would involve complex computation. Even if the Government attempted to make such a financial estimate, the estimate would not be appropriate as the Government would have no way to know the actual amount of resources devoted by the contractor. Therefore, no such figures could be provided to the District Council. In addition, HAD provided written replies on 9 and 20 January 2020 respectively reiterating the Government's stance.

300. HAD explained that the Government had not estimated the expenditure for terminating the works of the Project. In accordance with

paragraph 1.14 of the Code, departments are not obliged to acquire information not in their possession. Therefore, The Office considered that HAD did not breach the Code for not providing the Working Group with the above information.

Procedures of terminating the construction works

301. At the District Council meeting on 21 January 2020, HAD explained that pursuant to the General Conditions of Contract for Building Works (General Conditions of Contract) for government works contracts, the Government might terminate a contract if the contractor's performance was not satisfactory, but a new contractor had to be engaged to complete the remaining works. Such provision would not be applicable if the works contract of a project was terminated for reasons other than the contractor's unsatisfactory performance. HAD also explained that a contract had to be drawn up in a way that was fair to all contracting parties. Therefore, the works contract did not contain any clauses for terminating the contract by payment of liquidated damages in accordance with the stage of works. The General Conditions of Contract for government works contracts is already in the public domain and is available at the website of the Development Bureau, link to which was provided in HAD's written reply to the Working Group dated 8 June 2020.

302. HAD explained that the works contract of the Project did not contain any "termination clauses" allowing exit from contract without payment nor payment of liquidated damages, and that the General Conditions of Contract was already available in the public domain. According to paragraph 1.14 of the Code, departments are not obliged to acquire information not in their possession or already published. Therefore, The Office considered that HAD did not breach the Code for not providing the Working Group with the "termination clause" which did not exist and providing them only with the link to the website containing the General Conditions of Contract.

Amount of payments made

303. At the Working Group meeting on 7 May 2020, HAD advised that the Government had earmarked a total of about $76 million in 2019/20 and 2020/21 for meeting the works expenditure of the Project. In light of the possibility that District Council members might take reference to "the amount of works expenditure already incurred" when considering the financial implications for terminating the Project, HAD explained at the

meeting that, during the progression of a works project, sums already paid by the Government to a contractor were not equivalent to the actual amount payable by the Government, as the process of making payment to the contractor involved time. First, the contractor had to submit invoices to the Government regularly for reimbursement of works expenditure in accordance with the works progress and contract terms. The Government would then meticulously verify the claims before making payments to the contractor within the time frame specified in the contract. Quite a number of invoices were still being processed and there might still be outstanding claims yet to be submitted by the contractor. Hence, the Government did not have the actual or estimated sum payable to the contractor for the Project at that time.

304. The Chairman of the Working Group wrote to HAD on 20 May 2020 to request a breakdown of the works expenditure. In its written reply dated 8 June, HAD elaborated on the payment procedures given in the preceding paragraph and reiterated that the Government did not have the estimated sum payable to the contractor for the Project at that time. HAD opined that the information requested by the complainants was not "information in the department's possession" as specified in the Code.

305. The Office agreed that as the Government did not have the estimated sum payable to the contractor for the Project at that time, and the information requested by the complainants was not "information in the department's possession" as specified in the Code.

306. However, The Office noticed that at the Working Group meeting on 7 May 2020 and in the letter dated 20 May 2020 to HAD, the Chairman of the Working Group asked HAD to respond to the enquiry of "the actual amount of payments made" for the Project and provide "the amount of payments made to the contractor" respectively. The Office understood HAD's remarks that the sum already paid by the Government for the works during a works project might not be able to fully reflect the prevailing actual spending position. Nevertheless, HAD could have provided the sum already paid to the contractor as at a specified date, with a note stating that such figure did not cover invoices being processed and those yet to be submitted by the contractor, so as to assist the complainants comprehending the limitations of the figure. HAD's claim that the complainants might take reference to "the amount of works expenditure already incurred" when considering the financial implications for terminating the Project was not a valid reason for non disclosure of information under the Code. In sum, The Office did not consider the

disclosure of "the amount of payments made for the works" could be refused under Part 2 of the Code.

Information of works contract

307. At the Working Group meeting on 7 May 2020, members of the District Council requested the Government to provide the works contract of the Project. HAD indicated at the meeting that the relevant General Conditions of Contract was already available in the public domain, and the link to the relevant webpage had also been provided to the Chairman of the District Council at request. The other parts of the works contract contained commercial confidences and information, and hence could not be divulged by the Government. On 20 May 2020, the Chairman of the Working Group submitted a written request for "the works contract with confidential information masked". In its written reply dated 8 June, HAD provided the link to the webpage containing the General Conditions of Contract, and reiterated that the other parts of the works contract could not be provided as they involved commercial confidences and information.

308. Upon inspection of the works contract concerned, the Office found that there were different parts in the contract, including the General Conditions of Contract, Special Conditions of Contract, works specifications, cost breakdown, records and declarations of the contractor, drawings, etc. The Office confirmed that there was information provided by the contractor in the contract (which are third party information pursuant to in the Code), and accepted in principle that part of the information (e.g. cost breakdown) was sensitive. Generally speaking, HAD was of the view that the works contract contained commercial and financial confidences, the disclosure of which might prejudice the competitive edge or financial position of the concerned parties. Also, according to the contract, the information provided by the contractor could only be used for purposes specified in the contract. The Government, being a party to the works contract, might be subject to the common law duty of confidentiality and there was a risk of liability for breach of confidence if the contract was disclosed. Furthermore, there was no overriding public interest for disclosure in this case that might override the duty of confidentiality on the part of the Government. The Office considered that HAD's explanation for not providing the works contract to the Working Group on consideration of the provisions in paragraphs 2.14(a), 2.16 and 2.18 of the Code was not unreasonable. However, given the principle of the Code that information would be released upon request, HAD should disclose the information as far as possible instead of not providing the entire works contract by adopting a broad-brush approach.

The Office stressed that the purpose of the complainants' request for information was not a reason for refusing the request for information under the Code.

309. Regarding HAD's view that there were no grounds of public interest for seeking the contractor's consent to disclose information it had provided, The Office noticed that the information requested by the Working Group was "the works contract with confidential information masked". Therefore, The Office considered that whether HAD had to seek the contractor's consent to disclose its information was not the key factor in this case. For the avoidance of misunderstanding, the views of The Office should not be regarded as agreeing that this case did not involve public interest, nor HAD was not required to seek the contractor's consent for disclosure of information.

310. HAD pointed out that masking all the confidential information of the works contract would require an unreasonable diversion of the department's resources, to which the provision of paragraph 2.9(d) of the Code was relevant. According to The Office's understanding, specific terms and conditions, and requirements relevant to the project (including the General Conditions of Contract, part or the whole of the Special Conditions of Contract, works specifications, etc.) were contained in the tender documents issued by the Government during the tendering process of the project, and were subsequently incorporated into the works contract. They are not third party information and have been disclosed in the tender documents during the tendering process, and thus were information was relatively less sensitive and had a lower degree of confidentiality. Therefore, contrary to HAD's claim, there should be no need to divert a huge amount of manpower to examine the contract and seek legal advice in order to assess whether the information could be disclosed. As for the cost breakdown in the works contract, The Office had inspected the contract and, agreed that a large volume of information was involved. Masking the confidential parts would require the deployment of a substantial amount of manpower. Yet, the works contract consisted of individual sections. HAD might remove the whole section involving the cost breakdown. This would reduce considerably the resources required for releasing the requested information as far as possible.

311. For different sections of the contract, The Office opined that HAD should review the Working Group's request for the contract information of the Project with a view of the comments given in the preceding paragraph, and identify those information not restricted by considerations

therein, so to release such information to the complainants as far as possible.

312. The Ombudsman was of the view that HAD did not breach the Code for not providing to the Working Group information that the Government did not possess nor information already published. However, HAD should provide information on "the amount of payments made for the works". In addition, HAD's broad-brush approach in handling the request for contract information of the Project was debatable. Therefore, The Ombudsman considered this complaint partially substantiated.

313. The Ombudsman recommended HAD to –

(a) provide "the amount of payments made for the works" of the Project to the Working Group. The Office noticed that HAD was prepared to calculate the amount of payments made to the contractor as at a specified date and inform the Working Group accordingly, with a note on the limitations of the figure, including the fact that the figure could not reflect the actual sum payable to the contractor at that time; and

(b) review the Working Group's request for contract information of the Project.

Government's response

314. HAD accepted The Ombudsman's recommendations and has taken up follow-up actions.

315. HAD wrote to the Working Group on 31 March 2021, providing the amount of payments made by the Government for the works of the Project as at 28 February 2021, with a note on the limitations of the figure.

316. HAD also reviewed again the Working Group's request for the works contract of the Project, and considered that the General Conditions of Contract of the works contract could be released to the Working Group. Such information was attached to HAD's letter to the Working Group dated 31 March 2021. The other parts of the works contract involved a vast amount of commercially confidential information. Masking the confidential information would involve a significant amount of work and could only be accomplished by unreasonably diverting the department's resources. Besides, in HAD's opinion, if any contract information other

than the General Conditions of Contract was to be disclosed, the Government, as a contracting party, was obliged to examine every detail of the contract information in depth and seek legal advice in order to assess whether the disclosure of any individual pieces of information would cause prejudice to the contractor and/or the Government. As the process would involve considerable manpower, thereby unreasonably diverting the department's resources, such information could not be provided to the Working Group.

317. HAD informed The Ombudsman of the above follow-up actions in its letter dated 6 May 2021. Subsequently, The Ombudsman enquired in its letter dated 10 June 2021 whether HAD had taken into consideration the following views in its review of the Working Group's request for the works contract –

(a) Apart from the General Conditions of Contract, part of the information in the works contract had been made public through the tender documents during the tendering process. Such information was relatively less sensitive and had a lower degree of confidentiality. Therefore, contrary to what HAD claimed, there should be no need to divert a substantial amount of manpower to examine the contract and seek legal advice in order to assess whether the information could be disclosed; and

(b) Different parts of the works contract were contained in individual sections. HAD might remove the whole section involving the cost breakdown. This might reduce notably the resources required for releasing the requested information.

318. With regard to HAD's decision of withholding from the Working Group all parts and sections of the works contract other than the General Conditions of Contract, The Ombudsman requested HAD to elaborate on the considerations for not releasing different parts and sections of the contract separately.

319. On 10 August 2021, HAD responded to The Ombudsman and confirmed that it had considered thoroughly the Office's above views and question of whether sections other than those covering cost breakdown could be released.

320. HAD pointed out that apart from the cost breakdown, there were other commercially sensitive or third party information in the works

contract of the project that should be held in confidence, such as the contractor's statements of convictions made under the relevant legislation, form of tender, etc. Such information might be scattered over different parts of the contract. In addition, the contract terms were intertwined and interrelated. Even though some contents, such as the contract terms on liability and claims, did not seem to be confidential or third party information, they might be taken advantage of by a third party other than the contractor if released, which might cause losses to the Government. Therefore, despite the Office's view that part of the information of the works contract had already been made public through the tender documents during the tendering process and hence was relatively less sensitive and had a lower degree of confidentiality, HAD opined that, for the sake of prudence and safeguarding the Government's interest, it was necessary to examine every detail of the contract information in depth and seek legal advice in order to evaluate whether the disclosure of any individual pieces of information would cause prejudice to the Government and/or the contractor. As the process would involve substantial amount of manpower and hence unreasonably diverting the department's resources, to which the provision of paragraph 2.9(d) of the Code is relevant, such information could not be provided to the Working Group. Taking into consideration the views and recommendations of The Ombudsman, HAD concluded that only the General Conditions of Contract in the works contract could be provided to the Working Group.

Housing Department

Case No. 2020/2314(I) – (1) Delay in handling water seepage complaint; and (2) Refusing to provide information

Background

321. The complainant is an owner of a Tenants Purchase Scheme estate in Sham Shui Po while the flat on the upper floor (the Flat Above) is a public rental housing (PRH) unit managed by the Housing Department (HD). The complainant pointed out that there had been water seeping from the Flat Above to the ceiling and wall of her flat since 2007. She and her nephew lodged several complaints but the situation had not improved. In May 2015, a large amount of sewage from the Flat Above seeped through her flat. She subsequently learned from a District Council member's office that HD had conducted three rounds of tests between October 2015 and June 2016 and confirmed that the seepage problem was caused by unauthorised alteration of bathroom partition by the tenant of the Flat Above. However, HD had not completed the reinstatement works until 2018. The complainant wanted to hold related parties responsible and thus wrote a letter to HD on 7 October 2019 requesting for provision of reports of the above three tests and all subsequent tests conducted by HD on the Flat Above (the Request). However, HD simply rejected her request for information through the loss adjuster's response dated 30 October instead of giving her a direct reply. She lodged a complaint against HD for –

(a) failing to properly follow up on her complaints about water seepage from the Flat Above through her flat (Allegation (a)); and

(b) alleged breach of the Code on Access to Information (the Code) in handling her request for information (Allegation (b)).

The Ombudsman's observations

Allegation (a)

322. The Office of The Ombudsman (the Office) considered that upon receiving the complaints lodged by the complainant, the property management service contractor engaged by HD had sent staff to follow up, including measuring humidity and conducting colour water test. There was no information indicating that neither HD nor the estate service

contractor had failed to take proper follow-up actions. Regarding the allegation of the complainant that the ceiling seepage in her bathroom was caused by the unauthorised alteration of partition by the tenant of the Flat Above, HD had already denied it. As this involved professional judgement of the works aspect but not administration matters, The Office had no comment in this respect.

323. Nevertheless, although the estate service contractor found out in January 2010 that the tenant of the Flat Above had made unauthorised alteration to the bathroom partition, it was not until December 2015 that it took follow-up actions on the unauthorised alteration. During the period of nearly five years, there was no information indicating that neither HD nor the estate service contractor had taken any regulatory action upon the tenant of the Flat Above. Furthermore, the reinstatement of the partition was subsequently suspended due to special personal reasons of the tenant. As a result, the required reinstatement works were not completed until September 2018. Such delay was indeed undesirable.

324. The Office noted that HD revised the estate management guidelines in August 2016, setting out, among others, the time frame for offending tenants to reinstate the flat. The Office believed that such requirement could regulate the misdeeds of tenants.

325. In view of the above, The Ombudsman considered Allegation (a) unsubstantiated, but other inadequacies were found on the part of HD.

Allegation (b)

326. HD explained that it did not aware of the Request until 17 October 2019 and the loss adjuster had not consulted it before making the response on 30 October. Indeed, after HD was aware of the Request, there was sufficient time for HD to intervene before the loss adjuster making the response, but it failed to do so. This was tantamount to allowing the estate service contractor and the loss adjuster to handle the matter on their own. The subject request had not been properly followed up in the end. The Office is glad to note that upon commencement of the full investigation, HD has reviewed its previous follow-up work and took corresponding actions which included disclosing relevant information to the complainant, as well as reminding its staff to provide relevant information as appropriate when handling similar cases in the future.

327. The Ombudsman considered Allegation (b) substantiated. HD should implement measures to ensure estate service contractors submit timely to HD any requests for information received in the course of handling claims, and HD staff should take appropriate follow-up actions in accordance with the principles of the Code.

328. Overall, The Ombudsman considered the complaint against HD partially substantiated and recommended that HD implement measures to ensure estate service contractors submit timely to HD any requests for information received in the course of handling claims, and HD staff should take appropriate follow-up actions in accordance with the principles of the Code.

Government's response

329. HD accepted The Ombudsman's recommendations. HD sent an email to its estate service contractors on 18 January 2021 to remind them that should they receive any requests for claim-related information from claimants in the course of handling claims, they should submit the requests to HD timely for follow-up.

330. HD organises training courses every year to brief its staff on the provisions and requirements of the Code to familiarise them with the relevant guidelines. In addition, HD regularly re-circulates General Circular No. 5/2016 on "Handling Requests for Access to Information" by email to remind all staff to follow up on requests for information according to the guidelines contained therein and the principles of the Code. HD last re-circulated the relevant circular on 20 July 2021.

Housing Department

Case No. 2020/2477 – Mishandling the complaint against public housing tenants for unauthorised dog keeping

Background

331. On 20 July 2020, the complainant lodged a complaint with The Office of The Ombudsman (The Office) against the Housing Department (HD). The complainant is a tenant of a flat in a building in a housing estate in Sha Tin (the subject building). The complainant alleged that tenants of several flats on the floor the complainant resided (the subject floor) were suspected of unauthorised dog keeping and the barking of the dogs caused nuisance (the dog barking problem).

332. The complainant also said that a complaint was lodged with HD about the dog barking problem in June 2019 and the HD staff replied that they would ask the outsourced property services agent of the Estate (the PSA) to follow up. Subsequently, the complainant repeatedly raised the dog barking problem to the PSA, which replied that it had no authority to interfere in dog keeping of tenants and only HD was empowered to allot points to the tenants under the Marking Scheme. The complainant complained against HD for mishandling his complaint, resulting in the persistence of the dog barking problem.

The Ombudsman's observations

333. The Office was of the view that the PSA and HD had followed up the dog barking problem and carried out corresponding actions under the Marking Scheme for Estate Management Enforcement in public housing estates based on their findings. However, The Office considered it undesirable as, there was clearly room for improvement in respect of the effectiveness of HD's enforcement, and that the investigation efforts devoted at the initial stage went futile. In fact, according to the Operation Manual of the Marking Scheme, officers were only required to make a record on site and take photos of the dogs as far as practicable for use as evidence, but the PSA's misinterpretation of the guidelines affected the enforcement effectiveness of the Marking Scheme.

334. Relevant records showed that upon receipt of the complainant's complaint in September 2019, the PSA staff conducted site inspection on

the same day and heard dogs barking from the subject flats, but nobody answered the door. Although the PSA staff later succeeded in making home visits to individual units, such visits were ineffective in terms of evidence collection and enforcement as prior notice and tenants' consent were required before entering and the tenants could make preparation in advance. Subsequently, security guards found in a number of inspections barking noise emanating from the subject flats but they could not collect further evidence as nobody answered the door. Follow-up work was thus highly impeded.

335. HD heard dogs barking during the period from October 2019 to January 2020. However, as nobody witnessed the dogs inside the subject flats and took photos of them, HD could only continue to arrange for site inspection by staff and security guards of the PSA/HD. This showed that HD's enforcement actions only focused on compliance with existing procedures, neither had it reviewed timely if such procedures were effective in meeting the enforcement target, nor adjusted strategies in relation to evidence collection and corroboration as appropriate. After prolonged follow-up without further progress, HD should have adjusted the methods of collecting evidence as early as possible. It was not until November 2020, where several months had passed, that HD reviewed the situation, sought legal advice, carried out further inspection and supervision and adjusted the methods of collecting evidence.

336. HD explained that further inspection and supervision were not carried out earlier because manpower had been deployed to cope with the COVID-19 epidemic. In this regard, The Office considered the HD's explanation debatable. The COVID-19 epidemic only broke out in late January 2020. If HD could promptly consider the evidence submitted by the witnesses (i.e. the allegations by the complainant and security guards about dog barking noise emanating from the subject flats) and enhance evidence collection by adjusting its action plans, the problem could have been solved before the outbreak of the epidemic. Not to mention that the Special Operations Team (SOT) of HD had witnessed the tenant of one of the flats complained going out with a dog on 29 November 2019, which should have warranted HD's further actions at that time.

337. The Office considered it undesirable for HD to spend more than a year to obtain sufficient evidence for issuing the Notification Letter on Allotments of Points to tenants of relevant flats. Besides, the SOT submitted its investigation findings of 29 November 2019 to the outsourced PSA without submitting to the District Tenancy Management Office (DTMO) concurrently, which shall be improved. Inadequacies

were also found on the part of HD. HD's finding of insufficient evidence on the premise of PSA's misinterpretation of its guidelines of the Marking Scheme had led to the elapsing of the opportune time for enforcement action in resolution of the dog barking problem, and it was considered unsatisfactory.

338. The complainant also alleged that the PSA staff contended that the PSA had no authority to interfere with tenants' dog keeping, which the relevant staff had denied. Given the lack of corroborative evidence, The Office could not ascertain the factual situation and would refrain from commenting. Nevertheless, the contention that the PSA did not have the authority to allot points was true.

339. In light of the above, The Ombudsman was of the view that although HD had followed up the complaint according to the relevant workflow, there were inadequacies during the process. Therefore, The Ombudsman considered this complaint partially substantiated and recommended that HD –

(a) continue to monitor the subject flats to see whether there is recurrence of cases of unauthorised dog keeping and take follow-up actions accordingly in a timely manner;

(b) review and improve the relevant guidelines in the Operation Manual where necessary to keep up with the operational experience and enhance enforcement effectiveness;

(c) review the SOT's workflow for releasing investigation findings so that DTMO can obtain the investigation details simultaneously in order to monitor the follow-up actions taken by PSAs and review their decisions; and

(d) strengthen training for frontline enforcement staff to enhance their effectiveness in handling complaints about unauthorised dog keeping.

Government's response

340. HD accepted The Ombudsman's recommendations and has taken the following actions –

(a) HD and the PSA have been monitoring the subject floor and no case of unauthorised dog keeping has been found so far. Staff of the PSA and HD also contacted the complainant by phone on 8 and 10 June 2021 respectively. The complainant stated that dogs barking was no longer heard from surrounding units and was satisfied with the follow-up of HD and the PSA;

(b) To enhance enforcement effectiveness, HD reviewed the relevant guidelines and the SOT's workflow for releasing investigation findings, and issued the revised guidelines and workflow to frontline estate management staff. The revised guidelines in the Operation Manual of the Marking Scheme for Estate Management Enforcement in Public Housing Estates stipulate that in cases of unauthorised keeping of dogs/animals, even without photos of the dogs/animals as evidence, officers can allot penalty points if they personally see the dogs/animals. Dog barking noise can also be treated as prima facie evidence for further enforcement actions;

(c) According to the SOT's revised workflow for releasing investigation findings, after completing the investigation on unauthorised dog keeping in an outsourced estate, the SOT shall submit the original investigation report to the outsourced PSA for enforcement actions with a copy to DTMO and the Property Service Administration Unit of HD, so that they can follow up the investigation findings of the SOT more effectively; and

(d) To enhance the capability of frontline estate management staff in handling complaints about unauthorised dog keeping, HD organised a training session and a seminar on 9 and 26 March 2021 respectively, during which responsible officers explained the updated guidelines and procedures and shared their experience. Content of the training session and the seminar has been uploaded to the intranet of HD for reference by all staff.

Housing Department

Case No. 2020/2812 – (1) Unreasonably handing in the applications for displaying posters in a public housing estate to its headquarters for approval; (2) Lack of transparency in its vetting procedures; (3) Delay in handling the applications; and (4) Failing to update the applicants on the progress of poster vetting

Background

341. The complainants claimed that since June 2020, a number of applications submitted by District Council members for displaying posters in public housing estates had suddenly and unreasonably been sent to the headquarters of Housing Department (HD) for vetting by estate offices (Allegation (a)). The vetting procedures lacked transparency. No reasons were given as to why the posters were submitted to the headquarters for vetting and, despite the applicants' requests, information such as vetting criteria, procedures, processing time and the names and contact numbers of the responsible officers was not provided (Allegation (b)). There was also delay in the handling of a number of applications (Allegation (c)). HD's failure to proactively update the applicants on the vetting progress of the subject posters had seriously upset the applicants' administrative arrangements and resulted in a wastage of resources; leading to delay in receiving such information which affected the public's right to know (Allegation (d)).

342. The complainants provided detailed information on the applications for displaying posters, which involved the vetting of a total of six applications.

The Ombudsman's observations

Allegation (a)

343. When the publicity materials (PMs) of an application were considered controversial in contents, HD followed the prevailing policy and guidelines by referring the application to the headquarters for handling. There was no sudden change in practice. The Office of the Ombudsman (the Office) took the view that frontline staff in different estate offices might not have the same understanding of HD's vetting criteria regarding

PMs that involved controversial contents. HD's current practice could indeed maintain consistency in handling applications and was not considered unreasonable. The Ombudsman considered Allegation (a) unsubstantiated.

Allegation (b)

344. HD claimed that it had, through different means, explained to the applicants the criteria for vetting applications, and that applications involving publicity materials with controversial contents would be referred to the headquarters for vetting. However, when the Office investigated the six applications concerned, it found that HD had not specified clearly what and how the poster contents were controversial nor reasons for failing to meet HD's vetting criteria. The Office took the view that when processing the applications, HD should be as clear and specific as possible in explaining to the applicants why the applications were rejected (e.g. which ordinance or guideline had been violated). This would not only help applicants submit their applications in accordance with HD's requirements but also better meet the public's expectation on good public administration.

345. The Office had also studied the documents/information mentioned by HD and found that they had not clearly set out the vetting procedures, the panel responsible for vetting (the Panel), ranks of officers comprising the Panel and the appeal mechanism. The Office considered that HD, having formulated vetting procedures for the applications of displaying PMs, should make public these procedures as far as possible so that applicants could have a better understanding. There was nothing wrong to have estate staff to act as contact persons to inform applicants of the vetting progress and relay applicants' views to the Panel at the headquarters. It is also reasonable for the applicant to enquire the status of its application, and the names and titles of the subject officers. The Office took the view that based on the principle of good public administration, HD should clearly update the applicants with the latest application status upon their enquiry, and provide them with the titles of the officers responsible for vetting the applications. If the application concerned was being vetted by the Panel, titles of the Panel members should be provided. Therefore, The Ombudsman considered Allegation (b) partially substantiated.

Allegation (c)

346. When a relatively complicated application or an application involving controversial contents was received and the Panel of HD headquarters could not determine immediately whether the message conveyed by the poster met the display requirements, the Office considered it prudent and responsible for the Panel to conduct further discussions, submit the application to higher ranking officers for vetting and/or seek legal advice. Furthermore, given that a considerable number of applications for display of posters with controversial contents were received during that period and these cases involved new legislations, it was understandable that the Panel needed more time to handle the applications concerned. Nevertheless, when studying the case, the Office found that according to HD's guidelines, the PMs displayed should be informative and the information should be welfare- or service-providing and non-profit making in nature. In this regard, the Office considered that it should not be difficult to define whether or not an application is "welfare- or service-providing". Had such criterion been considered at the outset, the vetting process could have been expedited and prolonged waiting time could have been avoided. The Ombudsman considered Allegation (c) unsubstantiated but found that there was room for improvement.

Allegation (d)

347. The Office took the view that if longer processing time for an application was anticipated, HD should take the initiative to communicate with the applicant regarding the latest position or progress of the application rather than informing the applicant upon individual councillors' requests. The Office urged HD to review its current vetting procedures and formulate clearer guidelines regarding applications that require longer processing time, such as proactively updating the applicants with the latest progress of their applications through regular interim replies. The Ombudsman considered Allegation (d) substantiated.

348. To conclude, The Ombudsman considered this complaint partially substantiated and recommended that HD –

(a) disclose the vetting procedures and guidelines formulated by HD regarding application for display of PMs in more detail, through its website and other channels;

(b) remind its staff that when responding to enquiries, they should clearly inform applicants of the latest vetting progress of their applications, and provide applicants with the titles of the responsible officers in a more positive and open manner. If the case is being vetted by the Panel, the titles of the Panel members should be provided; and

(c) review the current vetting procedures and formulate guidelines for applications that require longer vetting time, e.g. proactively updating the applicants with the latest progress of their applications through regular interim replies.

Government's response

349. HD accepted The Ombudsman's recommendations and has taken the following actions –

(a) HD's vetting criteria and guidelines regarding the display of publicity materials have been revised and uploaded onto the websites of the Housing Authority and HD. Staff of estate offices have issued letters to local parties concerned to ensure that they are well aware of the revised criteria and procedures for the display of PMs;

(b) HD reminded its staff by email on 15 June 2021 that when handling applications for displaying posters/banners, they should timely inform the applicants of the latest progress. Where necessary, an interim reply and regular replies should be made, and titles of the responsible officers/ Panel members should also be provided to the applicants; and

(c) HD has already revised the guidelines and reminded staff to timely inform applicants of the latest progress of their case. Where necessary, an interim reply and regular replies should be provided.

Housing Department and Social Welfare Department

Case No. 2019/4924A (Housing Department)– Rejecting the complainant's rehousing applications with unreasonable and discriminatory reasons

Case No. 2019/4924B (Social Welfare Department) – Failing to properly follow up the complainant's rehousing applications

Background

350. The complainant and the complainant's son lived in a public housing estate in the New Territories. They both diagnosed with psychological illness and received regular medical treatment at psychiatric out-patient clinics in public hospitals. They had frequent conflicts and their relationship was poor. The godmother of the son (the godmother) lived in Kowloon and always rendered support to the complainant and the complainant's son. In September 2017, the complainant approached a social worker (Social Worker A) of the Medical Social Service Unit (MSSU) of the Social Welfare Department (SWD) to apply for housing transfer to Kowloon to gain better support from the godmother. Social Worker A relayed the complainant's transfer request to the Housing Department (HD) and referred the case to a social worker (Social Worker B) of another MSSU of SWD to follow up on the welfare needs of the complainant.

351. In February 2018, HD informed the complainant that the application for special housing transfer was rejected and also notified Social Worker B of the result. With due regard to the complainant's situation, in June 2018, Social Worker B recommended HD to consider another request of the complainant for housing transfer to Kowloon (the Second Application). In view of the change in circumstances and preference of the complainant, in November 2018, SWD made another recommendation to HD for housing transfer to another estate in the same district the complainant was residing (the Third Application). In August 2019, the complainant was notified by Social Worker B that the application for housing transfer within the same district was declined by HD as the complainant had no social support in the district. Owing to further change in the complainant's situation, SWD recommended housing transfer to

Kowloon for the complainant in September 2019 to facilitate her medical treatment and access to social support (the Fourth Application).

352. The complainant lodged a complaint to the Office of The Ombudsman (the Office) in November 2019, complaining that Social Worker B discharged responsibilities in a perfunctory manner and failed to properly follow up on the complainant's rehousing application, including failing to take the initiative to contact the complainant and inform the application progress, and failing to provide relevant supporting documents to HD, which resulted in HD writing to the complainant consequently, requesting for documents that the complainant did not possess.

The Ombudsman's observations

353. The Office considered that applicants had the responsibility to submit the required documents to HD for processing. Being affected by psychological illness, the complainant was often emotionally unstable and would intermittently refuse to be contacted by the staff of HD or SWD, making it difficult for the two departments to follow up on the case effectively. This was one of the reasons for the prolonged handling of the applications.

354. The Office noted that the two departments had different views on whether certain documents should be obtained for processing of the rehousing application. During the handling of complainant's special transfer applications, HD had all along required the complainant to provide the relevant supporting documents in accordance with the existing policies, and provided clarifications and explanations as to why it sought assistance from SWD to collect such documents. The Office considered that HD's explanations were not unreasonable.

355. Meanwhile, the complainant had all along thought that Social Worker B was wholly responsible for following up on the rehousing application. The Office considered that in the process of assisting the complainant to handle the three applications for special housing transfer, Social Worker B had all along taken the initiative to contact the complainant, relayed HD's requirements to her, kept the complainant informed of the application progress and asked for the relevant supporting documents. The Office did not consider that Social Worker B had discharged her duties in a perfunctory manner. The Office considered that Social Worker B could have explained roles and duties to the complainant

as early as possible, and considered exploring other feasible ways to assist the complainant. For example, Social Worker B could have assisted by arranging a meeting between the complainant and the staff of HD and accompanied the complainant to the meeting to provide emotional support, so that the staff of HD could explain to the complainant directly the criteria and details of the rehousing application. The Office also pointed out, if HD's staff had taken into account the fact that the complainant might not be able to obtain a referral letter from medical professionals on own accord as a result of psychological illnesses, and taken the initiative to consult SWD about the complainant's circumstances before rejecting the first application, The Office believed that it would have helped HD process the application.

356. On the location preference, the Office believed that the request for transfer to another estate within the same district was the complainant's contention. While such was still categorised as special housing transfer, the complainant mistaken that the procedures were simpler, thereby making it easier to obtain the approval of HD. Though the intention was to ease the complainant's emotional distress, the Office considered that there was inadequacy for SWD to recommend the application based on the misunderstanding of the complainant; it also necessitated HD's reassessment of the application and request for relevant supporting documents. Unless there were sufficient reasons, the Office considered that it would have been more reasonable and effective for SWD to continue with the Second Application. The Office also pointed out that phrases in HD's letters of reply to the complainant could have led to misunderstanding that the chance of approval for special transfer applications varied with the choice of district. In this connection, The Office suggested that HD should review the statements in its letters and make amendments as appropriate to avoid any misunderstanding.

357. In light of the above analysis, the Ombudsman considered the complaint unsubstantiated, but there was room for improvement. The Ombudsman recommended HD and SWD to –

(a) enhance their collaboration and communication, and foster their co-operative relations, especially in explaining clearly to each other (including frontline staff) their roles and duties, and details of the related housing policies; and

(b) advise their frontline staff to maintain direct and candid communication with each other to clarify the issue when handling individual applications.

358. The Ombudsman also recommended SWD to –

(a) raise issues with HD as early as possible in a clear and definite manner if there is any doubt on their requests or judgment;

(b) explain to applicants the roles and duties of SWD's social workers as early as possible; and

(c) strengthen training for social workers to familiarise them with the principles, details and criteria of the existing public housing policies (especially for housing transfer) so that they could identify applicants who are in genuine need of housing transfer and make effective recommendations to HD.

359. The Ombudsman also recommended HD to –

(a) remind its staff to be more sensitive in processing rehousing applications, particularly when the applicant states that he/she is suffering from illness and may not be able to independently handle matters in relation to the applications. HD staff should, in such case, proactively consult social workers for more details regarding the applicant's status and seek SWD's early assistance; and

(b) review the statements in its letters and make suitable amendments to avoid the misconception that same district rehousing applications would have higher chance of success.

Government's response

360. SWD and HD accepted The Ombudsman's recommendations and have taken the following actions –

(a) Since 2010, SWD and HD have set up a liaison group at headquarters level and five liaison groups at district level to enhance collaboration. In the past five years, the liaison groups held seven meetings at headquarters level and 39 meetings at district level to review and streamline procedures on handling housing assistance cases, and to implement improvement measures, including HD's direct handling of requests for other housing assistance made solely on medical grounds. HD met with SWD at the meeting of the Local Liaison Group of the North District and Shatin District on 21 April 2021 and exchanged views

on the handling of the above case. The roles and responsibilities of both sides, as well as details of the relevant housing policies were explained at the meeting. Both sides agreed on the importance of enhancing communications for processing future cases in a more effective manner. SWD will make good use of the liaison groups to enhance inter-departmental collaboration and communication, including strengthening of the collection and exchange of views and experience on handling housing assistance cases from frontline workers at district level. HD and SWD will also work closely to examine the mode of collaboration relating to the handling of housing assistance cases among SWD, HD, NGOs and other stakeholders concerned to propose measures for enhancement of collaboration/ communication, and arrange Liaison Group meetings at the headquarters level to further share information about the roles and responsibilities of both sides in handling transfer applications and other cases, and to strengthen liaison and communications between the two parties;

(b) SWD's Committee on Integrated Family Service Centre, comprising representatives from the headquarters and 11 District Social Welfare Offices of SWD, 12 NGOs operating Integrated Family Service Centres/ Integrated Services Centres and the Hong Kong Council of Social Service, will remind staff to comply with the relevant procedures and guidelines when handling applications for housing assistance, explain the roles and duties of social workers to applicants clearly, and maintain close communication with HD. If there is any problem in communication and collaboration with HD, staff should report to their officers-in-charge or supervisors as early as possible, so that the issues can be discussed in the liaison group meetings when necessary. Officers-in-charge or supervisors of SWD's service units will continue to monitor the progress of housing assistance cases through casework supervision, case conference and case sharing so as to ensure proper handling of cases;

(c) Through the implementation of various regular training activities, SWD provides continuous training for social work personnel to promote professional development. In order to enrich the frontline social workers' knowledge of existing housing policies, SWD organised training courses for frontline social workers in November 2020 and May 2021 on the housing policy, including housing transfer arrangement, application and referral mechanism, collaboration with HD, etc;

(d) HD has reminded its frontline staff to strengthen communications with SWD and pay attention to the applicants' need when processing special transfer applications. If it is noticed that an applicant appears to be unable to handle application matters by himself/herself, frontline staff should take the initiative to contact the social workers for a direct and candid discussion in order to gather information about the applicant's circumstances and clarify any problems. They should also provide early assistance to the applicant or seek support from the social workers; and

(e) HD has reminded its frontline staff to consider special transfer applications in light of the special grounds provided by the applicants. If the documents furnished by the applicants do not substantiate their genuine needs for special transfer, whilst rejecting the applications, frontline staff should avoid using wording that may give rise to misunderstanding, thus preventing the incorrect impression that approval of application depends on the district indicated in the transfer application.

Hong Kong Police Force

Case No. 2019/3702(I) – Unreasonably refusing to disclose headings of all chapters of the Police General Orders

Background

361. On 24 June 2019, the complainant made a request to the Hong Kong Police Force (HKPF) via email for access to the headings of all chapters of the Police General Orders (PGO). On the 28th of the same month, HKPF replied via email that the complainant could obtain information of PGO from HKPF's website, and provided the relevant hyperlink. Later on the same day, the complainant pointed out to HKPF that the requested information was actually the headings of all chapters in PGO, but HKPF's website only showed the headings of some chapters.

362. On 5 July 2019, HKPF made a further reply to the complainant, indicating that after amendments over previous years, some chapters of PGO became non-existent. HKPF also refused to disclose certain parts of information in PGO by invoking paragraphs 2.6(e) and 2.6(f) of the Code on Access to Information (the Code). Those parts available for public inspection had been uploaded to HKPF's website.

363. On 31 July 2019, the complainant further requested HKPF to indicate which chapters in PGO were non-existent, and which chapters were not disclosable. In its reply to the complainant on 9 August, HKPF reiterated that the information available for public inspection had been uploaded to its website. HKPF also claimed that the undisclosed information in PGO involved operational details. Hence, pursuant to paragraphs 2.6(e) and 2.6(f) of the Code, HKPF refused to disclose such information to the complainant.

364. On 9 August 2019, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against HKPF for its unreasonable refusal to disclose the headings of all chapters (including non-existent and undisclosed chapters) of PGO.

The Ombudsman's observations

365. According to the information provided by HKPF, the headings and content of some chapters of PGO are currently not disclosed, while the

headings and part of the content of some other chapters are available to the public. The nature of those undisclosed chapters involves HKPF's investigation procedures, guidelines and restrictions in relation to handling of miscellaneous and criminal cases, and also the operational plans and procedures for various law enforcement actions. Disclosing those chapters might assist persons with an intent to disrupt public safety and order, or other lawbreakers, to grasp the procedures adopted by HKPF for case investigation and law enforcement, thereby finding ways to circumvent or obstruct the police's law enforcement actions. It would hinder HKPF from discharging its statutory duties of maintaining public safety, and prevention and detection of crime, etc.

366. Although the complainant only requested access to the chapter headings of PGO, HKPF considered it improper to handle the headings and content of the chapters separately because they were closely related. Disclosure of the headings of those undisclosed chapters might induce persons with intention to commit certain kinds of crime to attempt to obtain the content of chapters pertaining to such offences, thereby finding counter measures to evade detection and enforcement by the police.

367. Moreover, HKPF contended that disclosing all chapter headings might generate a misunderstanding among the public that HKPF only focused on certain case categories or enforcement ambits, and in turn induce lawbreakers to seize opportunities to commit offences not covered by PGO.

368. HKPF considered its officers had handled the complainant's request for information pursuant to the Code, and had explained to the complainant its reasons for withholding the information as far as practicable.

369. However, the Office considered that the headings of those undisclosed chapters only gave a general idea about the themes of the chapters, without any specific content. Even if the content in those chapters was indeed about police's criminal investigations or operational plans for law enforcement, etc., and thus fell within the categories of information under paragraphs 2.6(e) and 2.6(f) of the Code as claimed by HKPF, the Office considered that merely disclosing the headings (not content) of those chapters would hardly result in the situations as suggested by HKPF. The Office found it far-fetched for HKPF to argue that disclosing the chapter headings would be prejudicial to its duties of maintaining public safety, preserving property, preventing and detecting criminal offences, and apprehending criminals. Moreover, the Office

could not see how merely disclosing the relevant chapter headings would induce lawbreakers to attempt to obtain the content of those chapters or give them any substantive advantage, or would be beneficial to persons with intention to disturb public safety or pose threat to properties belonging to others.

370. In fact, HKPF submitted in April 2003 a progress report to the Panel on Security of the Legislative Council (LegCo) about uploading PGO to the Information Kiosks in police stations. The report provided the total number of chapters in the then PGO and listed out the headings of those chapters that HKPF decided to withhold from the public at the time. There was no information showing that the practice in 2003 had led to the situations or concerns raised by HKPF. This further demonstrated that HKPF's reasons for refusing to provide the complainant with the headings of those undisclosed chapters in the current PGO were unjustified.

371. HKPF insisted that it was justified to invoke paragraphs 2.6(e) and 2.6(f) of the Code to refuse the complainant's information request.

372. HKPF mentioned that in accordance with paragraph 2.2.2 of the Guidelines on Interpretation and Application (the Guidelines), it was not necessary to be able to prove in any particular case that harm or prejudice would result from disclosure of particular information. It sufficed if there was a risk or reasonable expectation of harm in the circumstances. Paragraphs 2.6.16 and 2.6.19 of the Guidelines point out that the Code does not oblige the Government to disclose information which would be of assistance to actual or potential lawbreakers. In assessing the probability that disclosure would be prejudicial to a law enforcement process or facilitate the commission of an offence, it suffices if it is more likely than not that prejudice would result from disclosure of the information sought.

373. HKPF indicated that PGO is a crucial cornerstone of its efficient operation to carry out the objects and provisions of the Police Force Ordinance. HKPF opined that, in considering the complainant's request, the effect of PGO on its overall operations should be taken into account. Disclosing all chapter headings in PGO might allow lawbreakers to grasp the ambit covered by PGO, thereby impairing the enforcement efficacy of HKPF.

374. HKPF reiterated that parts of PGO included HKPF's procedures and guidelines for case investigation. Disclosing such information would assist lawbreakers to contemplate HKPF's overall capacity in case investigation and law enforcement actions. Chances are that it would cause

lawbreakers to purposefully circumvent or interfere with investigation procedures, or wilfully commit those offences not listed under PGO.

375. Meanwhile, HKPF disagreed that the submission of the relevant document to LegCo in the past would necessarily preclude it from invoking the Code to refuse disclosure of all chapter headings of PGO at present. In handling each request for information, HKPF would independently scrutinise the particular circumstances of that request.

376. Furthermore, HKPF stated that the complainant's request for information had not specified the purpose of request or overwhelming public interest involved. Therefore, after balancing the public interest in disclosure against any harm or prejudice that might result, HKPF found that the harm which might arise from disclosure to the delivery of justice outweighed any unidentified potential public interest. Even if the complainant reveals the purpose of requesting the information, HKPF, after seeking legal advice and taking reference from a number of precedents, considered that it could rely on public interest immunity to refuse the disclosure of all chapter headings of PGO.

377. In response to HKPF's further reply, the Office opined that when Government departments invoked the provisions in Part 2 of the Code to withhold information and considered the "harm" or "prejudice" that might result from disclosure, paragraph 2.2.2 of the Guidelines explained that it sufficed if there was a risk or reasonable expectation of harm in the circumstances. That paragraph further remarks that "where the perceived risk is neither very likely nor serious, it should be given less weight". Moreover, paragraph 2.6.19 of the Guidelines also reminds departments that in citing paragraph 2.6(e) of the Code to withhold information, they should assess the probability of causing relevant prejudice. Evidently, although in this case HKPF was not required to prove that the specified harm or prejudice would certainly arise when invoking paragraphs 2.6(e) and 2.6(f) to withhold the relevant information, it was still essential for HKPF to give clear and reasonable justification that the disclosure of information was likely or reasonably expected to cause such harm or prejudice. By the same token, when considering the question of whether it could raise public interest immunity, this point must be taken into account.

378. The Office agreed that if the disclosure of particular information would hinder the police from preventing and detecting crime, maintaining public safety, etc., the nature of such prejudice could be serious. The Office also accepted that in the current social atmosphere, certain people

indeed wished to obstruct police enforcement. However, HKPF had failed to explain how lawbreakers could actually use such information to impair HKPF's enforcement efficacy, or to contemplate HKPF's overall law enforcement capacity, thereby circumventing or interfering with its investigations. There was no evidence that if lawbreakers became aware of the ambit or offences not covered by PGO, they would misunderstand that HKPF did not have sufficient capacity to handle, and thus would purposefully commit such offences. After all, given the multiplicity of crime, PGO cannot and will not cover all offences.

379. The Office also accepted that while HKPF disclosed all chapter headings in 2003, it did not follow that it must adhere to the same practice at present, as its considerations could vary according to different circumstances. However, the Office opined that HKPF had failed to explain, in hindsight, why its practice at that time was improper and what prejudice was caused; or how the current situation was different from years ago, resulting in the need to hide those headings at present. Nor had it provided specific and convincing reasons or examples to explain that after lawbreakers became aware of all chapter headings in PGO, how they could use such information to obstruct the police from maintaining law and order.

380. Furthermore, as pointed out in paragraph 2.2.6 of the Guidelines, public interest immunity is a basis upon which the Government may seek to withhold information from production in court proceedings and that should not be confused with public interest. While HKPF considered that it could rely on public interest immunity to refuse disclosure of all chapter headings of PGO, it had in fact not provided any information showing that it was granted the immunity, such that it was not required to disclose all chapter headings of PGO. Since no court proceedings were involved in the complainant's information request and the Office's investigation this time, HKPF's claim of public interest immunity was not applicable.

381. Overall, The Ombudsman found HKPF to have failed to sufficiently justify invoking paragraphs 2.6(e) and 2.6(f) of the Code for refusal to disclose information in this case. Therefore, The Ombudsman considered this complaint substantiated and recommended HKPF to reconsider the complainant's information request pursuant to the Code. Unless there is specific and convincing justification to invoke paragraphs in Part 2 of the Code for refusal to disclose the requested information, it should accede to the request.

Government's response

382. HKPF accepted The Ombudsman's recommendation and, after careful consideration of further legal advice and all relevant information, responded to the Office in writing on 21 September 2020 to further elaborate on its reasons for refusing to disclose the requested information.

383. Since 9 June 2019, there had been over a thousand demonstrations, processions and public gatherings in Hong Kong related to opposition to the amendment of the Fugitive Offenders Ordinance, many of which had led to serious violent and illegal acts, posing a severe threat to the overall safety and social stability of Hong Kong.

384. The number of requests for information received by HKPF in 2019 tripled the annual average number in the past. Many of them were suspicious in nature and shared the same purpose, that was, accessing different kinds of sensitive and operational information of HKPF, e.g. table of contents of the standard operating procedure for specialised crowd management vehicles, content of the Force Procedures Manual, guidelines and specifications for the operational equipment of police, composition of tear gas and the procurement information and stock in relation to tear gas, and the information of police officers participating in various police operations. This situation has reflected that people with ulterior motives, through abusing the mechanism established by the Code, were trying to collect various kinds of sensitive and operational information about HKPF from multiple channels, so as to grasp HKPF's operational plans and criminal investigation strategies as well as conduct targeted attacks with the intention of impeding HKPF's overall operations.

385. The chapter headings of PGO are directly related to their content. Therefore, an overall assessment should be conducted when considering the complainant's request, and the chapter headings and their content should not be treated separately. The undisclosed chapters cover the areas of HKPF's operational plans and criminal investigations, which are directly related to HKPF's key law enforcement areas and operational plans. The information is also applicable to HKPF's current and future discharge of duties of maintaining public safety as well as preventing and detecting crime, which is directly related to the police force's overall operational efficiency.

386. The chapter headings of PGO involve HKPF's consideration for its strategic and operational plans. With the chapter headings, people with

ulterior motives might be able to collect information about certain types of operations carried out by HKPF via various means and deduce the content of the chapters for counter actions to obstruct police operations.

387. Even worse, HKPF cannot rule out the possibility that people with ulterior motives may obtain more in-depth information under those chapter headings via unofficial or unlawful means. With the effort to obtain different parts, they may be able to compile the complete content of the chapters. HKPF's operational plans and criminal investigations may be adversely affected. People may also be able to conduct targeted attacks with such information in hand, posing a great risk to HKPF's law enforcement efforts in maintaining social peace, public safety and public order, as well as the prevention and detection of crime. HKPF has taken the headings of two undisclosed chapters that are related to its criminal investigation and operational plans as examples, and further elaborated on the impact of disclosure on HKPF. HKPF had also provided examples indicating that it did receive other requests for sensitive information on criminal investigation procedures under some headings of undisclosed chapters.

388. Therefore, inappropriate disclosure of the chapter headings would let people with ulterior motives or lawbreakers aware of the scope of HKPF's operations and criminal investigations, and may seriously affect HKPF's overall operations as well as hinder HKPF from effectively discharging its duties of maintaining social peace, public safety and public order, as well as the prevention and detection of crime, etc. For this case, the focus should not be narrowed to the impact on police operations resulted from disclosure of the text in the chapter index. More prudent and comprehensive consideration should be made on potential risks and damages to the police's law enforcement actions.

389. In accordance with section 10 of the Police Force Ordinance, Chapter 232, Laws of Hong Kong, the duties of the police force include:

(a) preserving the public peace;

(b) preventing and detecting crimes and offences; and

(c) preventing injury to life and property.

390. To ensure the police force can effectively discharge the above duties, it is essential to maintain the overall operational efficiency of the

police force. Disclosure of the chapter headings of PGO that should not be made public may adversely affect the police force's operational efficiency, thereby undermining the police force's law enforcement capability, facilitating the occurrence of crime, and hindering the police force from discharging its statutory duties.

391. Therefore, inappropriate disclosure of information related to PGO would harm or prejudice HKPF's proper and efficient conduct of the operations and discharge of duties. Therefore, HKPF considers that, in addition to paragraphs 2.6(e) and 2.6(f) of the Code, it can also rely on paragraph 2.9(c) of the Code, i.e., "the disclosure of information would harm or prejudice the proper and efficient conduct of the operations of a department", to refuse disclosure of such information to the complainant.

392. The Office mentioned in the Investigation Report that HKPF had submitted in 2003 the total number of chapters of the then PGO and the headings of those chapters that HKPF decided to withhold from the public at the time, and failed to explain how the current situation was different from years ago. HKPF has cited examples that a series of severe violent and illegal acts and various attacks against the police force and police officers occurred in Hong Kong since 2019. Many HKPF's officers were doxxed online with over 3,000 police officers and their family members affected. Personal information of the police officers, including phone numbers, residential addresses, identity card numbers, work locations of family members and schools attended by their children, were unlawfully disclosed and widely published on the Internet. The police officers being doxxed were harassed by nuisance phone calls, and their identities were misused to apply for loans and to make online purchases. Their family members were also harassed at the workplaces. Some police officers or their family members even received threatening letters. These acts constituted serious harassment to the officers and their family members, causing grievous concern over their personal safety and mental distress. All these deliberate acts targeting the police force and police officers were performed with the intention to undermine the police force's law enforcement capability, incite enmity against the police and prevent HKPF from effectively enforcing the law and maintaining law and order, seriously affecting public safety and order. Besides, back in 2003, HKPF did not receive a large number of suspicious requests for sensitive and operational information as mentioned in above. The circumstances mentioned above are sufficient to prove that the current social situation is incomparable with that in 2003.

393. Besides, in HKSAR v Leung Tin Kei and Others (HCCC 408/2016), regarding certain information previously disclosed, the court "agrees with the prosecution's submission that the prosecution's previous disclosure does not mean that the prosecution has lost the right to rely on public interest immunity. However, this is a factor to be considered by the court, and the extent of the disclosure at the time should be taken into consideration." When public interest immunity is applied during court proceedings, the court has to balance the possible harm or prejudice to public interest caused by disclosure of information as set out in the provisions of paragraphs 2.6(e) and 2.6(f) of the Code when considering applications for public interest immunity. In two other cases, namely Chu Woan Chyi v Director of Immigration (HCAL 32/2003) and Sony Rai v Mr William Ng Esq, The Coroner of Hong Kong and Ors [2011] 2 HKLRD 245, after weighing the possible harm to public interests, such as public safety and anti-crime operations, caused by disclosure of operational regulations and guidelines, the courts considered that the types of information involved public interest immunity. In such case, it was inappropriate to disclose all or part of the information. HKPF had indeed successfully used public interest immunity as the ground for refusing to disclose the content of one of the undisclosed chapters of PGO in HKSAR v Leung Tin Kei and Others (HCCC 408/2016).

394. In making the request for information, the complainant did not specify the purpose of the request, which might involve considerable public interest. It would be one of the factors for HKPF to decide whether there was an overriding public interest to disclose the requested information. After considering the possible harm or prejudice resulted from disclosure of information against public interest, HKPF decided that the potential harm to public interest resulted from the disclosure of information outweighed the potential public interest that had not yet been confirmed at the moment, thereby refusing to release the requested information to the complainant.

395. HKPF considers that as a statutory law enforcement agent of Hong Kong, it has professional knowledge and extensive experience to perform its statutory duties. Therefore, HKPF should be able to conduct the "harm or prejudice test" in a comprehensive and objective manner and has made reasonable and professional judgments when handling the request for information involved in this case.

396. Based on the grounds stated in above, HKPF has handled this case in full compliance with the Code and has substantive and reasonable grounds to invoke the provisions of paragraphs 2.6(e), 2.6(f) and 2.9(c) of

the Code to refuse to disclose the headings of all chapters in PGO to the complainant.

397. HKPF has reconsidered the request for information carefully by following the requirements of the Code as specified in The Ombudsman's recommendation. HKPF reiterates that there is sufficient and convincing justifications to invoke relevant provisions of the Code for refusal to disclose the headings of all chapters in PGO to the complainant.

Hong Kong Police Force

Case No. 2019/5225(I) – Failing to comply with the provisions of the Code on Access to Information to provide information on the police's use of lighting equipment

Background

398. On 30 August 2019, the complainant requested the Hong Kong Police Force (HKPF) to provide information on the police's use of lighting equipment against the people gathering outside Wong Tai Sin Police Station on the evening of 4 August 2019. The seven pieces of information requested included –

(a) name, model and specifications of the lighting equipment (Information (a));

(b) guidelines on the use of the lighting equipment (if any) (Information (b));

(c) purpose of the lighting equipment at the time of purchase (Information (c));

(d) risk assessment of the visual damage that may be caused to the person exposed to the beam generated by the lighting equipment at the time of purchase (if any) (Information (d));

(e) justification for the police officers to use the lighting equipment on a street with adequate lighting and justification for operating the lighting equipment in fast flashing mode during the incident on the evening of 4 August (Information (e));

(f) whether the Chief Executive and the Secretary for Security knew and agreed with the use of the lighting equipment against the public and the media for a prolonged period of time (Information (f)); and

(g) whether the Chief Executive and the Secretary for Security would order HKPF to review the issue if the use of the lighting equipment would cause discomfort to the public and affect media filming (Information (g)).

399. On 8 October 2019, HKPF replied to the complainant that a large number of demonstrators gathered outside Wong Tai Sin Police Station on the evening of 4 August 2019, during which a large number of violent demonstrators threw hard objects and used laser beams against police officers. Based on operational needs, the police officers at scene used lighting equipment to assist in the law enforcement operation. As the details of the lighting equipment used by the police officers were related to the police's operational matters, disclosure of the information would harm or prejudice HKPF's responsibilities in maintaining public peace, safety and order, and preserving property. Paragraph 2.6(f) of the Code on Access to Information (the Code) was thus invoked to refuse the disclosure of information.

400. On 14 October 2019, the complainant lodged a complaint with the Office of The Ombudsman (the Office).

The Ombudsman's observations

401. HKPF indicated that since 9 June 2019, it had to tackle a series of protests arising from the opposition to the amendments to the Fugitive Offenders Ordinance, many of which had turned into serious violent and illegal acts. The violent acts also targeted at the police, posing a severe threat to the overall safety of Hong Kong. In many of the demonstrations, the police operations often lasted till late at night, and it was necessary to use lighting equipment with adequate efficacy to perform duties at night or in low-visibility environments. The purpose of using lighting equipment was to assist the police in carrying out effective and safe law enforcement operations in restrictive environments, and to ensure the safety of all parties at scene.

402. For Information (a) and (b), the Office accepted HKPF's explanation that disclosing such information might allow holders of the information to take counter-actions according to the police's operational plans, hence impeding the police's duties in maintaining public safety and preserving property. It was not unreasonable for HKPF to cite paragraph 2.6(f) of the Code to refuse disclosure of the information. However, the complainant would have a better understanding of the reason for refusal if HKPF could elaborate on the justifications to the complainant.

403. For Information (c), the Office considered that HKPF's reply on 8 October 2019 had described the situation outside Wong Tai Sin Police Station on the evening of 4 August, and explained the operational need of

police officers at scene to use lighting equipment in the law enforcement operation. The explanation provided to the complainant failed to account for the original purpose of purchase of the equipment.

404. For Information (d), HKPF should have clearly informed the complainant in its reply that it did not hold the information, so that the complainant would not misunderstand that HKPF refused to provide it.

405. For Information (e) to (g), the complainant was raising questions/enquiries instead of requesting for information such as documents or records. The request did not fall within the regulatory scope of the Code.

406. Overall, The Ombudsman considered this complaint partially substantiated and recommended HKPF to strengthen training to enhance officers' understanding of the provisions of the Code and ensure they would respect the Code's requirements in handling requests for information. If it is necessary to invoke the provisions in Part 2 of the Code to refuse disclosure of information, the relevant justifications should be specifically explained to the applicant. If the information requested is not held, such fact should be made clear to the applicant.

Government's response

407. HKPF accepted The Ombudsman's recommendation and responded to the Office in writing on 1 September 2020, indicating that HKPF had provided the complainant with the purpose of the purchase of the lighting equipment and explained that the lighting equipment was to assist the police in law enforcement operations at night and handling of violent attacks by demonstrators. Therefore, HKPF had properly responded to the complainant's application in accordance with the requirements of the Code.

408. The Office replied to HKPF on 23 October 2020, indicating that HKPF had only stated the purpose of using the equipment in its reply to the complainant, without mentioning the purpose of the purchase (i.e. to assist the police in carrying out effective and safe law enforcement operations in restrictive environments (at night or in low-visibility conditions)). Therefore, the complainant's request was not properly responded to.

409. Although HKPF considered it had complied with the requirements of the Code in the handling of this case, it agreed that continuous and strengthened training could help officers better understand the requirements of the Code.

410. HKPF developed a new internal database in July 2020 for regular uploading of latest concluded cases, experience summaries and key learning points to further enhance officers' sensitivity and professionalism in handling requests for access to information.

411. HKPF also held sharing sessions on the Code in November 2020 and May 2021 to further officers' knowledge and understanding of the Code and enhance officers' professionalism and competence in handling requests for access to information. HKPF will continue to organise regular training activities on the Code to ensure its officers clearly understand and comply with the contents and provisions of the Code and its Guidelines on Interpretation and Application.

Hong Kong Police Force

Case No. 2020/0440(I) – Refusing to provide the monthly breakdown of complaints received by the Complaints Against Police Office related to public order events since 9 June 2019 and other related statistics

Background

412. On 29 January 2020, the complainant made a request to Hong Kong Police Force (HKPF) under the Code on Access to Information (the Code) for the following, or part of the following information –

(a) The monthly breakdown of (i) complaints received by HKPF related to public order events (POE) since 9 June 2019; and (ii) complainants involved in those complaints;

(b) The monthly figures of (i) Reportable Complaints (RC) and (ii) Notifiable Complaints (NC) received by HKPF since 9 June 2019 related to POE; and

(c) The monthly breakdown of (i) complaints received by HKPF not related to POEs since 9 June 2019; and (ii) complainants involved in those complaints.

413. On 12 February 2020, HKPF replied to the complainant and provided the total number of complaints received that stemmed from POEs related to the Fugitive Offenders Ordinance (FOO) and the respective numbers of RC cases and NC cases as at 3 February 2020. However, HKPF refused to provide the requested information in monthly breakdown by citing paragraph 2.9(d) of the Code.

414. The complainant considered HKPF's refusal to provide the requested information be unreasonable and complained to the Office of The Ombudsman (the Office) on 19 February 2020.

415. On 18 February 2020, the complainant wrote to HKPF and requested a review. On 25 February 2020, HKPF replied to the complainant and reiterated that it did not have the avaliable figures under "monthly breakdown" as requested. Nevertheless, HKPF offered to provide the accumulative figures of RC received for the period of January to May 2019, January to August 2019 and January to November 2019; and

breakdown of those complaints by nature of the allegations for the above-said periods. On the same day, the complainant replied to HKPF via email. The complainant welcomed HKPF to provide the proposed information, but emphasised that the original request would not be modified. On 3 March 2020, HKPF sent an email to the complainant and provided the information as it proposed on 25 February 2020.

The Ombudsman's observations

416. Upon the Office's inquiry, the complainant expressed that "complaints since 9 June 2019 related to POEs" had not been really defined in the complainant's request, nor had the complainant further discussed the matter with HKPF direct. Nevertheless, the complainant considered "complaints since 9 June 2019 related to POEs" requested would be the same as "complaints against the Police stemmed from POEs related to the proposed amendments to the FOO" stated in HKPF's first reply to the complainant on 12 February 2020, as well as "complaints arising from the FOO related POEs" shown in the minutes of the Independent Police Complaints Council (IPCC) open meetings in 2019.

417. HKPF regarded the requested information as concerning complaints related to general POEs since 9 June 2019 (i.e. complaints stemmed from all kinds of POEs but not limited to those related to FOO), while the complainant considered "complaints since 9 June 2019 related to POEs" to be same as "complaints against the Police stemmed from POEs related to the proposed amendments to the FOO" or "complaints arising from the FOO related POEs". There was a difference between two parties' understanding of the scope of information being sought.

418. On the understanding that the complainant was requesting information about complaints related to all POEs received by HKPF since 9 June 2019, HKPF had explained how resources of the Department would be substantially diverted away from its proper functions in order to fulfill the information request and hence paragraph 2.9(d) of the Code was applicable in refusing the request. However, there is no information suggesting that HKPF had, before invoking paragraph 2.9(d) of the Code to refuse the information request, discussed with the complainant in any way the possibility of modifying the request to a mutually acceptable level, or defining the scope of the requested information more precisely as required by paragraph 2.9.7 of the Guidelines on Interpretation and Application of the Code (the Guidelines).

419. Overall, The Ombudsman considered this complaint partially substantiated and recommended HKPF clarify with the complainant the information request and handle the request in accordance with the provisions of the Code and Guidelines.

Government's response

420. HKPF accepted The Ombudsman's recommendation and had sent an email to the complainant and provided the complainant with the requested information on 28 October 2020.

Hong Kong Police Force

Case No. 2020/2074(I) – Refusing to provide information on the quantities of personal protective equipment being allocated and the stock in 2020

Background

421. On 29 February 2020, the complainant made a request to the Hong Kong Police Force (HKPF) via email for information on various anti-epidemic supplies (but not limited to masks manufactured by the Correctional Services Department (CSI masks)), N95 masks, protective gowns, protective coverall suits, 50ml alcohol-based handrub, 50ml alcohol-based handrub gel and bleach), including –

(a) quantities of the above anti-epidemic supplies allocated to HKPF by the Government Logistics Department (GLD) between 23 January 2020 and 29 February 2020 (Information (a));

(b) quantities of the above anti-epidemic supplies in HKPF's stock as at 23 January 2020 (Information (b)); and

(c) quantities of the above anti-epidemic supplies in HKPF's stock as at 29 February 2020 (Information (c)).

422. On 17 April 2020, HKPF replied to the complainant via email and refused to disclose the information requested. It also indicated that global demand for anti-epidemic supplies was soaring, and the Government was facing fierce competition in sourcing anti-epidemic supplies. The Government considered it not advisable to disclose more information on anti-epidemic supplies at that time, so as to prevent undermining the Government's bargaining power in sourcing anti-epidemic supplies. On the same day, the complainant made a request for review to HKPF via email. On 28 May 2020, HKPF replied to the complainant that its decision of not providing the above information remained unchanged.

423. On 19 June 2020, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against HKPF for unreasonable refusal of the request for information.

The Ombudsman's observations

424. HKPF pointed out that its refusal of the complainant's request for information was in line with the Government's policy at the time, i.e. not to disclose the stock of anti-epidemic supplies and related information so as to avoid disclosure of the departments' demand for anti-epidemic supplies and undermining the Government's bargaining power in sourcing anti-epidemic supplies. Moreover, the decision was made upon consideration of opinions of the relevant Policy Bureau.

425. For Information (a) to (c) relating to masks, the Office noticed that the Financial Services and the Treasury Bureau (FSTB), as the supervisory authority of GLD, admitted in its press release issued on 7 February 2020 that GLD had a limited stock of 12 million masks (of which 3 million were non-CSI masks) for use by Government departments. On 16 February 2020, FSTB issued another press release, pointing out that the Government had controlled its surgical masks usage to about 8 million per month, and GLD had a stock of about 12 million surgical masks at the time. Together with the stocks kept by individual departments and production by the Correctional Services Department (CSD), the total stock could only meet the demand for about two months. Besides, the Government had already disclosed in the press release issued on 26 January that CSD maintained a monthly average production of 1.1 million CSI surgical masks.

426. The Office considered it indisputable that there was a global shortage of surgical masks at the time. It was also public information that CSD's production could not meet Government departments' demand for surgical masks and the Government's stock of surgical masks could only meet the demand of Government departments for about two months. Given that the supply side knew fully well on the demand of the buyers, there was no sign to show that HKPF's disclosure of information relating to masks in Information (a) to (c) would further undermine the bargaining power of GLD in sourcing masks through commercial channels.

427. The Office understood that HKPF as a Government department must consider and follow the Government's overall position. However, HKPF did not mention that reason to the complainant in its refusal to request for information. Moreover, that reason is not a reason for refusal to provide information under Part 2 of the Code on Access to Information (the Code).

428. The Office considered that the information requested by the complainant was directly related to, and held by, HKPF. Even through the Government had provided advice on disclosure of the information, HKPF as holder of the information was still responsible for the decision on disclosure of the information.

429. As for information relating to other anti-epidemic supplies in Information (a) to (c), unlike the case of surgical masks, the information had never been released to the public. It was therefore reasonable for HKPF to refuse the complainant's request for information according to paragraph 2.9 of the Code.

430. In light of the above, The Ombudsman considered that HKPF had failed to observe the code when making certain decisions (i.e. those related to the information on "masks") in handling the complainant's request. The consideration made was not comprehensive enough. Therefore, The Ombudsman considered this complaint partially substantiated. The Office recommended HKPF to learn from experience and strengthen its training, ensuring that officers would carefully consider every request and the related factors in handling public requests for information and act in strict compliance with the requirements as set out in the Code and its Guidelines on Interpretation and Application (the Guidelines).

Government's response

431. HKPF accepted The Ombudsman's recommendations and agreed that continuous and strengthened training could help officers better understand the requirements of the Code and the Guidelines.

432. HKPF developed a new internal database in July 2020 for regular uploading of latest concluded cases, experience summaries and key learning points to further enhance officers' sensitivity and professionalism in handling requests for access to information.

433. HKPF also held sharing sessions on the Code in November 2020 and May 2021 to further officers' knowledge and understanding of the Code and enhance officers' professionalism and competence in handling requests for access to information. HKPF will continue to organise regular training activities on the Code to ensure its officers clearly understand and comply with the contents and provisions of the Code and the Guidelines.

Hong Kong Police Force

Case No. 2020/2279(I) – Refusing to provide information on seizure and destruction of dangerous drugs by the Hong Kong Police Force

Background

434. On 19 May 2020, the complainant requested the Hong Kong Police Force (HKPF) to provide information relating to the destruction of dangerous drugs involved in each detected dangerous drug case since the handover of Hong Kong, including (a) the dates when the cases were concluded; (b) the types of the dangerous drugs; (c) the weights of the dangerous drugs; (d) the locations of destruction of the dangerous drugs by HKPF; (e) the methods HKPF used for destruction of the dangerous drugs; (f) names of HKPF's persons-in-charge for destruction of the dangerous drugs; and (g) whether third-party witnesses were present to witness destruction of the dangerous drugs.

435. On 3 June 2020, HKPF replied to the complainant that no record was compiled for information (a) to (c), and therefore the information could not be provided. As for information (d) to (g), since it involved the safe keeping of dangerous drugs, HKPF refused to provide the information to the complainant according to paragraph 2.6(e) of the Code on Access to Information (the Code) (i.e. the disclosure of information would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders, or the security of any detention facility or prison).

436. The complainant considered HKPF's reply unreasonable and lodged a complaint with the Office of The Ombudsman (the Office) on 6 July 2020.

The Ombudsman's observations

437. Even though HKPF's Dangerous Drugs Register was only a record kept in the form of physical file and was mixed with record items other than information (a) to (c), information (a) to (c) requested by the complainant was indeed on current records, but not something that had never existed.

438. Nevertheless, the Office agreed that HKPF would have to mobilise an enormous amount of extra resources to search, sort out or copy relevant information about the cases handled by the police over the past two decades from a large number of physical documents, which would seriously affect the normal operations of the Department. The Office thus considered that information (a) to (c) was covered by the condition described in paragraph 2.9(d) of the Code (i.e. the information could only be made available by unreasonable diversion of a department's resources). However, the explanation given by HKPF to the complainant was not accurate enough. HKPF could actually invoke paragraph 2.9(d) of the Code to refuse the provision of such information to the complainant.

439. For information (d) to (g), paragraph 2.6(e) of the Code usually applies to criminal and regulatory offences. Regarding this provision, paragraph 2.6.17 of the Code's Guidelines on Interpretation and Application (the Guidelines) further states that "the effective investigation of both criminal and regulatory offences will ordinarily require that the investigation and methods of investigation are kept secret from the suspect and from other persons. This means that information relating to both ongoing and completed investigations…should ordinarily be kept confidential". Paragraph 2.6.19 of the Guidelines also explains that the provision does not require the probability of prejudice to law enforcement process or facilitation of commission of offences to actually exist. Instead, it suffices if it is more likely than not that prejudice would result from the disclosure of information.

440. After reviewing and studying the relevant provisions of the Code and the Guidelines, as well as the nature of information (d) to (g), the Office considered that HKPF's justification for refusal to disclose information (d) to (g) was reasonable and did not violate the provisions of the Code.

441. Overall, The Ombudsman considered this complaint unsubstantiated but there were other inadequacies found. The Ombudsman recommended HKPF to strengthen its training to ensure that officers fully grasp the requirements and operations of the Code and the Guidelines.

Government's response

442. HKPF accepted The Ombudsman's recommendation and developed a new internal database in July 2020 for regular uploading of latest concluded cases, experience summaries and key learning points to

further enhance officers' sensitivity and professionalism in handling requests for access to information.

443. Besides, HKPF also held sharing sessions on the Code in November 2020 and May 2021 to further officers' knowledge and understanding of the Code and enhance officers' professionalism and competence in handling requests for access to information. HKPF will continue to organise regular training activities on the Code to ensure its officers understand and comply with the contents and provisions of the Code and the Guidelines.

Highways Department and Transport Department

Case No. 2020/2530A and 2020/2530B – Delay in conducting feasibility study on converting a piece of leisure land into a carriageway

Background

444. The complainant stated that since 2011, the Government had fenced off a vacant site of a former petrol filling station at the junction of Tung Choi Street and Nullah Road in Prince Edward (the Site). According to the Mong Kok Outline Zoning Plan, the Site was mainly zoned as Open Space. The Government had been studying converting the Site into a carriageway to connect Prince Edward Road West with Tung Choi Street in the past nine years, during which there were citizens feeding feral pigeons at the site, and the excreta of the feral pigeons had polluted the residential areas nearby, causing hygiene problems. In July 2018, in response to the complainant's enquiry, the Yau Tsim Mong District Office advised that the Government would convert the site into a carriageway, and that the Highways Department (HyD) had to conduct ground investigation and relevant study, while the site was managed by the Lands Department (LandsD). In March and April 2020, HyD replied the District Council that the department had found a decked nullah within the Site. The department considered that as the feasibility of reconstructing or modifying the decked nullah could not be ascertained, the Site could not be converted into a carriageway. HyD advised that it would notify the Transport Department (TD) of the findings of the study as soon as possible.

445. The complainant questioned what the Government had actually been studying since 2011. The complainant considered it unreasonable for HyD, TD, and LandsD to have spent nine years to complete the study on the possibility of converting the Site into a carriageway, which constituted a waste of the Site. The complainant thus lodged a complaint with the Office of The Ombudsman (the Office).

The Ombudsman's observations

446. TD explained that since 2011, it had kept monitoring the traffic condition of the district where the Site was located. When the preliminary design of and the consultation work for the proposed carriageway were completed in September 2014, it immediately notified HyD in writing, and subsequently issued a Works Request Form to HyD for conducting ground

investigation. Throughout the period, TD had maintained close liaison with HyD. Upon learning that the proposed carriageway scheme was technically infeasible in April 2020, TD reviewed the traffic condition of the district, and confirmed that the existing road network could meet the traffic demand. The Office opined that TD had performed its duty in handling traffic management matter for the Site and no maladministration was found. However, if TD had, together with HyD, briefed the Yau Tsim Mong District Council on the traffic condition after implementing the improvement measures in 2011 and the progress of the feasibility study for the District Council to consider whether to pursue the original proposal, the Site could have been put to better use and public's misperception of an unreasonable delay by the departments could have been avoided.

447. HyD had explained the follow-up actions taken since February 2013 when the department received TD's memo on the proposed carriageway scheme, including conducting multiple site investigations, collecting information about the underground conditions, and consulting the Drainage Services Department (DSD) on the schemes of reconstructing and modifying the decked nullah. HyD also explained the reasons for not being able to ascertain the technical feasibility of the decked nullah reconstruction and modification schemes eventually, and had notified the relevant committee of the District Council and Government departments of the findings of the study in March 2020.

448. HyD also explained the reasons for the relatively long time required for conducting the study on the proposed carriageway scheme for the Site. As TD did not draw up any implementation programme, and the relevant study was far more complicated than expected, given that HyD had to accord higher priority to other works with urgent needs in view of limited resources, it was understandable that it had taken several years to complete the study. The Office considered that HyD had generally conducted the study on the proposed carriageway scheme in accordance with the established procedures without delay. However, even though there was no urgent need for implementing the proposal which is of a relatively low priority, the fact that it had taken several years for HyD to confirm the infeasibility of converting the Site into a carriageway inevitably raised doubts as to the efficiency of the conduct of the study. Although in the course of the study, HyD had explained to TD the feasibility of the proposed carriageway scheme and the engineering difficulties based on the information on hand, The Office considered that if HyD had indicated clearly to TD the estimated time required to proceed with the scheme based on past experience, TD could have discussed with the District Council whether to proceed with the proposed scheme or

explore alternative options, and the Site could have been utilised more efficiently.

449. The Ombudsman considered this complaint unsubstantiated and recommended TD and HyD to review the current arrangements in order to strengthen communications between the two departments; and set concrete implementation programmes for various road improvement projects wherever practicable, so that the departments could timely review the progress and the feasibility of the proposals for a decision on whether to continue with the proposals or explore alternative options.

Government's response

450. TD and HyD accepted The Ombudsman's recommendations. TD will draw up concrete implementation programmes for road improvement projects wherever practicable, so that relevant departments can make a timely review of the progress and the feasibility of proposals. HyD will also closely follow up on the progress of studies and works items, and endeavour to complete the relevant works according to the implementation programmes set by TD as far as possible. TD and HyD will make full use of the regular half-yearly liaison meetings to discuss various district road improvement studies and works items requested by TD in detail as necessary.

Immigration Department

Case No. 2019/5268 – Impropriety in introducing new arrangement with respect to the application for searching the records of birth registration/marriage in Hong Kong and obtaining a certified copy, allegedly in breach of existing legislation and seriously undermining freedom of press and the right of public access to information

Background

451. The complainant was a journalist of a local newspaper. On 25 October 2019, the complainant applied for search of marriage records at the Marriage Registration and Records Office (the Registry) of the Immigration Department (ImmD) in Admiralty. The complainant was told by a staff that the handling procedure for search applications had been changed since 16 October 2019. If an application for marriage or birth registration records was made by a person other than the data subject, consent from the data subject would be required. If the applicant was unable to provide the consent of the data subject, the applicant would be asked to provide justifiable grounds for assessment. On the same day, the complainant made enquiry with ImmD and Personal Data (Privacy) Commission (PDPC) regarding the arrangement.

452. Subsequently, ImmD and PDPC provided written reply to the complainant. The complainant was aggrieved that ImmD did not address the complainant's enquiry as to the reasons for changing the handling procedure and whether the previous arrangement whereby consent from the data subject was not required had breached the requirements of Personal Data (Privacy) Ordinance (PDPO). PDPC also stated in their reply that the personal data contained in the two public registers (i.e. the marriage and births registers) was governed by data protection principle 3 of the PDPO, which stipulates that unless prescribed and voluntary consent from the data subject was obtained, those personal data could only be used for the purpose(s) for which the public register was established or a directly related purpose. Nevertheless, the complainant stated that the purposes of the two public registers were neither published on the website of ImmD nor at the Registry so the applicant would not know if the request was consistent with the purposes of the registers. The complainant further stated that if journalists were required to disclose the purposes of search to ImmD, it might result in information leakage to the person investigated or ImmD, undermining the freedom of press. According to the existing

legislation, the marriage and birth registration records were public registers allowing public inspection. The present arrangement had seriously undermined the right of public access to information.

The Ombudsman's observations

453. Having regard to the increasing misuse of the public registers, The Office of The Ombudsman (the Office) considered it justifiable for ImmD, after seeking the advice from the Department of Justice (DoJ), to assess an application for search and/or certified copy with a view to strengthening the protection on personal data. PDPC also agreed to such arrangement.

454. The complainant alleged that whilst ImmD advised on 29 October 2019 that applicants were required to comply with the requirements of PDPO (i.e. the personal data must not be used for any purpose other than the purpose for which the public register was established or a directly related purpose without the prescribed consent of the data subject), the purposes of the two public registers were not published at that time. The Office was of the view that ImmD's arrangement caused confusion to the applicants as they were unable to know how to satisfy the requirements of ImmD. The Office considered it more appropriate for ImmD to announce the application procedures and requirements as well as the purposes of establishing the registers at the same time when the new arrangement was implemented on 16 October 2019.

455. From the administrative perspective, even though the intention of the new arrangement implemented on 16 October 2019 was to safeguard privacy, the fact that a long-established arrangement was changed suddenly, yet the reasons of such change, details of the new arrangement (including the reason and criteria of application, supporting documents required), and purposes of setting up the public registers / registration records were only announced on 7 February 2020, caused confusion and inconvenience to applicants who submitted applications during that period. The Office acknowledged that ImmD needed time to consult DoJ and PDPC on the new arrangement. However, it was unsatisfactory that the new arrangement was implemented when the relevant details had yet to be confirmed. The Office was of the view that ImmD should at least promulgate the key requirements of the new arrangement (such as to provide the written consent of the data subject or state the purpose or intended use of the requested records when applying for search of marriage or birth registration records in respect of a third person).

456. Also, the existing statutory provisions relating to registration of marriage could be traced back to version dating from 1876, times when the society was less aware nor concern about personal privacy comparing with to date. The Office opined that ImmD should consider reviewing relevant stator provisions to keep up with the latest social development.

457. In general, the Office was of the view that there was nothing improper, from the administrative perspective, for ImmD to refuse the complainant's application after consulting DoJ and the case particulars. Nonetheless, ImmD did not promulgate the new arrangement before its implementation; nor provided the purposes of setting up the public registers/registration record, rationale/details/requirements/procedures of the new arrangement. Such was against the standard of good administrative practices. Thus, The Ombudsman considered this complaint partially substantiated.

458. The Ombudsman recommended that –

(a) With reference to this experience, prior to implementing a new arrangement which might affect the public in future, ImmD should announce the details of the new arrangement and reasons of introducing the new arrangement as early as practicable;

(b) ImmD should consider adopting further administrative measures by informing the applicants that their personal data as well as the purpose(s) and intended use of the requested records might be disclosed to the data subjects; and

(c) ImmD should consider reviewing the Births and Deaths Registration Ordinance and Marriage Ordinance to cater for the latest social condition.

Government's response

459. ImmD accepted The Ombudsman's recommendations and has taken the following follow-up actions –

(a) Upon review, ImmD agreed that there was room for improvement regarding the implementation of the new arrangement. When implementing new arrangements in the future, ImmD would timely announce the details through different channels to ensure

that the public would be aware of the new arrangement as early as possible;

(b) ImmD would study the recommendation in detail. As the recommendation involved the disclosure of the applicants' personal data which were also protected by PDPO, ImmD would consult DoJ and PDPC as appropriate; and

(c) ImmD would continue to review the Births and Deaths Registration Ordinance and Marriage Ordinance in accordance with the latest social condition and introduce amendments to the relevant provisions as and when necessary.

Immigration Department

Case No. 2019/5611 – Unjustified delay in providing a person's records of birth registration and marriage in Hong Kong, in breach of performance pledge and seriously undermining freedom of press and the right of public access to information

Background

460. On 1 August 2019, the complainant applied for search of marriage and birth registration records of a person at the Marriage Registration and Records Office (the Registry) of the Immigration Department (ImmD) in Admiralty and paid the prescribed fees for the requests. As stated on the receipts, the records would be available for collection on 13 August and 29 October 2019 respectively. However, the complainant was informed that the records were not available when going to the Registry to collect the information on 6 November. On 27 November, the complainant called the Registry and was told that the records were still not available but no explanation was given. The complainant was aggrieved that ImmD failed to meet the performance pledge by providing the records within 7 to 10 workings days nor as per the dates shown on the receipts, and had not offered a reasonable explanation on such delay. The complainant considered that the delay of providing the records had seriously undermined the freedom of press and the right of public access to information.

The Ombudsman's observations

461. After consulting the Department of Justice (DoJ), ImmD opined that the existing legal provisions had already allowed them to exercise discretion not to accede to requests that might breach the requirements of the Personal Data (Privacy) Ordinance (PDPO), or when there was reason to believe that the information would be used inappropriately or illegitimately. In other words, prior to the implementation of the new arrangement, ImmD could exercise authority to assess an application for search and/or certified copy before releasing the records. As to whether the complainant's request had breached the requirements of PDPO, it was the professional judgement of ImmD. The Office of The Ombudsman (the Office) did not find ImmD's decision unreasonable or inappropriate.

462. The Office was of the view that ImmD should explain to the applicant why the request could not be processed within the target timeframe. ImmD should also take the initiative to inform the applicant the progress of the application from time to time. In the present case, ImmD should have explained to the complainant at the initial stage reasons why the requests were considered complicated in nature and would thus require longer time to process. Although ImmD had contacted the complainant by phone in mid-August 2019, ImmD had only requested the complainant to submit supplementary information through email on 6 February 2020. ImmD did not proactively contact the complainant within the six months' period. Since ImmD already casted doubt on the purpose of the requests upon receipt, and that DoJ had already advised that ImmD could exercise discretion pursuant to existing statutory regime not to accede to a request, ImmD could have asked the complainant for supplementary information at an earlier time instead of processing the requests after February 2020 when the details of new arrangement were promulgated. As the applications were made before the implementation of new arrangement, The Office was of the view that the handling of these applications should not be affected by the new arrangement.

463. On the other hand, even though the intention of the new arrangement was to safeguard privacy, the fact that a long-established arrangement was changed suddenly, yet the reasons of such change, details of the new arrangement (including the reason and criteria of application, supporting documents required), and purposes of setting up the public registers/ registration records were only announced on 7 February 2020, cause confusion and inconvenience to applicants who submitted applications during that period. The Office acknowledged that ImmD needed time to consult DoJ and Personal Data Privacy Commission (PDPC) on the new arrangement. However, it was not satisfactory that the new arrangement was implemented when the relevant details had yet to be confirmed. The Office was of the view that ImmD should at least promulgate the key requirements of the new arrangement (such as to provide the written consent of the data subject or state the purpose or intended use of the requested records when applying for search of marriage or birth registration records in respect of a third person).

464. Also, the existing statutory provisions relating to registration of marriage could be traced back to version dating from 1876, times when the society was less aware nor concern about personal privacy comparing with to date. The Office opined that ImmD should consider reviewing relevant stator provisions to keep up with the latest social development.

465. In general, the Office was of the view that there was nothing improper, from the administrative perspective, for ImmD to refuse the complainant's application after consulting DoJ and the case particulars. Nonetheless, it was unsatisfactory for ImmD to have taken over six months to process the complainants' two applications; and for failing to timely and proactively explain to the complainant the reason for the extended processing time, and sought supplementary information from the complainant at an earlier time. Therefore, The Ombudsman considered this complaint partially substantiated.

466. The Ombudsman recommended –

(a) ImmD should take the initiative to inform applicant the progress of application and the reason for taking a longer processing time if the request could not be processed within the target timeframe owing to the complicated nature;

(b) ImmD should look into the handling procedure of the present case to ensure that requests would be followed-up timely in the future. In particular, supplementary information should be requested from the applicant at the earliest opportunity;

(c) With reference to this experience, prior to implementing a new arrangement which might affect the public in future, ImmD should announce the details of the new arrangement and reasons of introducing the new arrangement as early as practicable;

(d) ImmD should consider adopting further administrative measures by informing the applicants that their personal data as well as the purpose(s) and intended use of the requested records might be disclosed to the data subjects; and

(e) ImmD should consider reviewing the Birth and Deaths Registration Ordinance and Marriage Ordinance to cater for the latest social condition.

Government's response

467. ImmD accepted The Ombudsman's recommendations and has taken the following follow-up actions –

(a) Upon review, ImmD agreed that there was room for improvement regarding the handling of the present request. An internal instruction was laid down on 19 June 2020 setting out the procedures of handling applications that were made by a person other than the data subject. It also stipulated the target timeframe for each procedure (including requesting the applicant to submit supplementary information, making assessment and decision upon receipt of all relevant information as well as informing applicant of the result). This would ensure the applications would be handled timely and the applicants would be informed of the progress in a timely manner;

(b) Upon review, ImmD agreed that there was room for improvement regarding the implementation of the new arrangement. When implementing new arrangements in the future, ImmD would timely announce the details through different channels to ensure that the public would be aware of the new arrangement as early as possible;

(c) ImmD would study the recommendation in detail. As the recommendation involved the disclosure of the applicants' personal data which were also protected by PDPO, ImmD would consult DoJ and PDPC as appropriate; and

(d) ImmD would continue to review the Births and Deaths Registration Ordinance and Marriage Ordinance in accordance with the latest social condition and introduce amendments to the relevant provisions as and when necessary.

Immigration Department

Case No. 2020/0041 – Delay in handling the Complainant's application for a search of the marriage records in Hong Kong, and unlawfully requiring him to justify his application

Background

468. According to the complainant, the complainant's legal team was appointed by a creditor to initiate legal proceedings in the Mainland against the debtor and guarantor for unpaid debts. As the Mainland court required the plaintiff to submit proof of the marital status of two persons in Hong Kong, the complainant applied for search and certified copy of the said persons' marriage records in Hong Kong through the website of Immigration Department (ImmD) on 7 November 2019 and paid the prescribed fee. As stated on the website, the records would be available for collection on 19 November 2019. On the following day, the complainant received a call from a staff of ImmD informing the complainant that in accordance with ImmD's latest arrangement, an applicant who was not the data subject was required to submit supplementary information to state the purpose(s) and intended use of the requested record for assessment by a committee. The complainant submitted the supporting documents via email on the same day. Since the complainant had not received the application results, the complainant called and emailed ImmD several times to enquire the progress. On 3 January 2020, the complainant was informed that the request was still under assessment and it was uncertain when the result would be available.

469. The complainant alleged that under the laws of Hong Kong, anyone could apply to ImmD for search of relevant records and any laws imposing restriction should be enacted by the legislature and only come into effect after publication. ImmD's website had not published the latest arrangement. The complainant opined that the arrangement had no legal basis and that it was unlawful for ImmD to require the complainant to submit the purpose for the requested record. Furthermore, ImmD should have processed the request within seven working days according to its performance pledge. To avoid indefinite waiting for a decision by the Government, the laws should provide for an application to be either approved or rejected within seven days. It had been more than two months from the request was submitted to the time when the complainant lodged the complaint with The Office of The Ombudsman (the Office), and the

request was still under assessment by then. The long processing time had seriously impacted the civil claim of the complainant's client. The complainant was aggrieved that the application was delayed by ImmD and the request of providing supplementary information lacked legal basis.

The Ombudsman's observations

470. After consulting the Department of Justice (DoJ), ImmD opined that the existing legal provisions had already allowed them to exercise discretion not to accede to requests that might breach the requirements of the Personal Data (Privacy) Ordinance (PDPO) or when there was reason to believe that the information would be used inappropriately or illegitimately. In other words, prior to the implementation of the new arrangement, ImmD could exercise authority to assess an application for search and/or certified copy before releasing the records. As to whether the complainant's request had breached the requirements of PDPO, it was the professional judgement of ImmD. The Office did not find ImmD's decision unreasonable or inappropriate. While a lengthier time was taken to process the complainant's request, ImmD had informed the complainant on 21 November 2019 by phone and on 13 January 2020 by email that a longer time was required to process the application owing to the complicated case nature, and the background of the new arrangement. After the promulgation of the details of the new arrangement, ImmD informed the complainant on 19 February 2020 by email the relevant changes and the purposes of establishing registers / registration records, and requested the complainant to provide two documents in support of the complainant's application. The Office was of the view that there was no maladministration by ImmD during the handling of the application as ImmD had informed the complainant the reasons attributing to the longer processing time, timely updated the complainant the progress of the application, and after the promulgation of the new arrangement, explained to the complainant the new arrangement and the supplementary information required in support of the application. The Office considered there was no maladministration in the handling of the application by ImmD.

471. On the other hand, even though the intention of the new arrangement implemented on 16 October 2019 was to safeguard privacy, the fact that a long-established procedure was changed suddenly, yet the reasons of such change, details of the new arrangement (including the reason and criteria of application, supporting documents required), and purposes of setting up the public registers / registration records were only announced on 7 February 2020, would cause confusion and inconvenience to applicants who submitted applications during that period. The Office

acknowledged that ImmD needed time to consult DoJ and Personal Data Privacy Commission (PDPC) on the new arrangement. However, it was not satisfactory that the new arrangement was implemented when the relevant details had yet to be confirmed. The Office was of the view that ImmD should at least promulgate the key requirements of the new arrangement (such as to provide the written consent of the data subject or state the purpose or intended use of the requested records when applying for search of marriage records of a third person) on 16 October 2019. In any case, ImmD agreed that there was room for improvement after review and had already taken measures to refine the arrangement.

472. Also, the existing statutory provisions relating to registration of marriage could be traced back to version dating from 1876, times when the society was less aware nor concern about personal privacy comparing with to date. The Office opined that ImmD should consider reviewing relevant stator provisions to keep up with latest social development.

473. In general, the Office was of the view that there was nothing improper, from the administrative perspective, for ImmD to refuse the complainant's application after consulting DoJ and the case particulars. The Office also consider that there was no undue delay in the processing of the application even though objectively the process took considerable time, with rationale elaborated by ImmD. Nonetheless, the Office opined that it was unsatisfactory for ImmD to implement new measures while relevant operational details and justifications were still being finalised and pending promulgation. ImmD should have at least promulgated the main requirements when implementing the new measures. Thus, The Ombudsman considered this complaint unsubstantiated but there was room for ImmD to improve.

474. The Ombudsman recommended that –

(a) With reference to this experience, prior to implementing a new arrangement which might affect the public in future, ImmD should announce the details of the new arrangement and reasons of introducing the new arrangement as early as practicable;

(b) ImmD should consider adopting further administrative measures by informing the applicants that their personal data as well as the purpose(s) and intended use of the requested records might be disclosed to the data subjects; and

(c) ImmD should consider reviewing the Marriage Ordinance to cater for the latest social condition.

Government's response

475. ImmD accepted The Ombudsman's recommendations and has taken up the following follow-up actions.

(a) Upon review, ImmD agreed that there was room for improvement regarding the implementation of the new arrangement. When implementing new arrangements in the future, ImmD would timely announce the details through different channels to ensure that the public would be aware of the new arrangement as early as possible;

(b) ImmD would study the recommendation in detail. As the recommendation involved the disclosure of the applicants' personal data which were also protected by PDPO, ImmD would consult DoJ and PDPC as appropriate; and

(c) ImmD would continue to review the Marriage Ordinance in accordance with the latest social condition and introduce amendments to the relevant provisions as and when necessary.

Immigration Department

Case No. 2020/0504 – (1) Unreasonably changing the application requirements and approval criteria for searching the marriage records in Hong Kong, allegedly in breach of the Marriage Ordinance; (2) Failing to make announcement and publish on its website the relevant guidelines and circulars before implementation of the new arrangement, which was also unknown to its hotline staff; (3) Non-compliance on the part of the Marriage Registry with the circular issued by the Immigration Department and unilaterally changing the criteria for approving applications; (4) Delay in handling the complainant's application and failing to give a written reply to his email; and (5) Unfairness in assigning an officer who had never handled the case to sign the reply letter

Background

476. On 8 January 2020, the complainant applied for search of marriage records of a person in Hong Kong through the website of Immigration Department (ImmD). As stated, the records would be available for collection on 20 January. Prior to the application, the complainant was aware of the announcement made by ImmD on 16 October 2019 regarding the tightening of the search arrangement. The complainant had enquired about the new arrangement via ImmD's enquiry hotline. At that time, the complainant was told by a staff (Officer A) that anyone could apply for search of marriage records in Hong Kong but ImmD would only reveal to the applicant whether such the record existed. If the applicant, who was not the data subject, wished to apply for certified copy of marriage records but was unable to provide the consent of the data subject, he / she would have to state the purpose(s) and intended use of the requested records and submit supporting documents for ImmD's consideration. On 10 January, a staff of the marriage registry (Officer B) called the complainant and requested him to provide supporting documents for assessment. Although the complainant had made clear that the complainant only wanted to confirm if the marriage record existed instead of applying for the certified copy, Officer B insisted that supporting documents were required. On the same day, the complainant submitted the supporting documents by email. On 23 January, the complainant called the registry concerned to enquire the application progress but was unable

to reach the case officer. On 24 January, the complainant was informed by Officer B over the phone that any search application without the consent of data subject would not be processed by the marriage registry. As the complainant queried on such arrangement, Officer B said he would discuss with his senior officer. On the same day, the complainant emailed ImmD to raise concerns. On 7 February, Officer B returned call to the complainant and told the latter that the senior officer had taken into account the concerns raised and considered that no further action was required. The complainant called Officer B on 10 February. The complainant was told that the marriage registry did not follow the guidelines laid down on 16 October 2019. The search arrangement had been further tightened in January 2020 but this had not been announced to the public. The complainant lodged a written complaint to ImmD on 11 February. On 27 February, the complainant called to follow up the complaint and was told by Officer C that search arrangement had already been tightened at the time when making application. Despite that no announcement was made before 8 January, ImmD had made an announcement subsequently. On 2 March, the complainant was replied with a letter signed by Officer D.

477. The complainant was aggrieved that ImmD abused its power and had breached the Marriage Ordinance by changing the application condition and assessment criteria of search applications (Allegation (a)); before the implementation of the new arrangement, ImmD did not make announcement nor put up the relevant guidelines on the departmental website. Hence, the public was unable to know about the new arrangement. The staff answering enquiry hotline was not familiar with the new arrangement and members of public who made enquiry were misled (Allegation (b)). The marriage registry did not follow the ImmD's guidelines laid down on 16 October 2019 but adopted their own assessment criteria (Allegation (c)). The handling of the complainant's application was delayed. The application results were not made available on 20 January according to performance pledge. No staff had proactively contacted the complainant to follow-up his case between 11 January and 23 January (Allegation (d)). Up to 28 February, the complainant was not given a written reply to the complainant's email of 24 January (Allegation (e)); and it was not fair that the letter dated 2 March was signed by Officer D who never handled his case (Allegation (f)).

The Ombudsman's observations

Allegation (a)

478. After consulting the Department of Justice (DoJ), ImmD opined that the existing legal provisions had already allowed them to exercise discretion not to accede to requests for search of the marriage records that might breach the requirements of the Personal Data (Privacy) Ordinance (PDPO) or when there was reason to believe that the information would be used for inappropriate or illegal purposes. In other words, prior to the implementation of the new arrangement, ImmD already possesses the discretion to assess an application for search and/or certified copy before releasing the records. As to whether the complainant's request had breached the requirements of PDPO, it should be of ImmD's professional judgement. The Office of The Ombudsman (the Office) did not find ImmD's decision unreasonable nor inappropriate. To sum up, The Ombudsman considered Allegation (a) unsubstantiated.

Allegation (b)

479. According to the records, the Office confirmed that ImmD informed the staff responsible for handling the applications and those responsible for handling enquiry hotlines the new arrangement by email on 16 October 2019. The two responsible officers handling enquiry hotlines had acknowledged receipt of the relevant guidelines, confirmed their understanding of the details of the new arrangement, and handled enquiries with reference to the new arrangement. As the complainant and the responsible officers handling the enquiry hotline had diverging accounts of their conversation, the Office was unable to ascertain the truth without other independent corroborative evidence. Hence, the Office would not comment on whether the complainant was misled by the responsible officers.

480. In fact, the new arrangement has already been implemented for two months when the requests were submitted by the complainant. Officer B had called and informed the complainant of the arrangement and requirement two days after the complainant made the application. ImmD had also assessed the request on the basis of the information provided by the complainant and arranged refund immediately after the request was not acceded to. The Office considered that the complainant was not unfairly treated.

481. The Office noted that ImmD decided to amend the new arrangement within the same day of implementation (16 October 2019) having regard to the circumstances of the material time. That said, the Office considered such arrangement undesirable as it would have

inevitably caused confusion to those members of public who had read the earlier announcement. To this end, the Office was of the view that ImmD should avoid amending a newly implemented arrangement within a short period of time.

482. On the other hand, even though the intention of the new arrangement was to safeguard personal privacy, the fact that a long-established procedure was changed suddenly but yet the reasons of such change, implementation details of the new arrangement (including the reason and criteria of application, supporting documents required), and purposes of setting up the public registers / registration records were only announced on 7 February 2020, would cause confusion and inconvenience to applicants who submitted applications during that period. The Office acknowledged that ImmD needed time to consult DoJ and Personal Data Privacy Commission on the new arrangement. However, it was considered unsatisfactory that the new arrangement was implemented when the relevant details were yet to be confirmed. The Office was of the view that ImmD should have at least promulgated the key requirements of the new arrangement (such as to provide the written consent of the data subject or state the purpose or intended use of the requested records when applying for search of marriage records of a third person).

483. Having regard to the above paragraphs, The Ombudsman considered Allegation (b) partially substantiated.

Allegation (c)

484. According to ImmD's explanation, ImmD amended the new arrangement within the same day on 16 October 2019. The relevant announcement on its website was removed in the evening of the same day. The staff also had ceased to distribute the relevant notice from 17 October onwards. In the light of the above, when the complainant made the application (i.e. 8 January 2020), ImmD had handled all search applications in accordance with the amended arrangement, and the staff of the marriage registry did not amend the application arrangement on their own accord. To this end, The Ombudsman considered Allegation (c) unsubstantiated.

Allegation (d)

485. According to records, Officer B called the complainant on 10 January 2020 and explained ImmD's new arrangement. The complainant

was requested to provide the purpose of the search or intended use of the requested record with relevant supporting documents. On the same occasion, Officer B explained to the complainant that no search would be conducted before approval was given. Hence, the collection date shown on the ImmD's website was irrelevant. Subsequently, Officer B informed the complainant on 15 January that longer processing time was required as the application was complicated. On 24 January, Officer B verbally informed the complainant that having considered the information provided by the complainant, ImmD was unable to accede to the requests. The complainant replied and indicated that supplementary information would be submitted to support the requests. As no further supporting document was provided in two subsequent emails of the complainant to ImmD, ImmD informed the complainant by phone on 7 February that the requests were not acceded to. Nonetheless, the complainant emailed ImmD on 9 February to request ImmD not to issue the written reply as the complainant would take further follow-up actions on the applications. Thus, ImmD only issued the formal written reply to the complainant on 2 March informing that the complainant's application was not acceded to. To this end, the Office was of the view that there was no maladministration by ImmD during the handling of the application. The Ombudsman considered Allegation (d) unsubstantiated.

Allegation (e)

486. According to the records, Officer B called the complainant on 7 February and informed him that his application was not acceded to after taking into consideration of all information, including the complainant's email of 24 January. ImmD withheld the issue of the written reply to the complainant as on 9 February upon the complainant's request via email and on the verbal representation of the complainant that further follow-up actions would be taken. The Office considered the allegation that ImmD delayed the issuance of the written reply to the complainant was unfounded. To this end, The Ombudsman considered Allegation (e) unsubstantiated.

Allegation (f)

487. ImmD could assign a suitable officer to handle the complainant's complaint and enquiry. Any reply made by such officer would represent ImmD's stance but not the individual's views. To this end, The Ombudsman considered Allegation (f) unsubstantiated.

488. Also, the existing statutory provisions relating to registration of marriage could be traced back to version dating from 1876, times when the society was less aware nor concern about personal privacy comparing with to date. The Office opined that ImmD should consider reviewing relevant stator provisions to keep up with latest social development.

489. In general, the Office was of the view that there was nothing improper, from the administrative perspective, for ImmD to refuse the complainant's application after consulting DoJ and the case particulars. Throughout the processing of the application, ImmD had kept the complainant informed of the new arrangement, provided reasons for the longer processing time and sought the complainant's provision of relevant supplementary information in time. ImmD also handled the complainant's complaint lodged with ImmD appropriately in accordance with established procedures. Nonetheless, the Office opined that it was unsatisfactory for ImmD to implement new measures while relevant operational details and justifications were still being finalised and pending promulgation. Same-day amendments to the new arrangement would also prone to inflict confusion for all. The Ombudsman was of the view that the complaint was partially substantiated.

490. The Ombudsman recommended that –

(a) with reference to this experience, prior to implementing any new arrangement which might affect the public in future, ImmD should consider carefully and avoid making sudden change to the arrangement within a short period of time. ImmD should also announce the details of the new arrangement and reasons of introducing the new arrangement as early as practicable;

(b) ImmD should consider adopting further administrative measures to inform non-data subject applicants that their personal information as well as the purpose(s) and intended use of the requested records might be disclosed to the data subjects; and

(c) ImmD should consider reviewing the Marriage Ordinance to cater for the latest social condition.

Government's response

491. ImmD accepted The Ombudsman's recommendations and had taken up the following follow-up actions –

(a) upon review, ImmD agreed that there was room for improvement regarding the implementation of the new arrangement. When implementing new arrangements in the future, ImmD would timely announce the details through different channels to ensure that public are aware of the new arrangement timely;

(b) ImmD would study the recommendation in detail. As the recommendation involved the disclosure of the applicants' personal data which were also protected by PDPO, ImmD would consult DoJ and Personal Data Protection Commission as appropriate; and

(c) ImmD would continue to review the Marriage Ordinance in accordance with the latest social condition and introduce amendments to the relevant provisions as and when necessary.

Immigration Department

Case No. 2020/2076(I) – Refusing to provide information about the quantities of personal protective equipment distributed to the Department and its stock levels in 2020

Background

492. On 3 March 2020, the complainant requested the Immigration Department (ImmD), under the Code on Access to Information (the Code), the following information relating to anti-epidemic supplies (including surgical masks (but not limited to masks manufactured by the Correctional Services Department (CSI masks)), N95 masks, protective gowns, protective coverall suits, 50ml alcohol-based handrub, 50ml alcohol-based handrub gel and bleach) –

(a) the quantities of the above-mentioned anti-epidemic supplies distributed by the Government Logistics Department (GLD) to ImmD from 23 January 2020 to 29 February 2020; and

(b) ImmD's stock of the above-mentioned anti-epidemic supplies as at 23 January 2020 and 29 February 2020 respectively.

493. On 22 April 2020, ImmD replied to the complainant that they had received masks and other anti-epidemic supplies from GLD. Given the surge in global demand for anti-epidemic supplies, the Government's procurement work faced keen competition. To avoid undermining the bargaining power of ImmD and GLD in the procurement of anti-epidemic supplies, it was considered inappropriate to disclose the relevant information at that time. ImmD invoked paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code to explain the reasons for rejecting the complainant's request for relevant information.

494. Upon the complainant's request for review, ImmD replied to the complainant on 11 June 2020 that disclosure of relevant information might undermine the Government's bargaining power in the procurement of anti-epidemic supplies and prejudice the Government's competitive position in procurement, which would, in turn, impair ImmD's operation. Thus, the decision to withhold the relevant information from the complainant was maintained.

495. The complainant held that the information requested from ImmD did not involve any sensitive information such as Government procurement procedures, purchase prices or names of suppliers and that the quantities of anti-epidemic supplies obtained by various government departments would not only have a bearing on the occupational safety and health of their employees, but also on members of the public's consideration of approaching the departments for using their services, which was a matter of significant public interest. Besides, given the pandemic situation in Hong Kong and that the situation of global procurement of anti-epidemic supplies had eased, the Government had no reason to refuse to make public the information requested at that time. Thus, the complainant lodged a complaint with The Office of the Ombudsman (the Office) against ImmD's refusal of the request for the relevant information on 19 June 2020.

The Ombudsman's observations

496. The Office understood ImmD's concern that disclosure of the relevant information on masks would undermine the bargaining power of ImmD and government departments in the procurement of masks through commercial channels at that time, which might cause financial loss to the Government and prejudice the efficient conduct of their operations Nevertheless, the Office noticed that the Financial Services and the Treasury Bureau (FSTB) publicly admitted through a press release on 7 February 2020 that the Correctional Services Department (CSD) had an insufficient stock of about 12 million masks (of which about 3 million were non-CSI masks) for use by various government departments at that time. On 16 February 2020, FSTB once again pointed out in a press release that the Government had maintained the level of monthly consumption of masks at about 8 million and that the GLD had a stock of about 12 million masks at that time. Together with the stock kept by individual departments and production by CSD, the then total stock could only last for about two months. Besides, the Government had already disclosed in the press release issued on 26 January 2020 that CSD produced 1.1 million CSI masks per month on average.

497. The Office considered that it was indisputable that at that time, there was a global shortage of masks and it was also publicly known that CSD's production of masks could not meet the demand of government departments and that the Government's stock of masks for various departments could only last for about two months. Given that supply side knew fully well on the demand of the buyers, it was not likely that ImmD's disclosure of relevant information on masks to the complainant would

worsen the situation and further undermine the bargaining power of ImmD and various government departments in sourcing masks through commercial channels. Thus, the Office considered ImmD being over cautious about the possible consequences of disclosing the requested information. Besides, a critical shortage of masks and occasional rumours about the misuse of CSI masks had attracted much concern and doubts from the public. There had also been calls for the Government's explanation on the production and sale of CSI masks, rendering "masks" an issue of public interest. The Ombudsman opined that disclosure of information relating to masks in Information (a) to (c) could address the public's misunderstanding that the Government was "concealing" information on the consumption of CSI masks. ImmD had not given due consideration to all factors, including the public interest involved in disclosure of the relevant information on masks. The decision was not well thought out.

498. The Office considered that unlike masks, the relevant information on other anti-epidemic supplies had never been disclosed. If such information was disclosed, suppliers might be able to get the picture and better estimate the Government's demand for these anti-epidemic supplies, which might indeed undermine the Government's bargaining position in negotiating the prices and better terms and conditions in procurement, making an adverse impact on the procurement operations of ImmD and GLD. Thus, ImmD's refusal to provide the complainant with the relevant information on other anti-epidemic supplies on grounds of paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code was justified.

499. The Office considered that when ImmD handled the complainant's request for information, part of the decision (i.e. the decision relating to the request for the information on masks) was not in line with the spirit of the Code and the scope of consideration was not wide enough. Thus, The Ombudsman considered this complaint partially substantiated.

500. The Ombudsman recommended ImmD to learn from experience and strengthen their staff training to ensure that they would carefully consider each request and all relevant factors and strictly comply with the Code's requirements and its Guidelines on Interpretation and Application in handling requests for information from the public in future.

Government's response

501. ImmD accepted The Ombudsman's recommendations and has taken appropriate follow-up actions, including drawing the attention of the officers responsible for handling the Code to the case; reminding them to consider each requirement and relevant factors carefully when dealing with cases in future; and seeking advice from the Department of Justice and relevant bureaux/departments, if necessary. Besides, the case was used as training materials in relevant internal training courses.

Immigration Department

Case No. 2020/2730 – Refusing the complainant's application for a search of marriage records, with no opportunity to furnish supplementary information and no appeal channel

Background

502. The two complainants were newspaper journalists. On 2 July 2020, one of the complainants applied to the Immigration Department (ImmD) for the marriage records of two persons in Hong Kong. Though the complainant had stated in the application that the requested record would be used to verify the marital relationship of the two persons for news activity, one of the complainants was informed by ImmD on 10 July via letter that the request could not be acceded to as ImmD was not satisfied that the request was consistent with the purpose of the establishment of the marriage records.

503. The complainants made reference to a previous case OMB2019/5268 in which ImmD had stated in its reply to The Office of The Ombudsman (the Office) that as long as the request was consistent with the purpose of the establishment of the marriage records, it could be lodged even if the consent of data subject was not obtained. This was however inconsistent with the handling of the present case as the complainant was required by ImmD to obtain the consent of data subject. The complainants also pointed out that, pursuant to the Personal Data (Protection) Ordinance (PDPO), personal data are exempted from the application of data protection principle 3 if disclosure would be in the public interest such as for news activity. The complainants were of the view that ImmD deliberately obstructed media organisations to conduct search on public registers by unreasonably refusing their applications. This had undermined the freedom of press and the right of public access to information.

504. The complainants were also aggrieved that they were not asked to provide supplementary information nor given any chance to explain their applications before it was refused by ImmD. ImmD did not provide an appeal mechanism but only reiterated that consent of data subject was required. The complainants considered that the lack of an appeal mechanism for decisions relating to search applications was procedurally unfair.

The Ombudsman's observations

505. The Office was of the view that ImmD had processed the application in accordance with the established procedures. After acknowledging that the complainant was not the data subject, ImmD had explained to the complainant the current arrangement on search of the marriage records in Hong Kong, and provided a notice and a "Supplementary Information Sheet". Subsequently, the complainant had also been requested to provide supplementary information for assessment. The reason that the request was not acceded to was not simply due to the lack of consent of data subject. Having regard to the available information provided by the complainant, ImmD was not satisfied that the rationale for the request was in line with the purposes of the establishment of marriage records in Hong Kong nor could afford any of the exemption(s) from the application of the data protection principle under PDPO. To this end, the complainants' allegation that ImmD unreasonably refused the requests without requesting the complainant to provide supplementary information or explanation to their applications was unfounded. In fact, there was also appeal mechanism on decisions relating to search applications. If a media organisation considered that a search on a public register involved public interest, they could apply to ImmD and provide concrete justifications and detailed information for ImmD's assessment and consideration.

506. While individual cases are unique, the Office was of the view that good public administration requires fairness and transparency. The Office acknowledged that ImmD needed to contemplate various factors, including public interests, exemption under PDPO, etc., when assessing search applications. To facilitate applicants' submission of relevant evidence to ImmD, the Office recommended ImmD to provide non-data subject applicants with case references, to assist applicants' understanding of the justification and supporting evidence accepted by ImmD. In the long run, ImmD should consider formulating a guideline on its assessments, both for the applicants' reference and to facilitate concise judgements by its staff when processing search applications.

507. It the complainant wished ImmD to reconsider its application, the complainant would make a written request for review with further supporting evidence appended to facilitate ImmD's review and further consideration.

508. The Office was aware that there was no mentioning of the aforementioned mechanism for request of review on ImmD's website.

From the public administration perspective, promulgation of the aforementioned mechanism via ImmD's website and other channels would promote transparency.

509. All in all, the Office was of the view that ImmD processed the complainant's application in accordance with existing practice. ImmD's refusal of the application was also mainly premised on the insufficiency of evidence provided by the complainant and assuring ImmD that the purpose of its request was in line with the purpose of the establishment of the marriage register, nor leading to the conclusion that exemptions under PDPO could be affirmed. There was no evidence suggesting that ImmD had deliberately deterred media organisations from conducting search on public registers or that the handling procedure was inconsistent with the current arrangement. Therefore, The Ombudsman considered this complaint unsubstantiated.

510. The Ombudsman recommended that –

(a) with reference to experience from approved cases, ImmD facilitate applicants' understanding of what constitute justifiable grounds for application and the required supplementary information to support the application by providing examples and factual illustrations. In the long run, ImmD should consider setting out its processing guidelines for the reference of applicants and ImmD's officers; and

(b) ImmD should provide the details of the appeal mechanism for decisions in relation to relevant applications on the departmental website or other channels to increase transparency.

Government's response

511. ImmD accepted The Ombudsman's recommendations and had taken the following follow-up actions –

(a) ImmD had consolidated experience in handling requests from non-data subjects and listed out on the department website the commonly required supplementary information or documents from applicants who were not the data subjects nor did not have the data subjects' consent; and

(b) Applicants would be informed that they could submit new information to ImmD for reconsideration when they were informed of the refusal decision by letter.

Inland Revenue Department

Case No. 2019/4506(I) – (1)Failing to provide at the complainant's request the number of prosecutions against residential property buyers for misrepresentation; (2) Improperly refusing to disclose whether the Department had been consulted by the Government when the doubled ad valorem stamp duty was introduced; and (3) Providing the complainant with an invalid hyperlink

Background

512. On 13 February 2019 and 17 November 2019, the complainant wrote to the Inland Revenue Department (IRD) requesting the following information under the Code on Access to Information (the Code) –

(a) The number of prosecutions against buyers of residential property for making false declarations in respect of applications for charging ad valorem stamp duty (AVD) at Scale 2 rates (Information (a));

(b) Whether IRD was consulted when the doubled AVD was introduced (Information (b)); and

(c) Various versions of the Stamp Duty Ordinance before and after the implementation of the doubled AVD (Information (c)).

513. Having received IRD's written replies of 22 February 2019 and 26 November 2019, the complainant made the following allegations against IRD –

(a) Regarding Information (a), the complainant criticized that IRD only provided the number of convicted cases for buyers making false declarations instead of the number of prosecutions (Allegation (a));

(b) Regarding Information (b), the complainant stated that it was improper for IRD to rely on paragraph 2.10(b) of the Code to refuse disclosure of the relevant information (Allegation (b)); and

(c) Regarding Information (c), IRD provided four hyperlinks to the webpages containing the relevant ordinance. The complainant was dissatisfied that one of the hyperlinks was invalid. The complainant also considered that merely providing hyperlinks would pose difficulty to people who do not know how to use the Internet, and that the hyperlinks might become invalid at any time in the future (Allegation (c)).

The Ombudsman's observations

Allegation (a)

514. In the complainant's written request to IRD, the complainant clearly asked for the number of prosecutions against buyers for making false declarations. However, IRD's provision of number of convicted cases instead of the number of prosecution to the complainant was an inaccurate response to the complainant's request.

515. Nevertheless, when the complainant expressed his dissatisfaction to IRD regarding the above reply in mid-September 2019, IRD followed up immediately by providing the number of prosecutions via its reply to the complainant on the 23rd of the same month. Before the Office of The Ombudsman (the Office) commenced investigation, IRD had already modified its reply. In such circumstances, the Office considered that Allegation (a) is unsubstantiated.

Allegation (b)

516. According to paragraph 2.10(b) of Part 2 of the Code, a department may refuse to disclose information if its disclosure "would inhibit the frankness and candour of discussion within the Government, and advice given to the Government. Such information may include: (i) records of discussion at any internal government meeting, or at any meeting of a government advisory body; (ii) opinions, advice, recommendations, consultations and deliberations by government officials or advisers to the Government."

517. The Office accepted IRD's explanation that, in reliance of paragraph 2.10(b) of the Code, the complainant's request for information involves the specific contents of the then consultation between the relevant policy bureau and IRD, and its disclosure would inhibit the frankness and candour of discussion within the Government. Hence, it is not

unreasonable for IRD to refuse disclosure of information. The Office considered that Allegation (b) unsubstantiated.

Allegation (c)

518. IRD admitted that it had wrongly provided the hyperlink of the Government's intranet to the complainant. IRD apologised to the complainant and provided a correct link to the relevant webpage.

519. For the allegation that it was improper for IRD to provide hyperlinks to webpages, the Office considered that the Government had promulgated the Stamp Duty Ordinance to which Information (c) relates by publication in the Gazette. The relevant provisions had also been uploaded to the Internet for perusal by the public. Hence, it is not unreasonable for IRD to provide the complainant with a hyperlink to the relevant webpage. Furthermore, according to paragraph 1.14 of the Code, if the applicant requests a department to provide information which is already published, the department can direct the applicant to the appropriate source of the information. Therefore, IRD did not violate the requirements of the Code by providing the complainant with a hyperlink to the webpage containing Information (c). The Office thus considered that Allegation (c) partially substantiated.

520. Overall, The Ombudsman considered this complaint partially substantiated and recommended that IRD –

(a) remind its officers of the need to review applicants' requests for information more carefully in the future, with a view to ensuring that the information provided meets the applicants' requests; and

(b) remind its officers of the need to examine the correctness of relevant hyperlinks if they are to be provided to applicants for information, with a view to ensuring that the applicants can browse the webpage.

Government's response

521. IRD accepted The Ombudsman's recommendations and issued an email in May 2020 to all unit heads and officers who oversee the handling of requests for information from the public reminding them of the need to ensure that information provided meets the applicants' requests, and to

examine whether correct hyperlinks are provided so as to ensure that the applicants can browse the relevant webpage.

Lands Department

Case No. 2020/2899 – Taking no enforcement action against occupation of Government land

Background

522. Since December 2018, the complainant has repeatedly complained to a District Lands Office under the Lands Department (LandsD) about unlawful occupation of government land in the New Territories. However, the District Land Office concerned (DLO) had not yet taken any land control action.

523. According to DLO, it could not enter the occupied government land for inspection and enforcement action, as part of it was surrounded by private land. The complainant was dissatisfied with such explanation and held that he had provided DLO with aerial photographs and evidence, and there were also satellite images on the internet showing the conditions of the occupied government land. However, DLO has not taken any enforcement action for years.

The Ombudsman's observations

524. This is a blatant case of unlawful occupation as aerial photographs taken of the government land show that an extensive area was suspectedly occupied. The Office of The Ombudsman (the Office) appreciates that since the government land was surrounded by private land, DLO had difficulties taking enforcement action. That said, DLO took no further action after its third site visit in August 2019 when it merely posted notices to request the landowners concerned to contact it. Not until March 2020 when the complainant enquired about the case progress after the lapse of over six months, did DLO post notices again.

525. Moreover, though the landowners concerned had never responded to its notices, DLO continued with its apparently ineffectual attempts to reach them by posting notices routinely at the scene. As a matter of fact, people who unlawfully occupy government land are mostly owners of the nearby private land. As DLO had received no response despite its repeated notices mounted at conspicuous locations near the entrances of the private land concerned, its expectation to be proactively reached by relevant

persons through posting notices at the scene continuously (including on roadside lamp posts) was unrealistic.

526. The Office has examined the site photographs taken by DLO and found signs showing various company names at different spots (including the entrances) of the private land surrounding the government land. Those companies might be landowners or occupiers of the private land. LandsD explained to The Office that DLO had contacted one of them in December 2020, but the person-in-charge claimed to be out of town and was therefore unable to offer assistance.

527. As early as December 2018, LandsD had received the complainant's complaint. However, LandsD had dragged its feet after failing to reach the owners of the private land concerned. Before The Office commenced the investigation in November 2020, DLO had not made much effort to locate the related parties through other channels. For example, it had not approached the persons-in-charge of the companies, the names of which could be seen on the spot. Nor had it tried to enter the government land by other means.

528. By the time DLO attempted to enter the government land in November 2020 and January 2021 respectively through the southern part under its control, and the track at the hillside to the north of the land, two years had been lapsed (counting from the date when DLO received the complaint). In The Office's view, DLO should have explored other feasible ways earlier instead of merely relying on the owners of the private lands concerned to contact it and offer assistance. The delay could then have been avoided.

529. In any event, DLO had managed to enter the government land via the hillside and started clearing the remaining part of it. The Office urge LandsD to take land control action in respect of the remaining parts of the land and consider instituting prosecution against the parties concerned based on the evidence gathered.

530. In view of the above, The Ombudsman considered this complaint substantiated.

531. With respect to LandsD's response to the comments made by The Ombudsman, the Office appreciates that the areas around the government land had a complex environment and that there might be potential dangers in opening a track at the hillside. Hence, it was reasonable for DLO to try

other ways for taking land control action first. The Office did not entirely disapprove DLO's posting notices at the scene for requesting the people concerned to contact it.

532. Nevertheless, DLO had repeatedly posted notices and the people concerned did not contact it. Even if DLO found it necessary to post notices continuously, the Office considered that it should have promptly explored other feasible ways to enter the government land, instead of simply waiting for the people concerned to give response. Although DLO had already cleared the southern part of the government land in April 2019, it was not until November 2020 that DLO tried to enter the government land via that area (which was unsuccessful). Meanwhile, DLO did not consider using other ways to take land control action.

533. The Office appreciates that DLO had put in place special work arrangements several times since January 2020, and so its work progress was affected. However, it is clear from the above that DLO's failure to take prompt land control action was mainly due to its failure to attempt other means to enter the government land earlier.

534. In view of the above, The Ombudsman maintained its conclusion that the complaint was substantiated. The Ombudsman recommended LandsD to make necessary amendments to its existing work guidelines based on the experience of this case. For example, requiring staff to seek instructions from their seniors promptly when they come across difficulties in taking enforcement action against occupation of government land that is surrounded by private land, so as to avoid impacting on the progress and effectiveness of enforcement action as this case unfolds.

Government's response

535. LandsD accepted The Ombudsman's recommendation. Its Headquarters issued an email to all District Lands Offices on 25 March 2021 reminding its front line staff that when encountering difficulties in taking enforcement action against occupied Government land that is landlocked by private land, they should report the case as soon as possible to the respective District Lands Officer for further steer so as to avoid affecting the progress of law enforcement action. The DLO concerned in the subject case will also continue to take actions to clear the remaining government land.

Labour Department

Case No. 2020/1174B – (1) Failing to inform the public of a new requirement on vehicles conveying dangerous goods, draw up guidelines and set a grace period for vehicle owners; and (2) unreasonably requiring vehicle owners to install warning lights on the back side of a vehicle's tail lift

Background

536. The complainant applied to the Fire Services Department (FSD) for a licence to use his vehicle for carrying Category 2 dangerous goods (DG) in 2019. Subsequently, he applied to FSD for renewing the licence after installing tail lift warning lights on the vehicle according to the safety requirement of the Labour Department (LD). FSD examined the vehicle in April 2020 and told him that a new requirement had been introduced following a discussion with LD in November 2019. The new requirement stipulated that vehicles carrying Category 2 DG should not have the tail lift warning lights installed near the DG to avoid explosion caused by gas leakage. Since the vehicle's warning lights were installed close to where DG was placed, FSD refused to renew its licence. The complainant made an enquiry with LD in late April 2020 about the above new requirement, but LD said no relevant guidelines were available. The complainant thus lodged a complaint with the Office of The Ombudsman (the Office) alleging that FSD and LD had failed to inform the public of the new requirement, draw up relevant guidelines and give vehicle owners a grace period to re-install the warning lights (Allegation (a)).

537. The complainant also complained that LD issued a letter in August 2020 requiring owners of vehicles carrying DG to install warning lights on the back side of tail lifts (i.e. facing the rear end of the vehicle) according to the "Tail Lift Fire Safety Guideline" issued by FSD in April 2020. He however considered that the warning lights would become invisible when the tail lift was lowered and thus could not alert people to the trapping hazards caused by tail lifts. The warning lights could also be crushed by the tail lift. The above requirement was therefore unreasonable (Allegation (b)).

The Ombudsman's observations

Allegation (a)

538. Regarding the new requirement on tail lifts of DG vehicles, although LD's "Guidance Notes on Prevention of Trapping Hazard of Tail Lifts" (GN) did not specify any requirement on the installation position of tail lift warning lights, the photo therein might cause vehicle owners to misunderstand that warning lights must be installed on the front side of the tail lift (i.e. facing the inside of the vehicle). If installed in this way, the vehicle will fail to comply with FSD's fire safety requirement and the application for licence/renewal will be affected. After clarifying the proper position for installing warning lights during the discussion in November 2019, the two departments should have drawn up guidelines or notified the public in a timely manner such that vehicle owners could be well prepared before vehicle examination to avoid the inconvenience caused by subsequent rectification and re-examination. The Ombudsman was of the view that there were inadequate coordination and unclear demarcation of duties between the two departments in handling the case, and considered the allegation against FSD partially substantiated, and the allegation against LD substantiated.

Allegation (b)

539. Regarding the requirement of installing warning lights on the back side of tail lifts, LD has already responded to the complainant's queries. The Ombudsman has no comment as the proper position of warning lights (including being effective for alerting the workers engaged in operation of tail lifts/other people to the trapping hazard, and whether being prone to be crushed and damaged by the tail lift) is within the professional judgement of LD, which is not an administrative matter subject to the Office's comment. Therefore, The Ombudsman considered Allegation (b) unsubstantiated.

540. In conclusion, The Ombudsman considered this complaint partially substantiated, and recommended that LD –

(a) complete the revision of the GN as soon as possible, and ensure that the affected vehicle owners are informed of the revised provisions; and

(b) schedule the review of other existing guidelines on occupational safety, liaise with relevant departments in case of any

inconsistencies or contradictions with the licensing conditions/requirements of other departments, make revisions and inform the affected parties, and take interim measures where necessary to ensure public awareness of such provisions before completion of the entire revision process.

Government's response

541. LD accepted The Ombudsman's recommendations and has taken the following follow-up actions –

(a) after consultation with the trade, revision of the GN was completed in March 2021 and the GN was uploaded to LD's homepage and distributed in various district offices of LD; and

(b) the review of existing occupational safety guidelines was completed in July 2021, and no inconsistency or contradiction was found between the content of these guidelines and the licensing conditions/requirements of relevant departments.

Official Receiver's Office

Case No. 2020/2509 – (1) Delay in returning items belonging to the bankrupt's mother stored in the safe deposit box ("SDB") under their joint names; (2) Inconsistent replies regarding the criteria for returning items in the SDB; (3) Unreasonably requiring the designs of jewellery in the SDB to be clearly shown in the old photographs provided by the bankrupt and his mother; (4) Unreasonably asking for proof that items in the SDB were gifts from the bankrupt's deceased father to his mother; and (5) Only agreeing to partial return of items in the SDB belonging to the bankrupt's mother

Background

542. On 23 July 2020, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Official Receiver's Office (ORO). On 3 August and 3 September, the complainant respectively provided the Office with supplementary information and reply slips signed by him and his mother.

543. The complainant was adjudged bankrupt in June 2018. According to a letter dated 26 August 2018 addressed to ORO by the complainant's mother, she and the complainant jointly owned a safe deposit box (SDB) with a bank (the bank). Although the SDB was held jointly in their names, the complainant's mother was the only user, and possessed all items inside the SDB. On 7 August 2018, the complainant and the complainant's mother, in the company of two ORO staff, opened and took stock of the items in the SDB at the bank. A member of ORO staff (Officer A) indicated that if the jewellery items inside the SDB were of lady's styles and supported by photos, they could be returned to the complainant's mother. On 27 August, the complainant's mother emailed to ORO the relevant information and supporting photos. At the end of December 2018, the case was followed up by another member of ORO staff (Officer B). But not until 20 May 2019 did Officer B write to the complainant and the complainant's mother to follow up the matter of the SDB.

544. Subsequently, ORO requested the complainant's mother to provide evidence to prove that the items kept inside the SDB were gifted by her late husband. ORO indicated that whether the items were of lady's style or size was not the basis upon which ORO considered whether they

should be returned. ORO also pointed out that the photos provided by the complainant's mother were unable to show the items clearly. After meeting the complainant in October 2019, ORO advised that five pieces of jewellery would be returned to the complainant's mother. In April 2020, the complainant provided additional relevant photos and receipts to ORO. On 9 July 2020, the complainant proposed that ORO returned part of the cash kept in the SDB to the complainant's mother. On 17 July, Officer B agreed to return half of the cash kept inside the SDB to the complainant's mother.

545. In summary, the complainant was dissatisfied with ORO for the following –

(a) In August 2018 the complainant and the complainant's mother requested ORO to return the items in the SDB. ORO had delayed handling the matter, including not agreeing to return half of the cash until July 2020 (Allegation (a));

(b) The criterion for returning the items given by different ORO staff (i.e. Officer A and Officer B) was inconsistent (Allegation (b));

(c) The photos provided by the complainant and the complainant's mother were mainly portraits, some were old-aged photos. ORO was "being difficult" by requesting the jewellery be shown clearly on the photos (Allegation (c));

(d) It was unreasonable for ORO to request the complainant's mother to provide evidence to prove that those items in the SDB were gifts from her late husband because it is unusual for a couple to enter into agreements when it comes to giving gifts (Allegation (d)); and

(e) Substantial numbers of photos and relevant receipts had been provided by the complainant and the complainant's mother to ORO, and those photos should have been sufficient to identify and confirm ownership of the relevant items. However, ORO only agreed to return five items to the complainant's mother. The complainant doubted the assessment standard adopted by ORO (Allegation (e)).

The Ombudsman's observations

Allegation (a)

546. The chattels found in the SDB were mainly jewellery ornaments and cash. The Office had the following observation and comments on ORO's handling of the claim of the complainant's mother on the above two types of chattels.

547. Regarding the claim for ornaments, the Office has studied the claim and supplementary information provided to ORO by the complainant's mother on 27 August and 9 October 2018. For the nature of the claim and the quantity and complexity of the information provided, the Office considered it not ideal that ORO took more than seven months to review and issue a letter on 20 May 2019 to request further evidence from the complainant's mother. Besides, after the complainant's mother's reply on 24 May, ORO sent her a reminder on 30 August (i.e. three months later) asking for submission of original copies of the photos. Despite the fact that it is the claimant's burden to provide evidence to support her claim, if ORO considered that the evidence provided by the claimant was insufficient, they should have informed the claimant expeditiously for her prompt follow-up and submission.

548. As for the claim to the cash, in July 2020, ORO also gave reasons for agreeing to return half of the cash found in the SDB. The Office noted that on 27 August 2018 the complainant's mother requested ORO to return the chattels (including the cash) in the SDB to her. On 9 October, she provided further information; which however did not include evidence relating to the cash. Then in an email from the complainant's mother on 16 April 2019, she urged ORO for prompt handling of the ornaments first but reserved her rights to claim or recover the cash.

549. Given that there had been dispute on the ownership of the cash found in the SDB and the burden of proof was on the complainant's mother, the Office considered that it was not unreasonable for ORO to give priority to the handling of the ornaments in response to the complainant's mother's request in her email dated 16 April 2019 before receiving further evidence from her in support of her claim to the cash.

550. However, after the complainant's request on 9 July 2020 for return of half of the cash to the complainant's mother, ORO, in the reply dated 17 July, only detailed the arrangements for handling the cash in the

SDB and asked the complainant to confirm if the cash record was correct. It was not until 17 August and 14 September, ORO respectively stated that written consent was required from the complainant's mother regarding the arrangement, and that she was required to fill out a consent form. After receiving the completed consent form, ORO eventually posted her the cheque on 29 September. In the context that the complainant and the complainant's mother had repeatedly requested prompt handling of the claim, the Office was of the view that, ORO should have been able to tell the claimants the kind of information to be submitted to facilitate ORO's handling of the claim in an expeditious instead of a piecemeal manner. As the submission was requested in a piecemeal manner, the complainant's mother received half of the cash after more than two months.

551. In short, taking into account ORO's whole process of handling the claim of the complainant's mother, the Office considered that ORO's handling time was not ideal even though time was needed to obtain information from the bank. There was also a need for ORO to streamline the procedures for obtaining information from claimants to avoid requesting different information from claimants at different stages, in order to increase the efficiency in handling claims.

552. The Office also considered that ORO should formulate internal monitoring mechanism and / or service pledge for handling claims similar to this case to ensure that claims were handled within a reasonable time. ORO pointed out that resolution of the claim to a large extent depended on sufficiency of information / evidence provided by the claimant, and that the process was not under their control. The Office believed that many other government departments, although facing the same situation in handling applications from the public, had their internal targeted processing time and / or service pledge put in place for ensuring the quality of public services. The Office understood that ORO had the statutory duty to protect creditors' benefits; but, if someone claimed that he / she possessed the property held on trust and made a claim, his / her benefits should also be considered and ORO had the responsibility to handle the claim within a reasonable time. For ORO's concern, ORO may consider adopting the date of receiving all the required information from claimants as the starting basis when the internal monitoring mechanism and / or service pledge was formulated.

553. In light of the above, the Office considered Allegation (a) partially substantiated.

Allegation (b)

554. The complainant alleged that Officer A indicated on 7 August 2018 at the time of opening the SDB that if the jewellery items inside the SDB were of lady's styles and supported by photos, they could be returned to the complainant's mother, but Officer A could not recall the exact details of the conversation. Given the lack of independent corroborating evidence, the Office was unable to ascertain the exact situation.

555. Having said that, after reviewing the emails exchanged between ORO and the complainant and the complainant's mother, the Office found that Officer A, after opening the SDB on 7 August 2018 did send letters to the complainant's mother on 16 August and 5 September 2018 to inform her that evidence should be provided to support her claim, otherwise ORO would assume that the items in the SDB were jointly owned by the complainant and her. The same request was sent by Officer B after the case was handed over to her.

556. The Office believed that there might have been a misunderstanding in communication when Officer A and the complainant and the complainant's mother opened the SDB on 7 August 2018. In any event, ORO has reminded the relevant staff to pay attention to avoid recurrence of the same.

557. In light of the above, the Office considered Allegation (b) unsubstantiated.

Allegation (c)

558. It is the statutory duty of the Official Receiver as trustee to deal with the property under her control cautiously for the protection of the benefits of creditors. When receiving a claim, the Official Receiver needs to critically examine the evidence provided and determine whether there is sufficient evidence to substantiate the claim. In this case, the Office believed that ORO's request for the complainant's mother to provide photos that could clearly show the jewellery to fully support her claim was not unreasonable.

559. In light of the above, the Office considered Allegation (c) unsubstantiated.

Allegation (d)

560. The Office noted that in Officer B's email dated 20 May 2019, the complainant's mother was requested to provide information or documents for the claim. She was asked to provide evidence to prove that the property of her late husband was owned by her, such as the Will or Letters of Administration, instead of the agreements entered between her and her late husband on the items in the SDB.

561. The Office also learned from the information provided by ORO that ORO had replied on 4 March 2020 to the complainant's complaint email dated 19 February 2020 (in which the complainant complained about ORO's request to the complainant's mother asking her to provide evidence on the items gifted by her late husband). In that reply, ORO explained that as the evidence provided by the complainant and the complainant's mother was unable to sufficiently prove the ownership of some of the items in the SDB, the items could not be returned. ORO also requested the complainant's mother to provide other potential evidence. These were different approaches adopted by ORO with the aim of assisting the handling of the claim.

562. ORO clarified that they tried to explore whether the complainant's mother had the documents to support her claim (the agreement entered between her and her late husband mentioned by the complainant was not included) and to facilitate the handling of the matter. The Office believed that such was ORO in performance of their duty and there was nothing inappropriate.

563. In light of the above, the Office considered Allegation (d) unsubstantiated.

Allegation (e)

564. ORO explained their guiding principle and assessment standard adopted in dealing with claims similar to this case. As The Office understood, the complainant doubted that ORO adopted inconsistent assessment standards in dealing with the complainant's mother's claim. However, whether the evidence provided by the complainant's mother was sufficient to support her claim or not was the judgement made by ORO after reviewing the available evidence. The Office would not interfere with the decision made by the Official Receiver in her capacity as the trustee. If a bankrupt or any of the creditors or any other person is aggrieved by

any act or decision of the trustee, they may apply to the court following section 83 of the Bankruptcy Ordinance, and the court may make such order in the premises as it thinks just.

565. The Office believed that the doubt from the complainant mainly came from the fact that the complainant and the complainant's mother had provided multiple times substantial information and documents for the dozens of items in the SDB. But ORO in their replies dated 6 December 2019 and 2 July 2020 simply stated that they had decided to return several items without explaining why the other evidence was not sufficient to support the complainant's mother's claim on the remaining items. The Office noted that, after knowing that ORO had decided to return five items, the complainant and the complainant's mother immediately questioned ORO's assessment standard and subsequently at various times provided more information and evidence for ORO's consideration. Against this background, when ORO decided to return five more items and still just briefly stated the assessment result without much explanation, it was unavoidable for the complainant to have questions about it. The Office was of the view that if a written explanation as to why evidence was not accepted on each item was not given, ORO could have met with, and explained to the complainant and the complainant's mother in a meeting to address their doubts. But, the Office did not see from the information provided that ORO had tried in any way to explain, in detail, the assessment results to the complainant and the complainant's mother.

566. In light of the above, the Office considered Allegation (e) unsubstantiated, but there were inadequacies.

567. Overall, The Ombudsman considered this complaint against ORO partially substantiated and recommended that ORO –

(a) formulate internal monitoring mechanism and / or service pledge for handling claims related to bankruptcy estate in order to ensure that claims are handled within a reasonable time; and

(b) explain its reasons for rejecting the evidence / information provided by the claimants.

Government's response

568. ORO accepted The Ombudsman's recommendations. ORO has implemented improvement measures on procedures of claims of cash and

chattels kept in SDB, and issued a relevant internal guideline on 31 May 2021, which includes the following –

(a) an internal pledge has been introduced for informing the claimant of the Official Receiver's decision in writing within 2 months from the date of receiving all of the required information and documents from the claimant; and

(b) the claimant should be clearly informed of the decision and the reasons for rejection in case the claim is rejected. If the claimant has any questions, the handling officer will arrange for a detailed explanation to the claimant in an appropriate way (e.g. meeting).

Post Office

Case No. 2020/1078 – (1) Delaying the handover of mail items to airline; and (2) Unreasonably changing the conveyance mode from air to surface

Background

569. During the period from 9 to 24 March 2020, the complainant posted a total of 10 mail items, i.e. Items (a) to (j), respectively to Japan. He pointed out the following problems of the Post Office (PO) in handling the above items –

(a) Items (a) to (d) were all posted on 9 March but those posted through EC-Ship arrived at the destination 9 days later than what it took for registered airmail;

(b) No update on the delivery status was shown for item (e) ever since its arrival at the mail processing centre on 14 March. The complainant once enquired with PO about its status, and was initially advised that the concerned item was pending for air allotment but was later informed that the posting of the item was withdrawn. The complainant clarified that he had never made any request for withdrawal and requested PO to process the item as soon as possible. Notwithstanding this, there is still no update on the delivery status of the item until the complainant lodged a complaint with the Office of The Ombudsman (the Office). The complainant was worried that someone might have taken away his item by making the excuse of withdrawing the posting;

(c) Items (f), (i) and (j) all arrived at the destination on 5 April, but item (f) was in fact posted a week earlier than the other two items; and

(d) Conveyance mode for items (g) and (h) was changed to surface route without consulting the complainant. The complainant pointed out that PO should be able to consult him before changing the conveyance mode for these two items as he had already provided PO with the item numbers and his contact information during his enquiry with the Mail Tracing Office about the status of his mail items in mid-March.

570. The complainant alleged PO of –

(a) delaying in its dispatch of items (a) to (c), (e) and (f);

(b) failing to advise the specific status of item (e);

(c) not dispatching items (a) to (c), (e) and (f) in in accordance with posting sequence; and

(d) changing the conveyance mode for items (g) and (h) without the complainant's consent.

The Ombudsman's observations

571. The Office understood that the complainant was of the view that the postal services of PO fell short of his expectation. Having examined PO's explanation, and relevant records and information, the Office considered the impact of the COVID-19 pandemic on the aviation industry and provision of international mail services indeed unprecedented, and delay in postal services was beyond the control of PO. After reviewing the situation, PO issued five press releases between 8 February and 25 March to announce the delays in airmail services for public information. PO also pursued every possible means to obtain extra air allotment, but the result was not promising as the supply of air allotment was scarce. As a result, PO announced on 27 March the suspension of part of or all airmail services to specified destinations (including Japan) to prevent the further increase of backlog of airmail. Taking into account the prevailing circumstances and the Universal Postal Union's advice, it was not unreasonable for PO to convey the backlog of mails (including items (g) and (h)) at the Air Mail Centre alternatively by surface route instead. As for the failure to seek consent from individual senders before changing the conveyance mode, PO had genuine difficulties, and were considered understandable.

572. Regarding the sequence of mail conveyance for items (a) to (c), (e) and (f), PO already explained that some of the mail items posted later might be conveyed earlier as it was necessary for PO to make the most efficient use of air allotment or take into account the possibility of unexpected flight cancellation, etc. Since PO did not retain records of mail size, it was unable to ascertain the reason for the conveyance of the concerned mails out of sequence. The Office considered that the sequence of mail conveyance, under the impact of the pandemic, was subject to unforeseeable factors which was beyond PO's control. Besides, PO also

explained to the complainant several times from 8 to 15 April regarding the status of item (e), which should have settled the issue.

573. With the above, The Ombudsman considered this complaint against PO unsubstantiated. The Office noted that PO did make announcement for public information through press releases but often it gave a generic description on the delay in airmail services for different countries. The Ombudsman suggested that PO could provide the public with more specific information on estimated delay time for different countries or regions such that senders could make better informed posting decisions, and at the same time PO could better manage client expectations.

Government's response

574. PO accepted The Ombudsman's recommendation and has been publishing notices since September 2020 to inform the public about the extra time required for conveyance owing to the insufficient air traffic capacity for specific destinations. Such approach has enhanced the transparency of information, which allowed senders be better informed about the actual circumstances before posting. This also enables PO to manage senders' expectations. PO would update the notice from time to time to keep the public abreast of the latest situation of postal services and any other new developments.

Post Office

Case No. 2020/1123 – Unreasonably changing the conveyance mode of a mail item from air to surface

Background

575. On 23 March 2020, the complainant posted a registered airmail containing surgical masks and eye wares to Australia (the Item). Subsequently, she learned that the Post Office (PO) had posted the Item by surface mail on 7 April and hence the posting of the Item was delayed. Upon her enquiry, PO informed that an announcement about the change of posting method had been made on its website. She considered that a contract had been entered into when the complainant posted the Item on 23 March, and PO had unilaterally broken the said contract without giving due consideration to the importance of the Item. At the time when she complained to the Office of The Ombudsman (the Office), the Item had yet to arrive at Australia. She considered that PO should have been able to post the Item by air but had opted not to in view of the higher costs involved.

576. Against the above background, she lodged a complaint with the Office against PO for improprieties in the handling of the Item.

The Ombudsman's observations

577. The Office understood that the service of PO in this particular case fell short of the complainant's expectation. Nevertheless, the impact of the COVID-19 pandemic on the aviation industry and the provision of international mailing services was indeed unprecedented. Having examined the information provided by PO, the Office found that PO did exhaust every possible means to obtain extra air allotment to meet the rising demand for airmail service and to clear the backlog of airmail items. However, since the supply of air allotment was scarce, PO was unable to procure sufficient air allotment. Given the uncertainty of air service worldwide during that period and having contemplated Universal Postal Union's advice, the Office considered it reasonable of PO to have resorted to sea conveyance.

578. In general, the Office expects government departments to maintain communication with people who are affected by change in

service arrangement. However, in this case, since the mail volume was huge and the provision of senders' contact information was not mandatory, it was not feasible for PO to contact each sender to obtain his or her consent on the change of conveyance mode. The Office noted that PO had advised in its press release of 9 April how the affected senders could apply for refund of postage difference. The Office considered that PO had tried to provide information to the public as far as practicable. After the Item had arrived at Sydney, PO did relay the complainant's request to the Australia Post Office (APO) and asked it to expedite the delivery. Yet, since APO had already declared a situation of force majeure, there was little PO could do besides issuing chasers.

579. With the above, The Ombudsman considered this complaint against PO unsubstantiated. The Office noted from the press releases of PO that it often gave a generic description of time delay for postal service to various destinations. The Ombudsman considered it more desirable if PO could provide the public with more specific information on estimated delay time for different regions such that senders could make better informed posting decisions, and at the same time PO could manage client expectations.

Government's response

580. PO accepted The Ombudsman's recommendation and has started to publish notices since September 2020 to inform the public about the extra time required for conveyance owing to the insufficient air traffic capacity for specific destinations. Such approach has enhanced the transparency of information, which allowed senders be better informed about the actual circumstances before posting. This also enables PO to manage senders' expectations. PO would update the notice from time to time to keep the public abreast of the latest situation of postal services and any other new developments.

Post Office

Case No. 2020/1177 – Unreasonably changing the conveyance mode of a mail item from air to surface

Background

581. On 19 March 2020, the complainant posted a registered airmail item (the Item) to the complainant's family member in Sydney, Australia. Upon the complainant's enquiry, the complainant learnt that the Item had been handed over to a freight forwarder on 1 April. On 20 April, the complainant further enquired with the Post Office (PO) of the progress and was advised that the Item had been conveyed by surface route on 7 April on grounds that no airmail service for Australia was available from 9 April and an announcement about the change of postage method had been made on PO's website.

582. The complainant was dissatisfied with PO for changing the conveyance method without being consulted. The complainant alleged that PO had overcharged the postage and most importantly, conveyance by surface route would cause a serious delay. Besides, PO insisted that the complainant had to submit a Mail Enquiry Form, or PO could not advise the complainant of the mail status.

583. Against the above background, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against PO for improprieties in handling the Item.

The Ombudsman's observations

584. The Office understood that the service of PO in this particular case fell short of the complainant's expectation. Nevertheless, the impact of the COVID-19 pandemic on aviation and the provision of international mailing services was indeed unprecedented. Having examined the information provided by PO, the Office found that PO did exhaust every possible means to obtain extra air allotment to meet the rising demand for airmail service and to clear the backlog of airmail items. However, since the supply of air allotment was scarce, PO was unable to procure sufficient air allotment. Given the uncertainty of air service worldwide during that period and in light of Universal Postal Union's advice, the Office considered it reasonable of PO to have resorted to sea conveyance.

585. In general, the Office expects government departments to communicate with people who are affected. However, in this case, since the mail volume was huge and provision of senders' contact information was not mandatory, it was not feasible for PO to contact each sender to obtain his or her consent on the change of conveyance mode. The Office noted that PO had advised in its press release of 9 April how the affected senders could apply for refund of postage difference. The Office found that PO had tried to provide information to the public as far as practicable. As regards the submission of a Mail Enquiry Form, PO had explained why it was necessary. The Office considered that PO had followed up the complainant's mail tracing enquiry in accordance with its established procedure. There was no evidence of maladministration on the part of PO.

586. With the above, The Ombudsman considered this complaint against PO unsubstantiated. The Office noted from the press releases of PO that it often gave a generic description of time delay for postal service to various destinations. The Ombudsman considered it more desirable if PO could provide the public with more specific information on estimated delay time for different regions such that senders could make better informed posting decisions, and at the same time PO could manage client expectations.

Government's response

587. PO accepted The Ombudsman's recommendation and has started to publish notices since September 2020 to inform the public about the extra time required for conveyance owing to the insufficient air traffic capacity for specific destinations. Such approach has enhanced the transparency of information, which allowed senders be better informed about the actual circumstances before posting. This also enables PO to manage senders' expectations. PO would update the notice from time to time to keep the public abreast of the latest situation of postal services and any other new developments.

Post Office

Case No. 2020/1344 – (1) Failing to provide information about the extra tracking points for a mail item sent by e-Express service; and (2) Unreasonably changing the conveyance mode from air to surface

Background

588. On 24 March 2020, the complainant posted an airmail item to the complainant's client in the United States (the Item) which the complainant expected to arrive at the destination in two weeks. As the Item was not yet delivered after a month, the complainant called the Post Office (PO) for enquiry and was advised that the Item had been conveyed by surface route instead and was loaded on board on 3 April. However, the mail tracking page did not show any relevant information by then. During a telephone conversation with a staff member on 22 May, the complainant learnt that the Item had arrived in the United States on 5 May. As the tracking page still showed no such information, the complainant requested for the provision of the aforesaid delivery status by PO in writing, but the email reply from PO dated 23 May only mentioned that PO on 3 April adopted the surface route for the conveyance of the Item. The complainant lodged a complaint with the Office of The Ombudsman (the Office) and alleged that –

(a) PO failed to provide information on each stage of mail conveyance on its tracking page, and failed to affirm the complainant in the email reply dated 23 May that the Item had arrived in the United States on 5 May; and

(b) PO was suspected of impropriety for changing the conveyance mode for the Item to surface route without consulting the complainant.

The Ombudsman's observations

589. The Office understood that the postal services of PO fell short of the complainant's expectation. Having examined PO's explanation, and relevant records and information, the Office considered the impact of the COVID-19 pandemic on aviation and the provision of international mailing services was indeed unprecedented, and delay in postal services was beyond the control of PO. After reviewing the situation, PO issued

four press releases between 7 February and 25 March to announce to the public the delays in airmail services. Attempting to resolve the problem, PO actively pursued every possible means to increase the traffic capacity for airmail, but these attempts went futile given the scarcity of the supply of air allotment in the market. As a result, PO announced suspension of airmail services to the United States in March and April to prevent backlog of airmails from increasing any further. Taking into account the prevailing circumstances and the Universal Postal Union's advice, it was not unreasonable for PO to have decided to convey the backlog of mails (including the Item) at the Air Mail Centre by surface route instead. As for the failure to seek consent from individual senders before changing the conveyance mode, PO had explained the difficulties involved, which were considered understandable.

590. With regard to mail tracking information, PO clarified that the terms of e-Express service does not include mail enquiry service but four tracking points would be provided instead. In addition, audio-recording of the telephone conversation dated 22 May substantiated that the PO staff did make unreserved effort in answering the complainant's enquiry. Under such circumstances, PO's failing to provide information on extra tracking points in its written reply dated 23 May did not constitute any act of maladministration. In spite of this, given the special circumstances, it would be more desirable for PO to have given a more comprehensive explanation on the handling of the incident in its reply dated 23 May.

591. With the above, The Ombudsman considered this complaint against PO unsubstantiated. The Office noted that PO did make announcement for public information through press releases but often it only gave a generic description for different countries. The Ombudsman suggested that it would be more desirable if PO could provide the public with more specific information on estimated delay time for different countries or regions such that senders could make better informed posting decisions, and at the same time PO could better manage client expectations.

Government's response

592. PO accepted The Ombudsman's recommendation and has started to publish notices since September 2020 to inform the public about the extra time required for conveyance owing to the insufficient air traffic capacity for specific destinations. Such approach has enhanced the transparency of information, which allowed senders be better informed about the actual circumstances before posting. This also enables PO to

manage senders' expectations. PO would update the notice from time to time to keep the public abreast of the latest situation of postal services and any other new developments.

Post Office

Case No. 2020/3719 – (1) Unreasonably suspending the requirement of obtaining signature from recipients during the pandemic; and (2) Failing to ensure the quality of delivery service after suspending the above requirement

Background

593. In September 2020, the complainant submitted the original copy of a certificate of Canadian citizenship to the Consulate General of Canada in Hong Kong when applying for the renewal of passport. As the complainant did not receive any reply, the complainant enquired with the Consulate about the progress on 9 November, and was advised by the staff of the Consulate that the new passport, together with the original copy of the certificate of Canadian citizenship, was posted back to the complainant's address via Local CourierPost service (the Item). The complainant therefore enquired with the Post Office (PO) about the status of the Item. The staff of PO replied on 10 November that signature was obtained for the receipt of the Item at 11:45 am on 6 October, but the postman concerned could no longer recall any specific information of the case such as whether the purported recipient was male or female. The complainant claimed that the complainant's family member was present at the delivery premise all the time till 3:00 pm on the purported delivery date, and there was no delivery by postman. On the following day, staff of PO called the complainant again and clarified that the Item was not signed for acknowledgment of receipt as the requirement was suspended due to the epidemic. Instead, postmen would record the delivery status on their own.

594. Later on, the complainant was made aware that the Item might have been delivered to another flat by mistake. With the help of a relative of the occupant purported to have received the Item by mistake, the complainant eventually retrieved the Item on 21 November.

595. Taking all these into account, the allegations made by the complainant could be summarised as follows –

(a) PO's unilateral suspension of the requirement of obtaining signature for receipt of mail was considered suspicious of violating the terms of service. The complainant alleged that PO suspended the procedure of signing for receipt casually without giving due

consideration to the fact that the mails affected may be posted by the Consulate and related official agency, and contained important documents. Besides, some of the courier service providers in the private sector continued to offer service of signing for receipt of mail during the epidemic. The complainant was of the view that it was unreasonable for PO to suspend such requirement on the ground of containing the spread of COVID-19; and

(b) Following the suspension of requiring signature for receipt of mail, PO did not put in place any other measure to monitor whether mail items requiring signature for receipt were delivered as addressed, but allowed postmen to record the delivery status on their own. Such practices failed to safeguard the interest of the public.

The Ombudsman's observations

596. PO expressed that the postman is believed to have delivered the mail to a wrong address and offered its apology for such a mistake. The Office of the Ombudsman (the Office) considered that the delivery service in this case indeed fell short of the public's expectation and caused trouble to the complainant. It was for the perseverance of the complainant that the important documents were fortunately retrieved in the end. The Office noted that PO would handle this case in a serious manner.

597. The Office considered it understandable for PO to direct postmen not to ask the person who received a mail item to sign to acknowledgment receipt on the PDA in view of the epidemic, despite such arrangement was not ideal. Investigation of the Office showed that PO had made relevant announcement on its website, put up notices at post offices, and also issued special notification to government departments and major customers posting in bulk after deciding to suspend the arrangement of signing for receipt of mail. The Office was satisfied that PO did make every effort to inform the public of such arrangement as far as practicable.

598. However, the Office considered that there was a lack of objective corroborative evidence by solely relying on postmen to take down the addressee's floor and flat number as a record of successful delivery, which safeguarded neither the interest of the addressees nor that of postmen. The Office also believed that, if not for the complainant's perseverance, the Item might not be retrieved with solely PO's record. In all fairness, it was not unusual for occasional man-made mistakes in delivery service. Given the fact that millions of mail items requiring signature for receipt were

handled by PO from March to December in 2020, the number of cases in dispute was only 344, which was indeed a very small number. The crux was how to continue to safeguard the interest of the addressees to the level not inferior to the original arrangement after suspending the requirement of signing for receipt of mail.

599. The Office was pleased to note that PO reviewed its practices upon the intervention of the Office and planned to introduce the measure of keeping electronic record for "successfully delivered" mail items by the second quarter of 2021 the latest (if the threat of the epidemic persists).

600. All in all, The Ombudsman considered this complaint against PO partially substantiated and would like to take the opportunity to urge PO to implement the measure of keeping electronic record for "successfully delivered" mail items as soon as possible, with a view to monitoring the quality of PO's delivery services effectively, thus safeguarding the interest of the addressees.

Government's response

601. PO accepted The Ombudsman's recommendation and has implemented the measure of keeping electronic record for "successfully delivered" mail items since 31 May 2021.

Registration and Electoral Office

Case No. 2020/2930(I) – Failing to provide the statistics on registered electors

Background

602. The complainant wrote to the Registration and Electoral Office (REO) on 9 July 2020, requesting the following information under the Code on Access to Information (the Code) –

(a) the annual statistics on registered electors for the eight Legislative Council (LegCo) functional constituencies (FCs) of the, namely the medical, health services, engineering, education, legal, accountancy, social welfare, and architectural, surveying, planning and landscape FCs, from 1998 to 2002 and in 2005 and 2010 (Information (a)); and

(b) the annual statistics on registered individual electors for the information technology FC from 1998 to 2015 (Information (b)).

603. On 28 July 2020, REO made a written reply to the complainant (Reply (a)). With respect to Information (a), REO stated that it did not keep the records on the numbers of electors for the relevant FCs on the registers of electors from 1998 to 2011. Regarding Information (b), REO provided the complainant with the statistics on registered electors for the information technology FC from 2012 to 2015. On the same day, the complainant wrote to REO again enquiring the reasons for the failure to provide all of Information (a) and part of Information (b). On 14 August, REO replied in writing to the complainant (Reply (b)) and provided the statistics on registered electors for the nine FCs involved in Information (a) and Information (b) at the LegCo general elections in 1998, 2000, 2004 and 2008 (election years).

604. REO explained that the information of registered electors was updated regularly and time-expired records would be removed. REO reiterated that it did not keep records of the numbers of electors for the FCs concerned pertaining to the registers of electors from 1998 to 2011. Noting that the reports on LegCo general elections submitted to the Chief Executive by the Electoral Affairs Commission (EAC) in LegCo election years (i.e. 1998, 2000, 2004 and 2008) contained the voter registration

statistics of the said election years relevant to Information (a) and Information (b), REO extracted the information from the said reports and provided the complainant with the relevant statistics in Reply (b). Other than that, REO was unable to further provide the complainant with the statistics on registered electors in or before 2011.

605. The complainant considered that REO had a duty to properly keep the information of registered electors for the purpose of providing it for the public's perusal. The complainant therefore lodged a complaint of maladministration against REO for failing to provide the information concerned as a result of the deletion of time-expired records.

The Ombudsman's observations

606. REO adheres to the Government's regulations and circulars on handling routine administrative work, including the management of voter registration records. Regarding the records of voter registration (e.g. voter registration application forms, copies of registers of electors and other related documents), REO follows the procedures for records retention and destruction in accordance with the requirements as set out in the records retention and disposal schedules (disposal schedules) approved by Government Records Service (GRS) Director.

607. The Office of The Ombudsman (the Office) had no objection to REO's explanation of retaining and destroying records according to the disposal schedules approved by GPS. The Office was of the view that, while following the disposal schedules for the destruction of records, REO should also take the initiative to select and preserve information with archival value amidst such records, including the annual statistics on registered electors.

608. The Office pointed out that the principal responsibility of determining the retention or destruction of relevant records falls on REO, and that there is no conflict nor contradiction between destroying the records and preserving information with archival value in the records.

609. The Office noted that the election reports published by the EAC contain the statistics on registered electors in each FC in past LegCo general elections, including the statistics in 1998, 2000, 2004 and 2008 as requested by the complainant. The Office opined that the decision of the EAC to retain the above information reflects the value for retention and reference of the voter registration statistics despite the long time lapse.

610. The Office considered that the compilation and publication of voter registration statistics are key duties of REO. REO publishes the voter registration statistics on the Internet every year. Information on voter registration, whether related to an election year or not, is important as it enables the Government and the public to have a clear understanding of the distribution and evolvement of electors. It is, therefore, of great historical and research value. REO should consider in a comprehensive and forward-looking manner when determining the archival value of the records. In the long run, REO should retain the annual voter registration statistics systematically for reference by the Government and for public inspection.

611. In view that REO has retained the annual voter registration statistics covering the duration of two general elections, and that only the voter registration information of the non-election years in 2011 and earlier is not retained, which results in an incomplete record of the information concerned, The Ombudsman considered the complaint partially substantiated and recommended REO to keep annual registered electors statistics constantly (as permanent records) for reference by the Government and for public inspection.

Government's response

612. REO accepted The Ombudsman's recommendation and was approved by GPS on 18 October 2021 the permanent retention of published records related to the statistics on voter registration. The published information in relation to voter registration statistics will continue be made and kept available for public access on the voter registration website and DATA.GOV.HK, and the proposed retention and disposal schedules will cover the statistical information uploaded onto the two platforms to formalise the arrangement of permanent retention of such published statistics.

Radio Television Hong Kong

Case No. 2020/0724(I) – Refusing to provide information related to the production of a television programme

Background

613. The complainant wrote to Radio Television Hong Kong (RTHK) and made a request under the Code on Access to Information (the Code) on 18 February 2020 for "the information on which it was based" (the Information) in a television programme (Programme A) broadcast on 14 February 2020. In its written reply to the complainant on 24 February 2020, RTHK indicated that Programme A "featured hot topics in the society presented in a sarcastic way and reflected different voices from the public, and its information was collected from different sectors of the society".

614. On the same day, the complainant wrote to RTHK again and indicated that the information he requested was "the information on which the production of the programme concerned was based, but not how the information was collected". On 28 February 2020, RTHK gave a further written reply to the complainant, indicating that "the content of Programme A was all based on information collected from different sectors of the society, including media reports, interviews, etc. The whole programme involved a lot of information and RTHK was unable to provide information on each and every item."

615. Dissatisfied with RTHK's reply, the complainant wrote to RTHK on the same day, for the third time to enquire whether RTHK's refusal to provide the information was based on any one or more of the reasons stipulated in Part 2 of the Code (Information which may be refused). In its third written reply to the complainant on 9 March 2020, RTHK stated that no further information could be provided.

616. The complainant thus lodged a complaint with the Office of The Ombudsman (the Office) against RTHK for its incompliance with the provisions of the Code in handling his request for information.

The Ombudsman's observations

617. According to the Code, Government departments (including RTHK) are required to make available Government-held information to

the public as far as practicable, so as to enable adequate public understanding of the Government and its services. Paragraph 1.14 of the Code stipulates that departments are not obliged to acquire information not in their possession nor create a record which does not exist.

618. It is explained in paragraph 2.1.2 of the Guidelines on Interpretation and Application (the Guidelines) of the Code that when a request for information is to be refused or partially refused, the applicant concerned must be informed and provided with the reasons.

619. RTHK explained that production staff would collect reference materials during preparation of programmes and hence would temporarily maintain these reference materials collected through different channels, including interviews and media reports. Such reference materials were not required to be submitted to supervisors nor be kept after completion of programme production. Production staff could decide by themselves whether or not to keep the reference materials according to the situation. RTHK has established a policy for archiving RTHK programmes. For reference materials collected for programme production, RTHK considered that there was no practical need to establish guidelines for retention and disposal of such materials, which is also the common practice in the industry.

620. RTHK further stated that the Information was mainly news information available on the Internet collected during programme production, which was of no archival value after completion of programme production. As such, RTHK did not retain them.

621. RTHK admitted that the staff responsible for the case misinterpreted the complainant's remark of "please provide the reference materials of the relevant reports (i.e. Programme A)" as enquiring the sources of information, and thus replied to the complainant that the reference materials came from media reports, interviews, etc., but did not state clearly that the Information could not be provided as it was not retained.

622. The Ombudsman considered that according to paragraph 1.14 of the Code, RTHK is not obliged to acquire information not in possession. When receiving the complainant's request, RTHK did not retain the Information and hence was not able to provide the complainant with it. In view of this, RTHK did not violate the provisions of the Code by not providing the complainant with information that it no longer possessed.

623. Nevertheless, RTHK kept stating in its replies that "the information was collected from different sectors of the society", "the whole programme involved a lot of information and RTHK was unable to provide information on each and every item", "no further information could be provided by RTHK", but did not clearly indicate that it did not retain the Information. It was inevitable that the complainant believed that RTHK was holding the Information but refused to provide the complainant with it, which led to this complaint. RTHK could hardly shift the blame.

624. Besides, according to paragraph 2.1.2 of the guidelines, RTHK is obliged to inform the complainant of the genuine reason when a request for information is refused. However, despite a number of replies, RTHK failed to inform the complainant of the genuine reason for refusal. As such, The Ombudsman was of the view that although RTHK misunderstood the complainant's request in the first place, as regards the course of event and its outcome, RTHK did not strictly follow the requirements of the Code in handling the complainant's request for information.

625. The Ombudsman had no special comment on RTHK's practice of allowing the production staff to decide whether or not to retain the reference materials collected during the programme preparation. As for RTHK's statement that there was no need to establish guidelines for retention and disposal of such reference materials, The Ombudsman had reservations on it.

626. The Ombudsman considered that the original intention of the Government in formulating the Code is to disclose the information it possesses to the public as much as possible, such that the public can fully understand the Government and its services. As such, even if the department considered that there was no need to retain particular reference materials after the work was completed, it should also stipulate the relevant practice in its procedures or guidelines for compliance by its staff. If the public asks for relevant information, the department could then quote its documented procedures or guidelines for explanations to avoid misunderstandings. This was also a good public administration practice. RTHK, as a Government department, should adhere to this set of principles.

627. The Ombudsman understood that RTHK allowed production staff to decide whether or not to retain the reference materials. However, RTHK should explain to the production staff clearly about the rank of officers who can exercise discretion to decide whether or not to keep the reference materials during the preparation of programmes, and the types of information covered by the relevant arrangement.

628. Based on the above analysis, The Ombudsman considered this complaint partially substantiated and recommended that RTHK –

(a) take reference from this case, to strengthen staff training to ensure that they handle the requests for access to information under the Code in a correct sense, and strictly comply with the requirements of the Code and its related guidelines when handling the relevant requests; and

(b) stipulate in the guidelines for production staff that the rank of officer who can exercise discretion to decide whether or not to keep the reference materials during the preparation of programmes, and the types of information covered by the relevant arrangement.

Government's response

629. RTHK accepted The Ombudsman's recommendations and has taken the following follow-up actions –

(a) updated staff training materials for new recruits by incorporating the requirements and application of the Code, and also uploaded relevant training materials onto its intranet for reference by staff; and

(b) reviewed and updated the archive policy to align with the enhanced information technology systems and the development of RTHK. The relevant policy specifies the types of information required to be retained and the preservation methods. The policy also specifies that only officers at the rank of Senior Programme Officer or above can exercise discretion on whether to retain certain items.

Radio Television Hong Kong

Case No. 2020/2071(I) – Refusing to provide information about the quantities of personal protective equipment distributed to the Department and its stock level in 2020

Background

630. The complainant emailed Radio Television Hong Kong (RTHK) on 3 March 2020 and made a request to RTHK under the Code on Access to Information (the Code) for information about different types of anti-epidemic supplies (including surgical masks (but not limited to masks manufactured by the Correctional Services Department (CSI masks)), N95 masks, protective gowns, protective coverall suits, 50ml alcohol-based handrub, 50ml alcohol-based handrub gel and bleach) including–

(a) the quantities of the above anti-epidemic supplies distributed by the Government Logistics Department (GLD) to RTHK from 23 January to 29 February 2020 (Information (a));

(b) the inventory of the above anti-epidemic supplies of RTHK on 23 January 2020 (Information (b)); and

(c) the inventory of the above anti-epidemic supplies of RTHK on 29 February 2020 (Information (c))

631. On 21 April 2020, RTHK emailed the complainant and informed the complainant that the request was refused. Since the global demand for anti-epidemic supplies had risen sharply, the Government had faced fierce competition when procuringanti-epidemic supplies. Thus, disclosure of the related information would undermine the bargaining power of the Government in the procurement of anti-epidemic supplies, and hence the request was refuesed. On the same day, the complainant emailed RTHK requesting for a review.

632. On 3 June, RTHK replied to the complainant that it still considered inappropriate to disclose the related information for the avoidance of undermining the Government's bargaining power in the procurement of anti-epidemic supplies. As such, RTHK upheld the decision of refusal.

633. The complainant opined that the requested information did not involve sensitive information such as the Government's procurement procedures, the purchase price and the names of suppliers. In addition, the quantities of anti-epidemic supplies distributed in the Government departments were related to the occupational safety and health of the staff of various departments, and the public's considerations when receiving public service which was of great public interest. Furthermore, given that the epidemic situation in Hong Kong as well as the worldwide procurement of anti-epidemic supplies had been eased, the Government had no reason to refuse the disclosure of the information to the complainant at that time. The complainant therefore lodged a complaint with the Office of The Ombudsman (the Office)alleging that RTHK's refusal to disclose the requested information was groundless.

The Ombudsman's observations

634. Government departments are required by the Code to make available Government-held information to the public as far as practicable, so as to enable adequate public understanding of the Government and its services, unless the information requested falls into the categories of information which may be withheld under part 2 of the Code, including –

(a) paragraph 2.9(a): Information the disclosure of which would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by a department;

(b) paragraph 2.9(b): Information the disclosure of which would harm or prejudice the competitive or financial position or the property interests of the Government; and

(c) paragraph 2.9(c): Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department.

635. RTHK explained that its refusal was based on consideration of the rapid development of the Coronavirus Disease (COVID-19), resulting in a surge of global demand for anti-epidemic supplies. At the early stage of the outbreak, RTHK had encountered a lot of difficulties in the procurement ofanti-epidemic supplies. RTHK's anti-epidemic supplies was provided by GLD. If RTHK disclosed the information requested by the complainant, suppliers would have knowledge of RTHK's demand of

anti-epidemic supplies, thus undermining the bargaining power of GLD on the procurement of anti-epidemic supplies. GLD may then be unable to purchase sufficient quantities of anti-epidemic supplies for use by frontline staff in various departments, which in turn affect their occupational safety and health, as well as the public health and the Government's implementation of epidemic prevention measures, which were of great public interest.

636. Nevertheless, in view of the stabilised supply of the various kinds of anti-epidemic supplies, RTHK emailed the complainant on 17 September and provided him with all the requested information in light of the latest development.

Information (a) to (c) relating to masks

637. RTHK indicated that disclosure of information on Information (a) to (c) relating to masks would undermine the bargaining power of GLD in the procurement of masks in the commercial market. The Office noted RTHK's concern.

638. Nevertheless, The Office noticed that the Financial Services and the Treasury Bureau (FSTB), being the housekeeping bureau of GLD, publicly admitted in a press release issued on 7 February 2020 that GLD had a limited stock of about 12 million masks (of which three million were non-CSI masks) for the needs of Government departments. On 16 February, FSTB mentioned in another press release that the Government had kept the overall consumption of masks at about 8 million per month, with GLD's stock of about 12 million masks at that time, the stock kept by individual departments and CSD's production, the total stock of masks could only last for about two months. On the other hand, the Government had earlier disclosed through a press release on 26 January that the monthly production of CSI masks of CSD was 1.1 million on average.

639. The Ombudsman was of the view that it is indisputable that there was a global shortage of masks at that time, and that CSD's production of CSI masks could not meet the demand of Government departments. Moreover, the Government had made it public that its stock of masks for various departments could only last for about two months. Given that the supply side knew fully well on the demand of the buyers, there was no sign to show that RTHK's disclosure of information relating to masks in Information (a) to (c) would further undermine the bargaining power of GLD in sourcing masks through commercial channels. As such, The

Office considered that RTHK had been over cautious about the possible consequences of disclosing the requested information.

640. Besides, a critical shortage of masks and occasional rumours about the misuse of CSI masks had attracted much concern and doubts from the public. There had also been calls for the Government's explanation on the production and sale of CSI masks, rendering "masks" an issue of public interest. The Ombudsman opined that disclosure of information relating to masks in Information (a) to (c) could address the public's misunderstanding that the Governmentwas concealing information on the consumption of CSI masks.

641. In light of the above, when considering whether information relating to masks in Information (a) to (c) should be disclosed, RTHK had not given due consideration to all circumstances, including the public interest involved in disclosure.

Information (a) to (c) relating to other anti-epidemic supplies

642. Unlike the information relating to masks, the information about the other anti-epidemic supplies in Information (a) to (c), including the supply, stock and consumption of various anti-epidemic supplies in RTHK and other Government departments, had never been released.

643. The Ombudsman considered that disclosure of such information may lead to disclosure of the demand of individual departments and the Government on anti-epidemic supplies, which could undermine the Government's bargaining power in negotiating the prices and terms when procuring anti-epidemic supplies, and in turn make adverse impact on GLD's procurement. As such, The Office considered it justified for RTHK to invoke paragraph 2.9 to refuse the complainant's request for information on the other anti-epidemic supplies in Information (a) to (c).

644. In light of the above, The Ombudsman considered that RTHK had failed to observe the code when making certain decisions (i.e. those related to the information on "masks") in handling the complainant's request. The consideration made was not comprehensive enough. Therefore, The Ombudsman considered this complaint partially substantiated. The Ombudsman recommended RTHK to learn from experience and strengthen its staff training, so as to ensure its staff will carefully consider each request and relevant factors, and strictly comply with the requirements of the Code and its Guidelines on Interpretation and

Application when handling requests for information from the public in future.

Government's response

645. RTHK accepted The Ombudsman's recommendation. It has updated its staff training materials for new recruits by incorporating information on the Code and uploaded relevant training materials onto its intranet for its staff's reference.

Social Welfare Department

Case No. 2019/1011 – Failing to properly follow up a complaint against a residential care home for the elderly

Background

646. According to the complainant, her mother-in-law was admitted to a residential care home for the elderly (RCHE A) between 26 December 2018 and 30 January 2019. Between 28 January and 1 March 2019, the complainant made the following complaints to the Social Welfare Department (SWD)'s Licensing Office of Residential Care Homes for the Elderly (LORCHE) –

(a) RCHE A unreasonably and suddenly increased her mother-in-law's home fees (the payment concerned) without giving reasonable notice (Allegation (a));

(b) A resident had been physically abused by the staff of RCHE A (Allegation (b)) (The complainant informed SWD that her mother-in-law had witnessed the incident. The complainant also provided SWD with the assaulted resident's name, and requested SWD to investigate); and

(c) The English name of RCHE A was not registered on the directory of licensed RCHEs (Allegation (c)) (the complainant suspected RCHE A of operating without a licence).

647. On Allegation (a), LORCHE replied that during an inspection by its staff, RCHE A could not produce the relevant admission agreement (the Agreement). LORCHE staff immediately admonished RCHE A. The complainant was dissatisfied that SWD did not sanction RCHE A for this. On Allegation (b), LORCHE had recorded the incident, but it did not launch any investigation forthwith, nor did it inform the complainant how SWD would follow up the incident. On Allegation (c), LORCHE insisted that RCHE A was licensed. LORCHE also stated that if the complainant suspected RCHE A of operating without a licence, she should institute litigation herself. The complainant criticised LORCHE for shirking its monitoring duty over RCHEs.

648. In sum, the complainant considered Allegations (a), (b) and (c) indicative of RCHE A having breached the Code of Practice for Residential Care Homes (Elderly Persons) (the CoP), but LORCHE had not taken any proper follow-up action. Dissatisfied, the complainant requested the Office of The Ombudsman (the Office) to follow up.

The Ombudsman's observations

Allegation (a)

649. Allegation (a) involved the following two critical issues –

(a) whether RCHE A was in breach of the CoP in demanding the payment concerned on 26 January 2019 (Critical Issue (a)); and

(b) whether RCHE A had signed the Agreement with the relative of the complainant's mother-in-law (Critical Issue (b)).

650. On Critical Issue (a), LORCHE confirmed that RCHE A was in breach of the CoP by failing to give a written notice of not less than 30 days before suddenly increasing the home fees of the complainant's mother-in-law.

651. On Critical Issue (b) and whether the complainant had visited RCHE A and received the original Agreement on 25 January 2019, RCHE A and the complainant gave divergent accounts. On 20 June 2019, the complainant sent an email to SWD, attached with the transcript (the Transcript) of a conversation alleged by the complainant to have taken place between the complainant and RCHE A's person-in-charge on 28 January 2019. SWD reckoned that the Transcript showed that the complainant's husband had signed an agreement.

652. The Office noted that RCHE A could not produce the Agreement signed by the parties all along, and the claim of RCHE A's staff that they had handed the Agreement to the complainant and never asked her to return it subsequently was implausible. Moreover, the Transcript showed that the person-in-charge of RCHE A had requested the complainant's husband to sign the document, but had yet to meet him so far. The Office was of the view that the conversation could not clearly show that the complainant's husband had signed the Agreement. The Office, therefore, considered LORCHE's findings with respect to Critical Issue (b) to be unsound and unconvincing.

653. The Office also pointed out that LORCHE was to monitor, via its inspection mechanism, whether RCHEs had provided residents with quality service and care facilities, and issued Requirement Notices to ensure a high standard of residential care service, thereby effectively safeguarding the interests of care home residents.

654. While LORCHE's findings on Critical Issue (b) were arguable, it issued the Requirement Notice on 20 May 2019 requiring RCHE A to implement improvement measures regarding the failure to properly keep and produce admission agreements for inspection, so as to avoid recurrence of similar disputes.

655. On the complainant's allegation that RCHE A requested its resident to move out from the care home on 27 January 2019 without giving her sufficient notice, SWD considered it unable to judge between the divergent accounts from the two sides in the absence of objective evidence. The Office believed that the conversation alleged by the complainant took place between RCHE A and her husband during the day of their dispute. As no audio recording was made for that conversation, nor was there any written record showing that RCHE A had requested the complainant's mother-in-law to leave the care home the following day, it was understandable for SWD to have been uncertain about the actual circumstances and not taken any further action.

656. The Ombudsman considered that while LORCHE had deficiency in handling Allegation (a), it had properly issued the Requirement Notice requiring RCHE A to implement improvement measures.

Allegation (b)

657. LORCHE had followed up Allegation (b), such as conducting a surprise inspection, making enquiries with residents and staff, and contacting the Police over the incident. LORCHE had confirmed that RCHE A was in breach of the CoP by failing to submit the Special Incident Report within three days, and had issued the Requirement Notice to RCHE A.

658. The Office had scrutinised the Special Incident Report submitted by RCHE A. The standard form it used at the time indeed did not have a field for filling in the date of making a report to the Police.

659. The Ombudsman considered SWD to have properly followed up Allegation (b). Nevertheless, SWD should step up the monitoring of RCHE A to ensure its compliance with the Requirement Notice and timely submission of reports in the event of special incidents.

Allegation (c)

660. LORCHE had confirmed that RCHE A was not operating without a licence. LORCHE had also required RCHE A to rectify the error on its receipts and staff business cards upon the complaint made by the complainant.

661. The Ombudsman considered SWD to have properly followed up Allegation (c).

Other allegation - delayed replies

662. The Office noted that after SWD replied to the complainant on 24 May 2019, she wrote to SWD more than ten times between June and October. SWD issued a series of consolidated replies to her between August and December. Given the many enquiries raised by the complainant, SWD needed time to search for information to give her replies. SWD's replies might not be considered as quick enough, but were not excessively delayed.

663. In light of the above, The Ombudsman considered this complaint partially substantiated and recommended that SWD –

(a) instruct staff to learn a lesson from this case and avoid making unsound conclusions by carefully investigating disputes involving a disagreement over facts between the two disputing parties; and

(b) step up inspection of RCHE A to ensure that it would comply with the instruction issued by SWD on 20 May 2019 and stringently adhere to the CoP, thereby safeguarding the interests of residents.

Government's response

664. SWD accepted The Ombudsman's recommendations, and has taken the following follow-up actions –

(a) Learning from the experience in handling this complaint, LORCHE has reminded staff to be prudent in conducting investigation on disputes among parties and avoid making unsound conclusions; and

(b) LORCHE has stepped up inspection and closely monitored the performance of RCHE A. The latter has shown improvement in its submission of Special Incident Report in accordance with the requirements of the CoP.

Social Welfare Department

Case No. 2020/0442(I) – Refusing to provide the number of agency quota places of an elderly home

Background

665. According to the complainant, he made a request to the Social Welfare Department (SWD) on 23 November 2019 for the number of agency quota places of a residential care home for the elderly (RCHE A) in each financial year for the period from 12 October 2009 to 23 November 2019 (the concerned information) pursuant to the Code on Access to Information (the Code). In its reply dated 6 December 2019 (should actually be 4 December 2019), SWD refused to disclose the concerned information to the complainant by citing paragraph 2.14(a) (i.e. third party information) of the Code.

666. The complainant considered SWD's refusal decision unreasonable, and was of the view that SWD should disclose the information concerned on the following grounds –

(a) the agency quota places of RCHE A were fully subsidised by public money and involved public interest;

(b) the agency quota places, which were subject to SWD's regulation, were not third party information. SWD should know the number of agency quota places of RCHE A and have the authority to disclose it to a third party and the public; and

(c) the number of residential places of RCHEs (including that of RCHE A) should be made public according to the licensing requirements.

The Ombudsman's observations

667. The Office of The Ombudsman (the Office) was of the view that, in deciding disclosure or otherwise of the concerned information to the complainant, SWD should consider whether there had been an explicit or implicit understanding from the third party that it would not be further disclosed, and whether the public interest in disclosure would outweigh any harm or prejudice that would result. Nevertheless, the Office had

reservations about SWD's view that the number of self-arranged residential places of RCHE A, which were funded by public money and subject to SWD's monitoring, was third party information.

668. The Office's investigation found that SWD's refusal of the complainant's request was based solely on RCHE A's previous objection to disclosing other information to the complainant, and SWD did not seek RCHE A's opinion concerning the complainant's request this time. It was not until the Office's intervention that SWD consulted RCHE A and was told at the second time that it agreed to disclose the concerned information. It showed that before consulting RCHE A, SWD merely considered its previous stance and conjectured that it would object to disclosing the concerned information. SWD had never explicitly or implicitly learnt from the third party (i.e. RCHE A) that the concerned information was not to be disclosed. SWD's decision-making process was improper.

669. Furthermore, even if RCHE A did not agree to disclose the number of agency quota places, SWD should have weighed the public interest in disclosure against the harm or prejudice that disclosure might result. As the agency quota places were services funded by public money, the organisations had to publish information concerning the waiting list arrangement, assessment and allocation of agency quota places. The Office was of the view that information about agency quota places should be as open and transparent as that of SWD's quota places to facilitate monitoring by the public and understanding by elderly persons on the waiting list and it would be in the public interest to do so. If SWD could publish the total number of places of subvented RCHEs, the Office saw no overriding reasons not to do the same for the agency quota places. Disclosure of such information by SWD would in no way harm or prejudice the subvented RCHEs.

670. The Ombudsman considered that SWD's initial refusal to provide the concerned information to the complainant was not in line with the Code. Therefore, The Ombudsman considered this complaint substantiated and recommended that SWD strengthen staff training to ensure their strict adherence to the Code and its Guidelines on Interpretation and Application when handling public requests for information.

Government's response

671. SWD accepted The Ombudsman's recommendation. At the complainant's request, SWD reviewed and rescinded the initial refusal

decision and provided the concerned information to the complainant in July 2020. Gaining experience from the above case, SWD would adhere to the provisions and procedures of the Code when handling public enquiries related to the Code in future. Besides, SWD organises workshops on the application of the Code for its staff every year to explain the requirements under the Code. SWD has also enhanced relevant training in its orientation programmes in 2020-21 and reminded staff to comply with the requirements of the Code when handling similar enquiries.

Social Welfare Department

Case No. 2020/1197(I) – Unreasonably obliterating certain information from a document and delay in reply

Background

672. According to the complainant, he was accused by his ex-wife of abusing his daughter and acted indecently towards his daughter. On 7 March 2019, a Multi-disciplinary Case Conference on Protection of Child with Suspected Maltreatment (the MDCC) was held by the Social Welfare Department (SWD), with the presence of a representative from the Hong Kong Police Force (HKPF), a teacher from the school at which the complainant's daughter was attending and a social worker, etc. The complainant made a request to SWD for a copy of the Notes of the said MDCC (Information (a)), the Social Enquiry Report prepared by the social worker (Information (b)), the report of psychological assessment and treatment in respect of his daughter (Information (c)) and all the medical reports of his daughter (Information (d)).

673. In relation to Information (a) to (c), SWD provided the relevant documents to the complainant with some information contained therein obliterated. The complainant was of the view that the obliteration of such information was unreasonable (Allegation (a)) and stated the following –

(a) For Information (a), SWD informed the complainant that some information contained in the Notes of the MDCC was provided by Kowloon West Regional Headquarters of HKPF (including information related to police investigation of a suspected child abuse case). In the absence of consent from HKPF, such information should not be further disclosed. Therefore, SWD refused to disclose it to the complainant by citing paragraph 2.14(a) of the Code on Access to Information (the Code) (i.e. third party information). The complainant claimed that he was the "data subject" of such information as the discussion in the said MDCC was related to the accusation of his ex-wife against him. Hence, he considered that he had the right to access to the unobliterated copy of the said Notes;

(b) For Information (a) to (c), SWD informed the complainant that the personal data of individuals other than him and his daughter was also contained in the requested documents. Therefore, SWD

refused to disclose those data to the complainant by citing paragraph 2.15 of the Code (i.e. privacy of individual). The complainant stated that his purpose for obtaining the requested information was to know about the recent condition of his daughter and to show his care for her. The District Court had issued a court order regarding the custody of his daughter, ruling that the information of his daughter should be shared between the complainant and his ex-wife. The complainant considered that SWD had misused the reason of privacy by unreasonably obliterating certain information when providing information on his daughter; and

(c) As for Information (d), the complainant stated that SWD had delayed in providing response to his request for information made on 26 March 2020 (Allegation (b)).

The Ombudsman's observations

Allegation (a)

674. The Office of The Ombudsman (the Office) examined both the obliterated and unobliterated versions of Information (a) to (c) as provided by SWD.

675. Regarding Information (a), the Office accepted that the information provided by HKPF on the suspected child abuse case during the MDCC should be kept confidential. Disclosure of such information would inhibit frank discussion of the case among the HKPF, SWD and other representatives present. The Office considered it reasonable to refuse the disclosure of such information to the complainant by citing paragraph 2.10(b)(i) of the Code.

676. As for the complainant's allegation that he, being the data subject of Information (a), should be entitled to access to the unobliterated version of the Notes of the MDCC, the Office considered that the complainant was not the only data subject involved in the MDCC even though the discussion of the said meeting was related to the allegation of his ex-wife against him. The MDCC in fact involved discussions and follow-up actions on the suspected abuse case of his daughter amongst SWD and other representatives present, and the Notes of MDCC contained their personal data. For Information (a), it was reasonable for SWD to seek advice from the representatives present in the MDCC on whether they agreed to have

their personal data disclosed. In the absence of consent from the data subjects concerned (including the teacher and the school social worker), SWD has obliterated the relevant personal data contained in the documents. The Office considered it in order for SWD to invoke paragraph 2.15 of the Code to refuse the disclosure of their personal data. In fact, SWD had not obliterated the information provided by the school at the MDCC in Information (a) because the school had given its consent.

677. Having said that, SWD invoked paragraph 2.14(a) of the Code as a reason to refuse the disclosure of information provided by HKPF in its letters dated 6 March 2020 and 27 April 2020 which might have caused misunderstanding to the complainant that Information (a) was "third party information". In this regard, the Office considered that inadequacy was found on the part of SWD in citing a wrong provision of the Code. In any case, SWD has agreed to strengthen staff supervision and training having regard to the experience of this case.

678. As regards Information (b) and (c), personal data of other individuals were contained in the social enquiry report and the psychological assessment and treatment report of the complainant's daughter. As the other data subjects concerned refused to disclose their personal data, it was reasonable for SWD to obliterate their personal data before releasing Information (b) and (c) to the complainant. The Office considered it appropriate for SWD to invoke paragraph 2.15 of the Code to explain the non-disclosure of such data. In fact, SWD had not obliterated the personal data of the social worker, and of the parents and girlfriend of the complainant contained in Information (b) because they had given consent.

679. Regarding the court order on the custodial matters of the complainant's daughter, the Office examined the said order and agreed with SWD's explanation that Information (a) to (c) did not fall under the definition of school documents as stated in the said court order. Accordingly, the relevant provisions in the order which ruled that the complainant and his ex-wife could share school documents among each other did not apply to the information involved in this case.

680. In conclusion, The Ombudsman considered that it was reasonable for SWD to refuse to disclose the full version of Information (a) to (c) to the complainant by invoking paragraphs 2.10(b)(i) and 2.15 of the Code. Therefore, Allegation (a) is unsubstantiated.

Allegation (b)

681. As to the request for information made on 26 March 2020, the Office considered that SWD should clearly point out to the complainant in its reply letter of 27 April 2020 that SWD was not in possession of the psychological report of his daughter. It was unsatisfactory that SWD only clarified with the complainant on this matter on 2 July 2020 (more than three months after receipt of the complainant's request for Information (d)) after the intervention of the Office. Therefore, the Office opined that Allegation (b) was substantiated. In any case, SWD had already clarified with the complainant on this matter.

682. To conclude, The Ombudsman considered this complaint partially substantiated and recommended that SWD should strengthen staff training so as to ensure that they would strictly comply with the requirements of the Code and provide timely and proper replies to the public when handling requests for access to information.

Government's response

683. SWD accepted The Ombudsman's recommendation and has clarified with the complainant in July 2020 that SWD was not in possession of the psychological report of his daughter. Gaining experience from the above case, SWD would adhere to the provisions and procedures of the Code when handling public enquiries related to the Code in future. Besides, SWD organises workshops on the application of the Code for its staff every year to explain the requirements under the Code. SWD has also enhanced relevant training in its orientation programmes in 2020-21 and reminded staff to comply with the requirements of the Code when handling similar enquiries.

Social Welfare Department

Case No. 2020/1331A – Failing to properly follow up a number of complaints against an elderly home according to the current monitoring mechanism

Background

684. According to the complainant, her mother (the Resident) was admitted to hospital in September 2016 and needed to use a walking frame after discharge from hospital. In addition, the Resident was suffering from multiple illnesses. In October 2019, she was admitted to a residential care home for the elderly (the RCHE). On 20 December 2019, she was admitted to hospital due to bacterial infection. She was discharged and returned to the RCHE on 22 December. The resident was re-admitted to hospital on 6 January 2020 owing to bodily discomfort. She was diagnosed with infection from five different types of bacteria. On 18 January 2020, she passed away due to complications.

685. When the complainant was tidying up the Resident's possessions at the RCHE on 24 January 2020, she discovered that the packaged food kept in the Resident's bedside table had marks of rodents' bites all over, and there were traces of destruction and wastes left by rodents nearby. In addition, the storage box of the nursing gloves was opened while rodents' droppings and traces of destruction were observed. She instantly filed a complaint with the RCHE. The home manager replied that they had already lodged a complaint with the Food and Environmental Hygiene Department (FEHD), but both FEHD and the RCHE were unable to get rid of the rodents. The complainant recalled that during October 2019, she witnessed that a health worker of the RCHE did not render wound care properly for the Resident. During the Resident's hospitalisation in January 2020, the complainant noticed that the Resident might have been inserted with a Foley catheter of the wrong size by the RCHE. The complainant called the Social Welfare Department (SWD) on 30 January 2020 to lodge a complaint about the above issues and SWD replied to her on 14 April 2020 in writing ("the reply dated 14 April").

686. Dissatisfied with the reply dated 14 April, the complainant considered that SWD had not conducted an in-depth investigation and she sent the Office of the Ombudsman (the Office), SWD, and FEHD an email on 5 May 2020 ("the email dated 5 May") raising various issues and new

complaints and requesting SWD to investigate her previous complaint again.

687. In the email dated 5 May, the complainant queried the following –

(a) whether SWD had exercised due diligence in monitoring the RCHE; and

(b) whether the monitoring of rodent infestation and hygiene problems of the RCHE fell under the purview of SWD or FEHD.

The Ombudsman's observations

688. The Office collected evidence during the investigation of this complaint with the objective to enquire, analyse and comment on whether SWD had monitored the RCHE and followed up on every complaint lodged by the complainant in accordance with the established mechanism on the administrative front, and whether the mechanism had any administrative deficiency throughout the incident.

689. On the complainant's allegation regarding nursing service, SWD had followed up in accordance with the established mechanism. Nevertheless, the Office would not comment on whether the RCHE's care and nursing service had been up to the required professional standard, since it fell outside the Office's ambit of handling complaints related to maladministration.

690. In regard to rodent infestation, information revealed that the Licensing Office of Residential Care Homes for the Elderly (LORCHE) of SWD had been following up on the RCHE's handling of the issue since their attention was brought to the problem in September 2019, up till the receipt of complaint from the complainant on 30 January 2020. According to relevant requirements, the RCHE was responsible for ensuring the cleanliness and hygiene of the RCHE and proper care for residents. Information provided by SWD indicated that the RCHE had already adopted various rodent control measures and sought assistance from the management office of the concerned building and FEHD. The Office noted there were external factors relating to the rodents problem of the RCHE, which could not be solved completely within a short period of time. Although the situation was undesirable, it was beyond SWD's control. In conclusion, SWD had, by and large, followed up on the rodent infestation problem from a regulatory point of view. As to whether the complainant

had withdrawn her complaint on rodent infestation as explained by SWD, it in fact would not affect SWD's regulatory responsibility and follow-up work. Moreover, as both parties gave different accounts of the incident, the Office would not comment on this.

691. The Office was aware that RCHEs were not required by the Residential Care Homes (Elderly Person) Ordinance, its subsidiary legislation and the Code of Practice for Residential Care Homes (Elderly Persons) (CoP) to notify the residents and their family members about rodent infestation problem. SWD clarified that LORCHE had, since the rodent infestation problem came to their knowledge, reminded the RCHE on numerous occasions to maintain communication with the residents and their family members on this matter. Nevertheless, the Office was of the view that the residents and their direct family members should be entitled to be informed of exceptional situations which may affect the residents' daily living, health and hygiene. This would not only enable them to have relevant information for making suitable decisions, but also facilitate them to cooperate with the RCHE in its operation and needs. It was undesirable that, under the existing regulatory regime, RCHEs might not take the initiative to inform the residents and their family members of issues such as rodent infestation despite repeated reminders from SWD.

692. Overall speaking, the Office considered that SWD had followed up on the various complaints raised by the complainant on the RCHE and requested the RCHE to rectify their shortcomings based on the investigation results in accordance with the established mechanism. SWD had also shared the investigation results with the complainant on 14 April, and 8 August and 21 August 2020 respectively.

693. Having scrutinised the relevant inspection reports submitted by SWD, the Office confirmed that SWD had carried out its regulatory duties by conducting surprise inspections to the RCHE according to the prevailing mechanism.

694. SWD had issued an advisory notice to the RCHE for improvement according to the mechanism, instead of reprimanding or warning the RCHE as the complainant demanded. The Office opined that this should not be interpreted as condoning the RCHE.

695. In view that there was no evidence to indicate that SWD followed up inadequately or inappropriately on the various complaints made by the complainant against the RCHE, or evidence to indicate that SWD did not carry out its regulatory role properly in respect of the RCHE, The

Ombudsman considered the complaint against SWD unsubstantiated and recommended that SWD should review the existing CoP to examine if a notification mechanism could be established, requiring residential care homes to notify the residents and their direct family members / guardians in the event of exceptional situations, such as rodent infestation, which may affect the daily living, health and hygiene of residents.

Government's response

696. SWD accepted The Ombudsman's recommendation and followed up by issuing a management letter to all RCHEs to require them to take initiative to inform the residents and / or their family members in the event of exceptional situations such as rodent infestation which may affect the daily living, health and hygiene of residents. Subject to the nature and severity of individual incidents, RCHEs should also submit Special Incident Reports to LORCHE in a timely manner. SWD will provide clearer guidelines in the CoP when an opportunity for revisions arises in future.

Social Welfare Department

Case No. 2020/2070(I) – Refusing to provide information about the quantities of personal protective equipment distributed to the Department and its stock levels in 2020

Background

697. The complainant emailed the Social Welfare Department (SWD) on 3 March 2020 making a request under the Code of Access to Information (the Code) for the following information regarding anti-epidemic supplies (including surgical masks (not limited to the surgical masks manufactured by the Correctional Services Department (CSI masks), N95 masks, protective gowns, protective coveralls, 50 ml hand sanitizers and bleach) –

(a) The quantities of the above anti-epidemic supplies distributed to SWD by the Government Logistics Department (GLD) during the period from 23 January 2020 to 29 February 2020 (Information (a));

(b) The stock level of the above anti-epidemic supplies kept by SWD as at 23 January 2020 (Information (b)); and

(c) The stock level of the above anti-epidemic supplies kept by SWD as at 29 February 2020 (Information (c)).

698. On 21 April 2020, SWD replied the complainant by email indicating that in view of the global upsurge in demand for the anti-epidemic supplies, the Government was facing fierce competition in the procurement work and SWD was of the view that disclosure of further information to the public was not advisable. In order not to undermine the bargaining power of SWD and other government departments in the procurement of anti-epidemic supplies, SWD refused to disclose the requested information to the complainant by invoking paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code (relating to the management and operation of the public service).

699. On the same day, the complainant made a review request to SWD. On 10 June 2020, SWD advised the complainant that the epidemic had become more severe, and the Government expected that there would be

increasing difficulty in the procurement of anti-epidemic supplies worldwide. As the disclosure of the requested information might facilitate suppliers in estimating the demand of the Government / individual departments for various anti-epidemic supplies and thereby prejudice the bargaining power of the Government, SWD decided to uphold its decision of refusing to disclose the requested information to the complainant.

700. The complainant was of the view that the requested information did not involve any sensitive information such as procurement procedures, purchase price, and the name of suppliers. Besides, the information on the quantities of anti-epidemic supplies distributed to the government departments involved significant public interest as it was relevant to the occupational health and safety of the government staff, and that the public would take it into consideration when using public services. Given that the epidemic situation in Hong Kong as well as the worldwide procurement of anti-epidemic supplies had been eased, it was unreasonable for the Government to refuse disclosure of the requested information at that time. The complainant thus lodged a complaint with the Office of The Ombudsman (the Office) alleging that SWD's decision of refusing to disclose the requested information was groundless.

The Ombudsman's observations

Information (a) to (c) relating to masks

701. In response to the Office's investigation, SWD stated that the disclosure of information on Information (a) to (c) relating to masks would undermine the bargaining power of SWD and other government departments in the procurement of masks, which may in turn induce financial loss to the Government and prejudice the effective conduct of government operations. The Office understood SWD's worries.

702. However, the Office noticed that the Financial Services and the Treasury Bureau (FSTB), the policy bureau of GLD, publicly admitted in its press release of 7 February 2020 that GLD had a limited stock of 12 million masks at the moment (including around three million non-CSI masks) for meeting the needs of government departments. FSTB issued another press release on 16 February 2020, stating that the Government had kept the overall consumption of masks at around eight million per month and GLD had at that time a stock of about 12 million masks. Together with the stock kept by individual departments and production by the Correctional Services Department (CSD), the total stock could last for

only about two months. On the other hand, the Government had earlier disclosed through a press release on 26 January 2020 that the monthly production of CSI masks by CSD was 1.1 million on average.

703. The Office was of the view that it was a hard fact that the global supply of masks was in shortage at that time. Also, the information that the production volume of masks by CSD was not enough to meet the consumption by government departments, and that the Government's stock level of masks could only last for about two months, was already made available to the public. Given the supply side knew fully well that the demand side had pressing needs for masks, disclosure of information on Information (a) to (c) relating to "masks" to the complainant would not necessarily aggravate the situation or undermine the bargaining power of SWD and other government departments in the procurement of masks in the commercial market. In view of the above, the Office considered that SWD had been overcautious about the possible consequences of disclosing the information under request.

704. Furthermore, there was a severe shortage of masks in the market at that time, but there were rumours of misuse of CSI masks from time to time which drew public attention and induced requests for the Government to disclose the information on the production and sale of CSI masks. As a result, the "masks" issue had become an issue of public interest. The Office considered that disclosing the information on Information (a) to (c) relating to "masks" could address the public's misunderstanding that the Government was concealing information on the consumption of CSI masks. SWD in fact mentioned in its reply on 10 June 2020 to the complainant's review request (21 April) that the Government had revealed part of the information relating to masks in a press release issued on 26 January 2020, so as to strike a balance between transparency of information and bargaining power in procurement. The press release was also appended to the reply. This showed that SWD was aware of the public attention concerning this issue but still refused to disclose such information.

705. SWD apparently had not taken into consideration all circumstances, including the public interest involved in the disclosure, when deciding whether to disclose the information on Information (a) to (c) relating to "masks".

Information (a) to (c) relating to other anti-epidemic supplies

706. Unlike the case of "masks", information on other anti-epidemic supplies in Information (a) to (c), including the supply, stock level and consumption in SWD and other government departments had never been disclosed to the public.

707. SWD stated that the information requested by the complainant could reveal the demand and consumption of the anti-epidemic supplies of individual departments and the Government as a whole. The Office considered that disclosure of such information may facilitate the suppliers to have a better grasp of the situation and estimate the Government's demand for those anti-epidemic supplies, and in turn undermine the bargaining power in the procurement and competitiveness for better contractual terms and cause negative impact on SWD in the procurement exercise. It was therefore justified for SWD to invoke paragraphs 2.9(a), 2.9(b) and 2.9(c) of the Code to refuse the disclosure of information to the complainant.

708. In conclusion, The Ombudsman considered that SWD had failed to observe the Code when making certain decisions (i.e. those relating to the information on "masks") in handling the complainant's request. The consideration made was not comprehensive enough. Therefore, The Ombudsman considered this complaint partially substantiated and recommended that SWD should learn from experience and strengthen staff training to ensure that the staff would consider each and every request and relevant factors carefully and strictly follow the requirements of the Code and its Guidelines on Interpretation and Application when handling information requests from the public in future.

Government's response

709. SWD accepted The Ombudsman's recommendations and has already provided the relevant information to the complainant in August 2020 having regard to the fact that the supply of anti-epidemic supplies had improved. Gaining experience from the above case, SWD would adhere to the provisions and procedures of the Code when handling public enquiries related to the Code in future. Besides, SWD organises workshops on the application of the Code for its staff every year to explain the requirements under the Code. SWD has also enhanced relevant training in its orientation programmes in 2020-21 and reminded staff to comply with the requirements of the Code when handling similar enquiries.

Transport Department

Case No. 2019/5283 – Unreasonably refusing to install plastic bollards on a road section to prevent drivers from cutting the double white lines

Background

710. In November 2019, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Transport Department (TD). According to the complainant, "No Right Turn" warning signs were put up at the entrance/exit of the subject estate (the Estate) as well as the location outside the Estate to remind drivers that vehicles were not allowed to cross the double white lines to enter the subject Estate from the northbound carriageway of the road to the west of the Estate (the road concerned) or turn right into the northbound carriageway of the road concerned from the Estate. However, drivers often ignored the warning signs and crossed the double white lines. The complainant asked TD to install facilities outside the Estate to prevent drivers from turning right illegally. TD replied and informed the complainant that it proposed to install a larger "No Right Turn" warning sign. The complainant considered TD's proposal ineffective and suggested erecting less bulky reflective plastic bollards between the double white lines. The complainant also pointed out that there were other roads in Hong Kong where reflective plastic bollards were installed. After reviewing the situation, TD considered that plastic bollards were not suitable for the case of the subject Estate, and it would be risky if the bollards were hit and sent flying, posing danger to nearby road users and pedestrians. In view of the above, TD did not install plastic bollards at the road section, and intended to construct a central dividing facility as a long-term improvement measure for the road concerned. The complainant considered TD's refusal to install plastic bollards was unreasonable.

The Ombudsman's observations

711. The Office was of the view that TD had explained in detail the rationale for not providing plastic bollards at the road concerned outside the Estate. According to TD's design guidelines, plastic bollards were used for dividing lanes in opposite directions to lower the risk of head-on collisions, not for preventing vehicles from turning right. Taking into

account the relatively high traffic flow at the road concerned, TD opined that if the bollards were hit and sent flying, it would likely pose a risk to nearby road users and pedestrians. TD concluded that it was inappropriate to install plastic bollards at the road section after making reference to internal guidelines and conducting risk assessments on the condition of the road section. The Office considered that, from the administrative perspective, TD's handling of the case was not improper.

712. TD also pointed out, while there were examples of using plastic bollards at other roads in Hong Kong, the traffic condition and the road alignment, width, gradient, etc. at each location were different. No direct comparison could be made. The Office came to the view that TD's explanation was reasonable.

713. Overall, The Ombudsman considered that this complaint against TD was unsubstantiated. Given that TD had commenced a review on the design of the entrance/exit of the subject Estate at the road concerned as well as the traffic facilities nearby, and had gauged the views of the local community and other departments regarding the feasibility of providing a central dividing facility, The Ombudsman urged TD to speedily complete the review and implement relevant traffic safety improvement measures.

Government's response

714. TD accepted The Ombudsman's recommendation. From January to August 2020, TD conducted three rounds of local consultations on the proposal of providing a central island at the location outside the Estate's entrance, and improved the design based on the views of the stakeholders. Subsequently, TD issued a Works Request Form to the Highways Department at the end of August 2020. The works concerned were completed in March 2021.

Transport Department

Case No. 2019/5708 – Issuing to a third party the Certificate of Particulars of Motor Vehicle showing the vehicle owner's personal particulars without his authorisation and consent

Background

715. On 6 December 2019, the Office of The Ombudsman (the Office) received a complaint from a police officer (the complainant) against the Transport Department (TD). On the 24th of the same month, the Office received the reply slip of the Notes for Complainants signed by the complainant.

716. The complainant alleged that the complainant's vehicle registration mark was uploaded to social media sites, resulting in doxxing activities against the complainant. The complainant learned from the information from TD that someone had applied to TD for a Certificate of Particulars of Motor Vehicle (Certificate) and obtained the complainant's personal particulars, including Identity Card (ID Card) number and residential address. As the complainant was not engaged in any business or transaction relating to traffic and transport and had not authorised the aforesaid application, the complainant considered that the inadequacy in TD's procedures for Certificate applications had rendered the privacy of vehicle owners vulnerable.

The Ombudsman's observations

717. As the Certificates contain such important particulars as the full name, address and ID Card number of registered vehicle owners, the Office considered it reasonable that the owners worry about unauthorised use or malicious disclosure of such particulars. Having scrutinised the relevant information and response from TD, the Office agreed that TD had to balance the needs among different stakeholders. Besides, the prevailing legal framework did not allow TD to adopt excessive administrative measures to impose restrictions on applicants of Certificate under the Road Traffic (Registration and Licensing of Vehicles) Regulations (the Regulations).

718. The Office was pleased to note that in response to the recent concerns about personal particulars of registered vehicle owners being

disclosed, TD had started to review the application procedures for Certificates as well as formulating measures to better protect the personal particulars of registered vehicle owners.

719. When the Regulations were made in 1984, personal privacy was not a matter of much concern in society, and therefore the personal particulars of registered vehicle owners could be obtained by going through simple application procedures for Certificates under the Regulations. TD had previously conducted public consultation during which the Office of the Privacy Commissioner for Personal Data and some stakeholders expressed concerns about the personal particulars on Certificates. Hence, the Office considered that in the long run, TD should conduct a comprehensive review to examine the purpose of the Regulations, scope of information to be provided and the application procedures for Certificates in order to better protect the personal particulars while serving the purpose of the Regulations. For example, TD could explore whether it could provide only information in the register that could accommodate the use specified by the applicant, and request the applicant to provide necessary document of proof for that specified use.

720. Overall, The Ombudsman considered this complaint unsubstantiated.

721. The Office opined that ID Card number is important data for identification, which could be used for applications for personal records (such as birth certificate and certificate of registration of marriage) maintained by the Government or organisations, credit cards, loans or other important issues. Misuse of registered vehicle owners' personal particulars obtained through Certificate applications might result in serious nuisance or loss suffered by those owners. The Office considered it sufficient to provide only part of the ID Card number (e.g. A123XXXX) if the purpose is to use the information to verify the identity of the registered vehicle owner among people with identical names. In fact, many organisations had adopted similar practice to collect only part of the ID Card number. The Office recommended that TD consider revising the content of Certificates such that the ID Card number of the registered owner would not be shown in full.

722. The Office was aware that the Property Alert offered by the Land Registry (LR) was a service to alert property owners to the status of their properties. By subscribing the service, property owners would receive an email alert of the delivery of any instrument relating to their properties on the day following the date on which the instrument was delivered to LR.

In that case, property owners could take appropriate and prompt actions against any unexpected and suspicious instruments. The Office considered that TD could refer to LR's Property Alert as an example and explore whether it could actively inform registered vehicle owners of issuance of Certificates relating to their vehicles. For example, TD could notify registered vehicle owners by electronic means (including email and/or SMS) when an application for Certificate had been submitted by what person/company so that the owners could take prompt actions against suspicious applications.

723. In the second half of 2019, there were cases where personal particulars of registered vehicle owners were published on the internet. Registered vehicle owners whose personal particulars were obtained through Certificate applications and maliciously disclosed or misused for causing them disturbances might want to change their vehicle registration mark. In the Office's opinion, TD should consider helping those vehicle owners.

Government's response

724. TD accepted The Ombudsman's recommendations and has taken the following follow-up actions –

(a) TD is actively considering the recommendation of showing only part of the vehicle owner's ID Card number on the Certificates;

(b) TD rolled out the "Email Notification Service for the Issue of the Certificate of Particulars of Vehicle" on 2 January 2021. Individual registered vehicle owners could subscribe to a free-of-charge email notification service through GovHK. In case a Certificate is issued to a person or an organisation for a vehicle owned by a subscribed vehicle owner, a notification email would be sent by TD to the subscribed vehicle owner; and

(c) In case a vehicle owner's personal data obtained through the Certificate were disclosed maliciously by doxxing activities, he/she might submit an application to change the registration mark of his/her vehicles. TD would handle quickly any of such applications received in accordance with the law.

Vocational Training Council

Case No. 2020/1334(R) – Unreasonably refusing to provide the administrative guidelines relating to staff performance, including completion of appraisal reports and mechanism of reward and punishment

Background

725. On 28 April 2020, the complainant lodged a complaint with the Office of The Ombudsman (the Office) against the Vocational Training Council (VTC).

726. According to the complainant, she worked in VTC's Institute of Professional Education and Knowledge from November 2018 to July 2019. On 28 August 2019, the complainant cited provisions of VTC Code on Access to Information (the Code) to gain access to the following two pieces of information from VTC –

(a) assessments, comments and reports with regard to the complainant's performance during her employment with VTC (Information (a)); and

(b) VTC's administrative guidelines on completing appraisal reports and establishing a mechanism for reward and punishment as well as the related appeal procedures (Information (b)).

727. On 13 September 2019, VTC stated in its written reply to the complainant that Information (a) was her personal data, which could only be obtained by applying for access to personal data. VTC further advised that Information (b) consisted of internal documents for serving staff's reference. Such documents were not to be disclosed to the public, including the complainant.

728. As regards VTC's refusal to provide Information (b), the complainant lodged a complaint with the Office, alleging that VTC's decision was unreasonable since Information (b) was neither confidential nor restricted and could be accessed anytime by staff via circulars and/or through VTC's intranet.

The Ombudsman's observations

729. Having studied VTC's Administrative Guides to Performance Management System and Disciplinary Rules, the Office confirmed that these documents were about VTC's mechanisms for appraising staff performance and punishing staff who had committed disciplinary offences, and were categorised as information relating to "staff management" as specified in paragraph 27.4(a) of the Code. VTC's refusal to disclose Information (b), therefore, did not constitute a violation of paragraph 27.4(a) of the Code.

730. Nevertheless, the Office noted that VTC had not clearly indicated in its reply to the complainant on 13 September 2019 that Information (b) was categorised as information to be withheld from disclosure in accordance with paragraph 27.4(a) of the Code. In addition, VTC had not cited paragraph 27.4(a) of the Code as justification for its refusal to comply with the complainant's request. In fact, VTC's staff were not expressly required under the Code to cite provisions regarding information to be withheld from disclosure as justification for refusing to provide such information.

731. The Office took the view that VTC's decision not to disclose Information (b) to the complainant was in compliance with the provisions of the Code regarding withholding certain information from disclosure. Nevertheless, VTC should have provided a more comprehensive explanation in its reply letter of 13 September by, for instance, citing relevant provisions as justification for its decision. Doing so could give the complainant a better understanding of the situation which in turn could have prevented the complainant from disputing and complaining about VTC's decision.

732. The Office also noted that the Code did not specify whether the public interest test described in paragraph 26[1] applied to all the reasons for refusing to disclose information laid out in paragraph 27. After a careful reading of paragraph 27 of the Code, the Office found that nearly all the reasons for refusing to disclose information involved some form of the public interest test. For instance, paragraph 27.1 of the Code stipulated that VTC could refuse to disclose "information the disclosure of which would harm or prejudice the security of VTC properties and premises". The Office noted that subparagraph 27.4(a) was the only exception as it

[1] Paragraph 26 of the VTC Code stipulated that the VTC will consider disclosure of information taking into account the public interest factors as weighed against any possible risk of harm or prejudice ("public interest test").

did not mention a harm/prejudice test, thus allowing VTC to refuse to disclose the information in question regardless of the public interest and harm/prejudice in disclosure, as well as the nature and sensitivity of such information.

733. The Office considered that the scope of information referred to in subparagraph 27.4(a) (i.e. "VTC's operations and managements of its member institutions, staff and students") covered a wide range and variety of information of varying sensitivities. VTC should further clarify the application of 27.4(a) by, for instance, introducing a harm/prejudice test to bring it in line with other subparagraphs of paragraph 27. VTC should also consider applying the public interest test mentioned in paragraph 26 to all the scenarios set out in paragraph 27 to provide guidance to the public and VTC's staff while striking a balance between the need for information transparency and maintenance of operational confidentiality of VTC.

734. In view of the above, The Ombudsman considered that VTC's decision not to disclose Information (b) to the complainant was in compliance with the provisions set forth in the Code in respect of withholding information from disclosure. Therefore, The Ombudsman considered the complaint unsubstantiated and recommended that VTC should –

(a) consider introducing new provisions to the Code to require VTC's staff to cite, as appropriate, provisions of the Code when explaining to an applicant requesting access to information their reasons to refuse to provide all or part of the information in question; and

(b) consider reviewing the provision of subparagraph 27.4(a) of the Code to further clarify the remit of the provision with a view to providing guidance to the public and VTC's staff while striking a balance between information transparency and operational confidentiality of VTC, given that VTC has to uphold the principles of openness and transparency in its governance as far as possible as a mostly publicly-funded statutory body.

Government's response

735. VTC accepted The Ombudsman's recommendations and has reviewed and revised the following paragraphs of the Code –

(a) paragraph 27, which has been revised to require staff to refer to the provisions of paragraphs 27.1 to 27.9 when explaining to an applicant requesting access to information their reasons for denying his/her request; and

(b) subparagraph 27.4(a), which has been revised to introduce a harm/prejudice test for disclosure of information that might affect VTC's management and operation, with a view to applying the public interest test to all the scenarios set out in subparagraph 27.4(a), bringing it in line with other subparagraphs of paragraph 27, and striking a balance between the need for information transparency and maintenance of operational confidentiality of VTC.

Water Supplies Department

Case No. 2019/4069, 2019/4089, 2019/4133, 2019/4137 and others – (1) Insufficient preparation before reconfiguration of the water distribution network, causing sediment to enter the water supply system; (2) Wrongly alleging that the contamination of water supply was caused by the estate's internal pipework; (3) Delay in resuming water supply after suspension; (4) Failing to properly test the safety of potable water; (5) Failing to replace the network's bitumen-lined and dilapidated pipes; (6) Wrongly alleging that water suspension was caused by repair works carried out by consumers; and (7) Failing to address enquiries and compensation demands

Background

736. On 27 August 2019, the Water Supplies Department (WSD) carried out urgent repairs on a section of the freshwater main in the district and made plans for rearrangement of the water distribution network. That night, the residents of a housing estate in the district (Estate A) found the freshwater discoloured, with black particles in it. The next day, water supply to Estate A was suspended. WSD deployed water wagons to provide temporary water supply. On 1 September 2019, water supply to Estate A resumed when temporary water pipes were used instead to supply water to the Estate. Thereafter, those temporary water pipes continued to supply water, and the original water supply from the Government water main at the street to the internal plumbing system (IPS) of Estate A (the Original Supply Route) never resumed.

737. The Office of The Ombudsman (the Office) received similar complaints against WSD from a number of complainants (the Complainants). Their complaints are summarised as follows –

(a) WSD failed to make adequate preparations for rearrangement of the water distribution network, supervise the rearrangement process throughout, maintain communication and make immediate response. As a result, the fresh water of Estate A was discoloured and contaminated with black sediment (Allegation (a));

(b) On 28 August 2019, WSD, in response to enquiries, indicated that water contamination was caused by problems of the pipes of the IPS of Estate A. This had affected the handling of the water suspension incident by the management company (MC) of Estate A (Allegation (b));

(c) WSD claimed that the quality of Government water supply had resumed normal on 28 August 2019. Nevertheless, when WSD flushed the water pipes of Estate A on that day and the next, bitumen particles continued to enter the water tanks of Estate A from the Government water main (Allegation (c));

(d) Residents of Estate A already noticed on 28 August 2019 that the Government water supply contaminated with bitumen kept flowing into the sump tanks of Estate A, and requested on the night of 29 August that WSD replace the water supply with a new and clean source. However, WSD started to connect the system with temporary water source only on 30 August, causing delay in resumption of water supply (Allegation (d));

(e) WSD only conducted tests on the outlook, colour and turbidity of drinking water and failed to carry out appropriate drinking water tests to address the concerns of the residents of Estate A over whether it was safe to use the water with bitumen for cooking (Allegation (e));

(f) Despite the fresh water having been contaminated, WSD did not suspend water supply to the shops in the mall of Estate A (the Mall). Restaurants in the Mall used the contaminated fresh water to cook, putting the health of their customers at risk (Allegation (f));

(g) Bitumen may be hazardous to health. Yet, WSD failed to replace those aged water mains with internal bitumen lining in the water distribution network (Allegation (g));

(h) On 11 September 2019, WSD and Estate A discussed resumption of the Original Supply Route. On 17 September, the Department carried out the related works, but bitumen contamination in the water supply source remained after rearrangements for feeding water to the first sump tank was completed. The works thus came to a halt. It was improper of WSD to have suggested and started

the works without careful prior examination of the original water supply system (Allegation (h));

(i) Between 28 and 31 August 2019, WSD made several announcements on the expected time of water supply resumption on its website (including 11:59 p.m. on 28 August, 12 noon on 30 August, 12 midnight on 31 August, and 4 p.m. on 31 August). Such information was incorrect because water supply eventually resumed on 1 September (Allegation (i));

(j) WSD wrongly stated in its water suspension notice that water supply was suspended because residents needed to repair the water pipes and asked WSD to close the water valve (Allegation (j));

(k) WSD took a very long time to resume the Original Supply Route to Estate A (Allegation (k));

(l) WSD failed to respond to the claims for damages filed by Estate A with respect to the water suspension (Allegation (l)); and

(m) In respect of the suspension to Estate A, a complainant had made enquiries to WSD for a number of times since late August 2019. He did not receive reply from WSD and further called WSD to inquire the situation and as yet, no responses were received. He was dissatisfied with WSD in ignoring his enquiries (Allegation (m)).

The Ombudsman's observations

Allegation (a)

738. WSD had already explained that sediment is common in water supply systems. Since sediment might be stirred up upon rearrangement of the water distribution network, WSD had taken reference from experience and flushed the Government water main until the water became visibly clear again during rearrangement of the network. From an administrative perspective, the Office considered that WSD had taken measures to flush away the visible sediment. In fact, there were no similar problems in the housing estates nearby which used the same source of water supply. WSD had been investigating the reasons why sediment was still able to enter the IPS of Estate A. The Ombudsman, therefore, considered that at this stage there was no evidence of impropriety in

WSD's rearrangement of the water distribution network that day. Allegation (a) was unsubstantiated.

739. The Office viewed that the measures taken to prevent sediment from entering the IPS of a building involved professional judgement about waterworks installations and repairs. It was not an administrative matter for the Office to comment. In any event, WSD had learned from this incident and arranged periodic flushing of the Government water main in the district, stepped up staff training and issued guidelines on urgent rearrangement of water distribution networks.

Allegations (b) and (c)

740. If a large number of black particles were present in the fresh water supplied to Estate A and it was solely a result of problems in the Government water supply, it followed that those housing estates nearby also served by the Government water mains along the same street should experience anomaly in water quality on a massive scale as well. Nevertheless, the Office learned from news reports that only individual domestic consumers in the housing estates near Estate A had reported that there were black particles in their fresh water as a result of WSD's rearrangement of water distribution network. WSD records also showed that those housing estates did not experience similar problems as Estate A. Besides, the shops in the Mall which got direct water supply from the Government water main did not find any problems in water quality after 28 August 2019. In this light, WSD considered that the presence of black particles even after the water tanks of Estate A had been cleaned was due to the problems of the IPS of the Estate. The Office found such inference not unreasonable. Regarding the reasons why a huge number of black particles were still present after the water tanks had been cleaned, again, it was not an administrative matter the Office could comment on.

741. On the quality of Government water supply, WSD had pointed out that the detached internal bitumen lining in steel water mains would not affect water safety. It took fresh water samples from the Government water main on 28 August 2019 for laboratory testing, and the results showed that the water was safe and suitable for drinking.

742. In light of the above, The Ombudsman considered Allegations (b) and (c) unsubstantiated.

Allegation (d)

743. WSD had explained the factors for consideration in providing another water supply point. The Office was of the view that it was not unreasonable for WSD to consider resuming the Original Supply Route as the preferred solution. As could be seen from the sequence of events, WSD first assisted Estate A in cleaning the water tanks in order to resume water supply via the Original Supply Route. Another supply point was considered only after repeated attempts to clean the tanks had failed to solve the problem at once. In the interim, water wagons and water tanks were deployed to maintain water supply to the residents. When WSD decided on 29 August 2019 to provide another water supply point, the related works was carried out and completed on the following day. Nevertheless, resumption of water supply met tremendous difficulties and resumption of water supply was delayed. Having considered WSD's explanation and its efforts in resuming water supply, The Ombudsman considered Allegation (d) unsubstantiated.

Allegation (e)

744. Bitumen material might release benzo(a)pyrene. According to WSD's laboratory tests and the consultant's study, the level of benzo(a)pyrene released by bitumen would not significantly increase when the water is heated up. In view of the concern of Estate A's residents, WSD had taken water samples for conducting laboratory tests of the benzo(a)pyrene level. Results showed that the benzo(a)pyrene level in the water samples was lower than 0.002 microgram per litre, which was far lower than Hong Kong's standard for drinking water at 0.7 microgram per litre. Since WSD had conducted laboratory tests for the water to address the concerns of Estate A's residents, and explained in detail the test standard and results, The Ombudsman considered Allegation (e) unsubstantiated.

745. Nevertheless, having scrutinised the relevant records, the Office opined that if WSD had included the information on drinking water standard in its written notification to the Owners' Committee (OC) of Estate A on 5 September 2019 about the results of the laboratory tests, and mentioned that the amount of benzo(a)pyrene released by bitumen would not significantly increase when the water was heated up, the residents of Estate A would understand better how WSD's tests could prove that the water was safe and suitable for drinking. The Office hereby advised WSD to remind its staff to provide detailed information about drinking water

safety standards in similar situations to address the concerns of the parties involved.

Allegation (f)

746. WSD had elaborated on how water was supplied to the shops in the Mall. Since the water supply systems used by the shops and the domestic units were different, and the shops did not experience the same problem as the residents of Estate A, it was not unreasonable that WSD had not discussed water suspension with the shops. In this light, The Ombudsman considered Allegation (f) unsubstantiated.

Allegation (g)

747. WSD stated that it had appointed a consultant in early 2019 to conduct a study for formulating a comprehensive strategy to tackle the steel fresh water mains with detachment of internal bitumen lining. The study was still in progress. In other words, the proposals on tackling the water mains with detachment of internal bitumen lining were still under examination. WSD had no definite arrangements at the moment.

748. The Office considered it not unreasonable for WSD to await the formulation of a comprehensive strategy before taking actions to tackle the steel freshwater mains with detachment of internal bitumen lining. In addition, WSD already decided on a proposal to repair the concerned section of Government water main on the street outside Estate A in order to resolve the case of Estate A. Relevant works had already commenced. As such, The Ombudsman considered Allegation (g) unsubstantiated.

Allegation (h)

749. WSD pointed out that on 11 September 2019, it had met with the OC and MC of Estate A and agreed that if the land mains of the IPS of the Estate A could be thoroughly flushed, the Original Supply Route could be resumed. The Office did not see any impropriety in the arrangement. The fact that the cleaning efforts did not yield satisfactory results was not foreseeable during initial planning. Besides, the unsatisfactory results should have nothing to do with the source of water supply. In this light, The Ombudsman considered Allegation (h) unsubstantiated.

Allegation (i)

750. WSD started to help Estate A clean its IPS and flush the Government water main on the afternoon of 28 August 2019. That night, it completed flushing the Government water main and confirmed that water quality resumed normal. Nevertheless, when water was re-fed into the sump tanks of Estate A, the result was unsatisfactory. The problem remained despite repeated attempts. When the works at another water supply point were completed, water supply resumption again met unexpected hurdles. The Office considered it not unreasonable for WSD to announce the estimated time of water supply resumption in response to works progress at that time, and to revise the time in view of the difficulties encountered. As such, The Ombudsman considered Allegation (i) unsubstantiated.

Allegation (j)

751. WSD had admitted that miscommunication between its staff might have caused the discrepancy between information on its website and the facts. The Ombudsman, therefore, considered Allegation (j) substantiated.

Allegation (k)

752. The Office understood that residents of Estate A hoped that the Original Supply Route could be resumed as soon as possible. Upon receipt of reports about anomaly in drinking water quality on 27 August 2019, WSD had repeatedly assisted Estate A in cleaning the IPS with a view to resuming the Original Supply Route, but to no avail. It then decided to supply water to Estate A via a temporary water main. WSD subsequently carried out a series of works, checked relevant information, conducted site visits, kept in touch and discussed with the OC and MC of Estate A in order to formulate a proposal to resume the Original Supply Route. According to WSD's updated information, the discussion was still ongoing. From an administrative perspective, The Ombudsman considered that WSD had been already trying to resolve the problem through various means and there was no evidence of unreasonable delay. In this light, Allegation (k) was unsubstantiated.

Allegation (l)

753. WSD had already pointed out that anyone who wished to claim damages should provide relevant information to the Department. It had notified Estate A of the arrangement. The Ombudsman, therefore, considered Allegation (l) unsubstantiated.

Allegation (m)

754. Having reviewed the information and sequence of events as given by WSD, The Ombudsman concurred with WSD's explanation that the latter had already made responses to the complainant as opposed to the allegation on the lack of responses. In this regard, The Ombudsman, considered Allegation (m) unsubstantiated.

755. On the whole, The Ombudsman considered this complaint partially substantiated. Although there was no significant maladministration found on the part of WSD in this case, the Office was of the view that water suspension had immense impact on residents, particularly when a large number of people were involved in this case and the problem had persisted for a long time. WSD should discuss with the OC and MC of Estate A to prevent recurrence of similar incidents. In this connection, The Ombudsman recommended that –

(a) WSD should complete quickly its investigation into the reasons why sediment entered the IPS of Estate A; and

(b) As the IPS of Estate A seemed rather problematic, if WSD considered that the system needed replacement / repair / maintenance / cleaning, it could give appropriate advice and make suitable suggestions to the OC and MC.

Government's response

756. WSD accepted The Ombudsman's recommendations and has taken the following follow-up actions –

(a) WSD had completed the investigation about the existence of sediment in the IPS of Estate A. A section of fresh water mains in the vicinity of the supply point of Estate A with detachment of internal bitumen protective lining was identified. The concerned

section of fresh water mains was subsequently rehabilitated and has been put back into operation for supplying water to Estate A accordingly; and

(b) WSD had assisted Estate A in flushing the IPS of the Estate A and Estate A has resumed the use of the original IPS in supplying fresh water to its residents.

Water Supplies Department

Case No. 2020/1968(I) – Failing to provide at the complainant's request information about pipework with bitumen linings in a district and research results regarding the impact on consumption safety and human health posed by bitumen in fresh water

Background

757. The complainant had previously lodged a complaint with the Office of The Ombudsman (the Office) against the Water Supplies Department (WSD). He alleged that WSD's improper administration had led to the incident of the suspension of fresh water supply in a housing estate in August 2019. He also alleged that WSD used water mains with bitumen protective lining inappropriately of which the detachment from the aged water mains might be hazardous to human health (under a separate file reference of the Office). The Ombudsman launched a full investigation into WSD in October 2019 and requested the WSD to provide information to facilitate the full investigation accordingly.

758. While the Office was following up the above case, the complainant had contacted WSD. On 13 May 2020, The Ombudsman completed the investigation of the above case and provided the complainant with the investigation report.

759. The complainant subsequently stated that he sent an email to WSD on 24 December 2019 to enquire about the fresh water mains distribution network in the district, viz. (a) the amount of fresh water mains with bitumen as internal lining (Information (a)); (b) the age of such water mains (Information (b)); (c) the service life and timetable for replacement of these water mains by WSD (Information (c)); and (d) the impact on health relating to fresh water containing bitumen with the relevant study findings and testing results (Information (d)).

760. On 11 June 2020, WSD replied to the complainant and explained that at the end of the twentieth century, bitumen was commonly used as the internal protective lining of steel fresh water mains. The bitumen used in steel fresh water mains was required to comply with the BS4147 standard. The detachment of the bitumen lining did not necessarily mean that the steel water mains had exceeded the service life, and that the department had engaged a consultant to study how to deal with the

detachment of bitumen lining in steel fresh water mains. WSD stated that the consultancy study preliminarily revealed that the release of Benzo[a]pyrene from the bitumen would not increase appreciably due to the heating of drinking water, and even if the bitumen entered the human body through the drinking water, it would not affect human health. As the consultancy study was still in progress, WSD was unable to provide the relevant information requested by the complainant.

761. The complainant was dissatisfied that WSD had not provided the information he requested and thus he lodged a complaint with the Office on 18 June 2020.

The Ombudsman's observations

762. The Office remarked that the investigation and conclusion of this case solely addressed whether WSD appropriately followed up the request for information from the complainant. As for the complainant's complaint about WSD's use of water mains containing bitumen protective lining, The Office had already completed the investigation.

WSD's handling of the first email

763. When citizens were dissatisfied with government departments, apart from complaining directly to the department, they often followed up through other channels, such as lodging a claim, lodging a complaint with The Office or other regulatory bodies, etc., during which the complainant might provide opinions or make requests to the departments in response to the latest developments of the case. The Office was of the view that after receiving follow-up comments or requests from the complainant, the department had the responsibility to review and respond accordingly. If the department had reasons to consider that it was inappropriate to give substantive reply to the complainant separately at this stage, it should clearly explain the reason and proactively reply to the complainant as soon as practicable.

764. Although the complainant did not explicitly indicate to WSD that he requested information in accordance with the Code on Access to Information (the Code), it could be seen from the text of his first email that he had clearly made a request for information. The Office was of the view that although it was investigating other related complaints against WSD lodged by the complainant at the time, it did not mean that WSD could be exempted from dealing with the complainant's request and responding to

the complainant. Therefore, WSD should handle the complainants' requests separately in accordance with the Code, and provided information or made an interim reply within 10 calendar days. However, WSD did not explain to the complainant that the Department was not intended to respond because the Office was investigating the relevant complaints. Further, after the Office completed the investigation of the complaints concerned, WSD did not take the initiative to contact the complainant, which inevitably made the complainant feel that his request for information was ignored. The Office considered that the practice of WSD was undesirable.

WSD's reply on 11 June 2020

765. WSD replied to the Office that it had processed and considered another email from the complainant dated 28 May 2020 (the second email) based on the Code. In the second email, WSD was requested to respond to the first email and provide the requested information. However, WSD did not provide the information or give an interim reply to the complainant within 10 calendar days. The reply email on 11 June 2020 did not inform the complainant that he had the right to request the Department to review the decision and lodge a complaint with the Office, nor were the reasons given for refusal to provide information in accordance with Part 2 of the Code with explanations. The practice did not comply with the Code Guidelines on Interpretation and Application (the Guidelines).

Justification of WSD for not providing the information

766. For WSD's refusal to provide the requested information in its reply to the complainant on 11 June 2020 on the basis of paragraph 2.13(a) of the Code (i.e. Information relating to incomplete analysis, research or statistics, where disclosure could be misleading), the Office had the following views.

767. According to WSD, having considered the intent of the complainant to request for information, WSD viewed that the complainant should be provided with all the information in a single and complete batch as part of the information involved incomplete analysis and study. Therefore, WSD was unable to provide the requested information and thus rejected his request. The Office opined that since the relevant analysis and study findings had not been completed, it was understandable that WSD could not provide the final result (i.e. Information (d)) or relevant possible recommendations (including whether the water mains were considered to

have reached the end of their service life and the timetable of replacement of water mains, i.e. Information (c)). Therefore, The Ombudsman considered that in addition to paragraph 2.13(a) of the Code, paragraph 1.14 of the Code (i.e. not obliging departments to acquire information not in their possession) was also applicable to Information (c) and Information (d).

768. Taking into account the queries from the complainant to WSD which were stemmed from the water supply suspension incident in the estate, it was understandable to the Office that WSD intended to provide all the information in a single and complete batch to alleviate his concerns about water safety. However, from the perspective of providing information, Information (a) and Information (b) (the amount of water mains with bitumen internal lining and their service life) were numerical data in nature, and these numerical data could be independently handled from the information related to the consultancy study requested by the complainant at the same time. The Office viewed that WSD should separately consider whether to provide Information (a) and Information (b) to the complainant. If WSD possessed the information and decided to provide it to the complainant, paragraph 2.13.2 of the Guidelines should be referred to, whereby WSD could release the information accompanied by an explanatory note that the final report and recommendations of the consultancy study were yet to be completed and provided by the consultants. This could prevent the complainant from having unnecessary misunderstanding on the use of bitumen internal lining in fresh water mains solely due to his own interpretation on Information (a) and Information (b). Besides, WSD could have made a remark in its reply on 11 June 2020 for the complainant's reference that the bitumen internal protective lining complied with standard and would not affect water safety, etc. Therefore, the Office considered that it was inappropriate for WSD to refuse to provide Information (a) and Information (b) by invoking paragraph 2.13 of the Code.

WSD's reply on 4 November 2020

769. WSD provided Information (a) and Information (b) to the complainant in its reply on 4 November 2020, and would further provide a map showing the distribution of steel fresh water mains with bitumen internal protective lining in the district. The Office noted that WSD had provided the two pieces of information to the complainant appropriately.

770. All in all, the Office accepted that WSD could not provide Information (c) and Information (d) at the time, but opined that WSD could have provided Information (a) and Information (b) to the complainant first. Therefore, The Ombudsman considered that this complaint partially substantiated, and recommended that WSD step up staff training to enhance their understanding of the Code and the Guidelines, and reminded their staff to consider carefully, when there was a request for multiple items of information in future, whether each item of the requested information should be handled separately.

Government's response

771. WSD accepted The Ombudsman's recommendation, and has arranged training for their staff and uploaded the training session to the Knowledge Management Portal of the Department for sharing with their staff who were unable to attend the said training. WSD would continuously strengthen the understanding of their staff on the Code through the above Knowledge Management Portal. In addition, WSD has reminded their Branch Heads and Division Heads that whenever a request for information involves multiple items, their staff should carefully review and consider whether each item of the requested information should be handled separately.

Part III
– Responses to recommendations in direct investigation cases

Correctional Services Department and Government Logistics Department

Case No. DI/437 – Arrangements for Production, Distribution, Stocktaking and Use of CSI Masks

Background

772. The Correctional Services Department (CSD) manufactures filter masks (CSI masks), which are mainly supplied to the Government Logistics Department (GLD), and then distributed by GLD for use by various policy bureaux and departments (B/Ds or user B/Ds). In January 2020, Hong Kong reported its first confirmed case of coronavirus disease 2019 (COVID-19). Following the development of COVID-19, there was a spike in public demand for filter masks, resulting in an acute shortage of supply. Meanwhile, the media and members of the public reported that CSI masks were on sale in the market, and The Office of The Ombudsman (the Office) also received public complaints about alleged misuse of CSI masks.

773. Against this background, the Office launched a direct investigation against CSD and GLD to examine their mechanisms, procedures and implementation with respect to the production, distribution and stocktaking of CSI masks, so as to identify any inadequacies and make improvement recommendations to the authorities where necessary. The Office also obtained information from five user B/Ds (namely the Food and Environmental Hygiene Department, the Customs and Excise Department, the Census and Statistics Department, the Registration and Electoral Office, and the Electrical and Mechanical Services Department). The Office hoped to learn more about how CSI masks were handled by user B/Ds in general through examining the information provided by the above seven departments.

774. Besides, in response to the COVID-19 outbreak, C&ED has launched a large-scale operation codenamed "Guardian" since 27 January 2020 to carry out spot checks of common protective items across the territory. The Office also obtained from C&ED the data related to CSI masks under Operation Guardian.

The Ombudsman's observations

CSD

Overall Arrangements from Production to Delivery of CSI Masks were Duly Followed

775. After reviewing CSD's entire process from procurement of raw materials, mask production to delivery, the Office considered its mechanism largely sound and adequate. CSD has also drawn up proper protective measures to guard against misappropriation of masks, covering the four critical procedures for storage, delivery, stocktaking of finished masks, and disposal of substandard masks. After examining the data and records of CSD, the Office has not found any signs of non-compliance with those measures on the part of CSD.

No Restrictions on Non-Governmental Organisations (NGOs) against Resale of CSI Masks Previously

776. The Office noticed that NGOs in the past could purchase masks from CSD after providing certain basic information. CSD had not restricted how NGOs should use the masks, such as reselling or using them for private purposes. In fact, unless otherwise stipulated in the purchase agreement, NGOs were entitled to decide how to use the purchased CSI masks. However, after the outbreak of COVID-19, CSI masks manufactured with public resources have attracted considerable attention from the community.

777. The Office was pleased to learn that CSD has sought legal advice from the Department of Justice in mid-February 2020 and subsequently decided to impose restrictions on NGOs against resale, export or private usage of goods and/or services purchased from CSD. A specialised application form for placing job orders by NGOs was introduced in late April, stipulating the terms and conditions for NGOs when purchasing goods and/or services from CSD in future. On 27 November 2020, CSD informed the Office that it had decided not to consider resuming the sale of CSI masks to NGOs in future. The Office considered CSD to have taken proper action in this connection to address the concern raised following the pandemic, which can reduce the potential risk of misuse of CSI masks and other goods/services.

Consideration to be Given to Setting Priorities for Accepting Purchase Orders of CSI Masks and Enhancing Transparency

778. CSD did not advertise and solicit purchase orders for its CSI masks. Apart from GLD, CSI masks were sold before the pandemic to the Social Medical Services Unit of Queen Elizabeth Hospital, Fanling Integrated Family Service Centre, Tai Po and North District Social Welfare Office, and Sheung Shui Social Security Field Unit under the Social Welfare Department (collectively referred to as SWD Agencies); the Hong Kong East Cluster and New Territories West Cluster under the Hospital Authority (collectively referred to as HA Clusters) and NGOs which had approached CSD to enquire and purchase the product after learning about its availability from various channels. Before the COVID-19 pandemic, CSD would decide whether to accept purchase orders from organisations other than GLD after considering any surplus production capacity of its Workshops and the ability to meet the delivery deadline requested by the client. However, as CSI masks are priced significantly lower than other filter masks on sale in the market, CSD's current practice would only benefit those organisations in the know about the masks available from CSD, and would surely give an impression of inadequate transparency. When the subject of CSI masks was widely discussed in the community, public scepticism was fuelled by the lack of transparency about the sale of those masks. The Office agreed that it is in public interest to suspend acceptance of purchase orders from organisations other than GLD until the COVID-19 pandemic is under control, such that CSD can concentrate resources on meeting the demand from B/Ds. Since CSD has acquired extra mask production machines to boost its mask production capacity in response to the pandemic, the Office reckoned that CSD should review its policy of accepting purchase orders for masks in normal and contingency circumstances, after balancing such factors as optimisation of resources (i.e. mask production machines and relevant devices, equipment) and B/Ds' demand for masks. In particular, it should consider setting priorities for target clients, changing the method of accepting purchase orders from organisations other than GLD (i.e. the Hospital Authority (HA) or other public organisations) and establishing a mechanism for accepting those orders, as well as enhancing transparency of relevant information.

GLD

No Loopholes Found in the Overall Arrangements from Procurement to Distribution of CSI Masks

779. After reviewing GLD's entire process from procurement to delivery of masks (including CSI masks) to B/Ds, the Office considered its overall mechanism satisfactory. To guard against misappropriation of masks during the process, GLD has adopted proper measures for three critical procedures, namely storage, delivery and stocktaking of masks (including CSI masks). After examining the data and records of GLD, the Office did not find any sign of non-compliance with the relevant procedures on the part of GLD.

Inconsistent Mask Distribution Mechanisms adopted by User B/Ds before the Pandemic

780. According to information from the seven departments, before the pandemic, individual departments adopted different mask distribution mechanisms and none of the departments asked their staff to sign upon receipt of the masks. As in the case of other consumables, B/Ds and their subordinate units are not required under the Stores and Procurement Regulations (SPR) to keep detailed records for distribution of masks. The Office considered that since the outbreak of the pandemic, all the seven departments have adopted proper measures to check against misuse of masks, and strengthened their distribution arrangements. For instance, designated officers are responsible for distribution and custody of masks and keeping a record of distribution, or staff are required to sign upon receipt of masks. Moreover, between late February and early May 2020, the departments conducted stocktaking of masks weekly and submitted the data to the Financial Services and the Treasury Bureau (FSTB) at its request. The actions taken were appropriate.

781. In any event, it was revealed in a case involving a contravention of the Trade Descriptions Ordinance convicted by the Eastern Magistracy on 23 September 2020 that CSI masks were on sale in the market. The Office recommended that GLD draw up guidelines for B/Ds on distribution and management of personal protective equipment (PPE) items (including CSI masks) as well as monitoring the consumption, in normal and contingency circumstances.

Lax Procedures for Disposing of Expired Masks by a User B/D

782. As a possible source of expired CSI masks was those discarded by B/Ds, the Office examined the procedures of the seven departments for disposing of expired masks (including CSI masks). At the onset of the pandemic, when there was an acute shortage in the supply of masks, a department kept the expired masks in good condition as the last resort and distributed some of those expired masks to its staff for contingency use. The Office considered that the CSI masks on sale in the market were probably those expired CSI masks which had been reserved as the last resort for contingency use.

783. The Office noted that it was stipulated in the Guidelines and Procedures for Stores Management of Government Stores issued by GLD that all B/Ds should handle expired stores pursuant to the SPR. However, no specific procedures for disposing of expired masks were provided in the SPR and hence different practices were adopted by different departments. The Office recommended that GLD issue guidelines to B/Ds as soon as possible to strongly remind them to distribute masks based on the "first-in first-out" principle and their suggested shelf life, so as to avoid having unused masks beyond the expiry date. The guidelines should also stipulate a set of uniform and stringent procedures for disposing of expired masks to ensure that those masks could not be used and sold in the market.

784. Moreover, the Office also recommended that GLD take this opportunity to draw up and issue to B/Ds guidelines on the disposal of expired PPE items other than masks.

No Evidence of CSI Masks Circulated in Market Extensively or Systematically

785. The Office considered that the data of C&ED's Operation Guardian reflected to a certain extent that CSI masks had not been circulated in the local market extensively or systematically. The masks seized by C&ED were probably expired CSI masks, which should have been discarded. In the absence of specific and direct evidence, the Office was not able to ascertain why there had been an isolated case of CSI masks on sale in the market. Nonetheless, the investigation of the Office revealed that the mask distribution mechanisms of some departments before the pandemic were rather lax, and the procedures of a certain department for disposing of expired masks were not entirely stringent. This could increase the risk of misuse of CSI masks.

List of Non-B/Ds Eligible for Distribution of Masks to be Reviewed

786. The Office noted that in addition to B/Ds, six non-B/Ds, namely the Office, the Independent Commission Against Corruption, the Independent Police Complaints Council, the Judiciary, the Public Service Commission and the Legislative Council Secretariat, might also request distribution of masks from GLD. The Office accepted that with adequate supply before the COVID-19 pandemic, it was unproblematic for GLD to distribute masks to non-B/Ds, such that those publicly funded organisations could purchase masks at lower costs. However, the Office noted that other statutory bodies of similar nature were not on the name list. The Office suggested that GLD review the list of non-B/Ds eligible to request distribution of masks from GLD in normal circumstances.

Failing to Disclose More Information in Timely Manner to Address Market Rumours and Public Enquiries

787. At the onset of the COVID-19 pandemic, relevant B/Ds considered that given the fierce competition for sourcing PPE items at that time, it was not appropriate to disclose detailed information about PPE items (including CSI masks), such as stock level, consumption, quantity procured and value involved, in order not to undermine the bargaining power of GLD and B/Ds in the procurement of PPE items. Meanwhile, the Office received a number of complaints about access to information related to CSI masks under the Code on Access to Information.

788. In the Office's opinion, the outflow of CSI masks became a topic of wide community concern partly owing to the lack of information for the public to understand and grasp the production, distribution, stocktaking and management of CSI masks by relevant B/Ds. As the public tried to obtain more information but to no avail, more speculations and conjectures were generated. The Office understood that relevant B/Ds were fully occupied in dealing with the heavy workloads brought by the pandemic at that time. It is also worth considering whether voluntary disclosure of relevant information would conversely impact on the fight against the coronavirus and the stakeholders. However, allowing public speculations and rumours to persist would only reinforce the impression of cover-ups on the part of the Government.

789. The Office was pleased to note that the Government eventually issued in August 2020 a report on PPE items to release information on the Government's procurement, stock and distribution of PPE items (including

CSI masks). The Office also urged the B/Ds concerned to take reference from this experience and contemplate how to disclose relevant information in a timely and proper manner under similar situations in future, after fully considering such factors as public interest and minimising any impact on the B/Ds' functions. This would help allay public concern and maintain public confidence in the Government.

CSD and GLD

Contingency Guidelines to be Drawn up Based on Experience of Coping with This Pandemic

790. During its direct investigation, the Office noted that CSD has since January 2020 ceased to accept purchase orders for masks from organisations other than GLD, and continued to reserve a small quantity of masks for internal consumption, such that it can concentrate resources on meeting the demand for masks from B/Ds. In the same month, CSD has taken measures to raise the output of masks incrementally, with the monthly output gradually boosted from around 1.011 million in 2018/19 to 4.057 million in March 2020.

791. The Office also noted that since January 2020, GLD has adopted various means to approach manufacturers and suppliers for procurement (including direct procurement) of masks. Meanwhile, GLD conducted an open tender for procuring masks in late January 2020, thereby contacting more suppliers and diversifying the source of supply. Furthermore, in a bid to accurately assess B/Ds' demand for masks under the pandemic, FSTB requested in early February 2020 all B/Ds to review their monthly demand for surgical masks, so that GLD could make corresponding procurement arrangements as soon as possible and maintain adequate supply of masks for B/Ds.

792. The Office considered CSD and GLD to have diligently performed their duties and endeavoured to meet the surging demand for masks from B/Ds under the pandemic. To facilitate their timely response to similar or other contingency situations in future, the Office recommended that CSD, based on the experience gained this time, draw up contingency guidelines regarding the criteria and priorities for accepting the purchase orders of masks and/or other personal protective equipment (PPE), and the corresponding arrangement for increasing the output of masks and/or other PPE in epidemic and/or other contingency circumstances. The Office also recommended that GLD, based on the

experience gained this time, draw up pragmatic and proper contingency guidelines regarding the collection and assessment of B/Ds' demand for masks and/or other PPE items, and the corresponding arrangement for procuring masks and/or other PPE items in epidemic and/or other contingency circumstances.

793. The Ombudsman recommended that CSD –

(a) review its policy of accepting purchase orders for CSI masks in normal and contingency circumstances, such as setting priorities for target clients, changing the method of accepting purchase orders from organisations other than GLD and establishing a mechanism for accepting those orders, as well as enhancing transparency of relevant information.

(b) based on the experience of meeting surging demand for masks from B/Ds this time, draw up contingency guidelines regarding the criteria and priorities for accepting the purchase orders of masks and/or other PPE, and the corresponding arrangement for increasing the output of masks and/or other PPE in future epidemic and/or other contingency circumstances.

794. The Ombudsman recommended that GLD –

(c) draw up and issue to B/Ds guidelines on distribution and management of PPE (including CSI masks), as well as monitoring the quantity used, in normal and contingency circumstances;

(d) issue guidelines on proper disposal of expired masks to B/Ds as soon as possible, stipulating a set of uniform and stringent procedures for B/Ds to follow and strongly reminding B/Ds to distribute masks based on the "first-in first-out" principle and their suggested shelf life;

(e) draw up and issue to B/Ds guidelines on disposal of other expired PPE items (such as N95 respirators); and

(f) review which non-B/Ds are eligible to request distribution of masks from GLD in normal circumstances.

(g) based on the experience of meeting surging demand for masks from B/Ds this time, draw up pragmatic and proper contingency

guidelines regarding the collection and assessment of B/Ds' demand for masks and/or other PPE, and the corresponding arrangement for procuring masks and/or other PPE in future epidemic and/or other contingency circumstances.

Government's response

795. CSD and GLD accepted The Ombudsman's recommendations and have taken the following follow-up actions.

CSD

796. CSD reviewed and updated its guidelines on acceptance of purchase orders for its products and services and relevant production arrangements in February 2021, including the contingency guidelines on the production of CSI masks and other PPE. The Ombudsman subsequently wrote to CSD on 2 June 2021, acknowledging that recommendation (b) had been implemented by CSD.

797. As regards recommendation (a), in its letter to The Ombudsman on 17 August 2021, the CSD pointed out that, apart from Government Bureaux/Departments and the Hospital Authority, PPE including CSI masks manufactured by the CSD would not be available for sale to other NGOs or private organisations.

GLD

Recommendations (c) – (e)

798. GLD has already modified the existing guidelines on the use and storage of stores as well as waste disposal. The revised guidelines, which were issued to B/Ds on 12 March 2021, set out the specific procedures for the distribution and management of masks and other PPE items under normal and contingency circumstances (including a reminder to B/Ds that masks and other PPE items should be distributed based on the 'first-in-first-out' principle and their suggested shelf life), the monitoring and recording of consumption as well as the disposal of expired masks and other PPE items.

Recommendation (f)

799. GLD has already completed the review. Among the six non-B/Ds mentioned in the investigation report of the Office, the administrators of the Public Service Commission Secretariat, the Independent Commission Against Corruption and the Judiciary Administration are all public officers and are required to comply with relevant government regulations (including the SPR). Hence, they may request distribution of the items required from GLD in accordance with relevant regulations. As for the other three non-B/Ds, request for distribution of items required are made in accordance with their agreements with the Government. These six non-B/Ds are required to bear the relevant procurement costs.

800. Under normal circumstances, supply of masks is not tight and it is not difficult to procure masks on the market. Hence, under normal circumstances, GLD's list of non-B/Ds in relation to distribution of stores will remain unchanged. However, depending on the needs in other special circumstances (such as a pandemic or emergency situations), GLD will review the situations or make other arrangements.

Recommendation (g)

801. To facilitate swifter response to emergency situations in the future, GLD has already updated the supplier lists for anti-epidemic items (including PPE items) and included about 280 new suppliers. GLD has also consulted the Department of Justice and refined the standard contract terms for direct procurement, so that the Government's interests may be better protected when conducting direct procurement in the future where necessary. In addition, to enhance its capabilities in handling emergencies and strengthening the current system for monitoring stock usage, GLD will consult the Food and Health Bureau on the stock level of anti-epidemic items under relevant contingency plans, and has already contacted B/Ds to compile in advance a list of contingency items required and draw up a list of emergency contacts, with a view to facilitating a timely understanding of B/Ds' demand for anti-epidemic items amid the epidemic and conducting urgent procurement to cope with any unexpected increase in demand.

Environmental Protection Department and Buildings Department

Case No. DI/440 – Government's Handling of Misconnection of Private Building Sewers to Stormwater Collection System

Background

802. According to the Environmental Protection Department's (EPD) data, the misconnection of building sewers to the building or communal stormwater drainage system (hereinafter referred to as sewer misconnection) is one of the major pollution sources affecting the quality of Hong Kong coastal waters. The resultant inflow of untreated sewage into the sea causes pollution and foul odours. To tackle sewer misconnection cases, EPD and the Buildings Department (BD) commence investigations according to the Water Pollution Control Ordinance (WPCO) and the Buildings Ordinance (BO) respectively and institute prosecutions where necessary. The Drainage Services Department (DSD), playing a supportive role, assists in the investigations of EPD and BD from time to time.

The Ombudsman's observations

803. The Office of The Ombudsman (the Office) considered DSD to have properly performed its duties in investigating and referring sewer misconnection cases, as well as implementing mitigating measures. The Ombudsman's comments regarding the handling of sewer misconnections by EPD and BD are as follows.

EPD

EPD should endeavour to collect evidence and take enforcement action

804. The Office acknowledged the practical difficulties facing EPD in enforcing the WPCO. Nevertheless, EPD should endeavour to take enforcement action against offenders under the WPCO, so as to contain coastal water pollution caused by the inflow of untreated sewage.

805. EPD asserted that, given the complexity of drainage connections of buildings in Hong Kong, it is often impossible to trace pollution sources or locations of sewer misconnection by mere observation of the drainage

pipes at the building's external wall without referring to the drainage plans. In the circumstance, it would not be possible to meet the requirements for applying to the court for a warrant to enter the premises (Warrant of Entry). Moreover, experience reveals that it is unlikely possible for officers to gather useful evidence upon entry onto the suspected premises for investigation with the consent of the residents or under a Warrant of Entry. EPD, therefore, generally will not apply to the court for a Warrant of Entry. The Office has reservation on EPD's understanding of the standard of proof regarding the application for a Warrant of Entry.

806. The Office recommended EPD to seek the Department of Justice's (DoJ) advice to explore the possibility of using circumstantial evidence for warrant applications to facilitate in-depth investigation and evidence gathering regarding suspected sewer misconnection cases causing illegal discharge of wastewater.

807. For cases involving difficulties entering the premises, the Office recommended that, in addition to applying to the court for a Warrant of Entry by itself, EPD also consider taking joint action with BD to increase success of entering such premises for investigation.

808. The Office did not consider EPD's enforcement against illegal discharge of wastewater at odds with BD's enforcement against unauthorised building works (UBWs) but complementary action. In addition to referral of sewer misconnection cases to BD, EPD should also endeavour to take enforcement action against illegal discharge of wastewater under the WPCO.

809. In the long run, EPD should review the WPCO and consider making legislative amendments to enhance its enforcement effectiveness.

BD

Serious delay in handling sewer misconnection cases

810. The cases selected for study in the report revealed serious delay on the part of BD in handling sewer misconnection cases. BD should take effective measures to avoid recurrence of similar incidents.

Case monitoring mechanism not effective

811. BD officers monitor the progress of case handling via the department's Building Condition Information System (BCIS). Its Progress Monitoring Committee (including its directorate grade officers as members) also monitors and follows up the status of outstanding statutory orders on a regular basis. While BD has established the monitoring mechanism at different levels, some of the statutory orders were only complied with, or remained outstanding, years after issuance. This reflects that the mechanism is not as effective as expected.

Failing to initiate investigation swiftly

812. The Office was of the view that upon receiving complaints or referrals of sewer misconnection cases, BD should swiftly initiate investigation to ascertain whether the problem exists, so that corresponding enforcement actions can be taken to prevent aggravation of the problem.

Failing to properly allocate manpower for handling sewer misconnection cases, resulting in cases held in abeyance for years

813. Given that UBWs items in sewer misconnection cases are categorised as actionable items under BD's enforcement policy against UBWs, it is highly unsatisfactory that such cases were held in abeyance for years. The Office urged BD to learn from this experience and that it should, whilst addressing critical building safety issues, deploy manpower to continuously process and resolve other cases involving actionable UBWs items.

Indecisive enforcement action

814. The Office was of the view that if the problem persists upon expiry of the period specified in the statutory order, BD should take decisive action to urge for the owners' speedy rectification of sewer misconnection.

Need for proactive assistance to three-nil buildings

815. BD should, when communicating with the owners concerned, proactively introduce the service of the Home Affairs Department (HAD)

regarding owners' corporation (OC) formation. Given that sewer misconnection can constitute a serious hygienic or environmental nuisance, the Office recommended that BD take the initiative to refer to HAD the sewer misconnection cases involving three-nil buildings (i.e. buildings without an OC, any form of residents' organisation or engaging a property management company). BD should also arrange its in-house Social Services Teams (SST) to assist the owners on a need basis. Moreover, the Office recommended that BD step up prosecution against the owners of three-nil buildings not complying with its statutory orders, thereby prompting them to arrange for remedial works as soon as possible. BD should also consider commissioning default works at an early stage for those buildings that have posed serious nuisance and risks to environmental hygiene and have had little progress in renovation, such that the sewer misconnection problem can be eliminated at the soonest.

Other Aspect

Need for resolution of sewer misconnection problem at source

816. The Office reckoned that the most effective way is to root out the problem of sewer misconnection at source. The Office urged EPD, BD and DSD to continue with their efforts in vigorous detection of sewer misconnection, proactive enforcement against confirmed cases of misconnection, and launching publicity and education campaigns in a bid to strike the problem at the root.

Government's response

817. The Ombudsman recommended EPD that –

(a) seek legal advice from DoJ to explore the possibility of adducing circumstantial evidence for warrant applications;

(b) consider taking joint action with BD for cases with difficulties in gaining entry onto the premises, so as to increase the success rate of entering such premises for investigation; and

(c) review the WPCO and consider making legislative amendments to enhance its enforcement effectiveness;

818. Also, The Ombudsman recommended BD that –

(d) review cases with outstanding statutory orders with a schedule drawn up for backlog clearance, and considering, where necessary, requesting allocation of more resources from the Government to address the persistent issue of resource constraints;

(e) improve the mechanism for monitoring case progress, and conduct site inspections swiftly and take enforcement actions decisively;

(f) consider proactively referring those sewer misconnection cases involving three-nil buildings to HAD, and arrange BD's in-house SST to assist the owners on a need basis;

(g) step up prosecution against the owners of three-nil buildings not complying with its statutory orders; and

(h) consider promptly commissioning default works for those buildings that have posed serious nuisance and risks to environmental hygiene and have had little progress in renovation.

Government's response

EPD

819. EPD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

Recommendations (a) and (c)

820. EPD has approached DoJ to seek legal advice and will carefully consider DoJ's advice to improve enforcement actions.

Recommendation (b)

821. EPD will continue to maintain close liaison with BD and DSD in handling cases of sewer misconnection, and will strengthen the collaboration with BD, including formulating a liaison mechanism to enhance referral procedures such that information of misconnection may be shared more promptly, systematically and accurately. Joint inspections will also be arranged as necessary to enhance enforcement effectiveness.

BD

822. BD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

Recommendation (d)

823. BD has drawn up a schedule to clear outstanding statutory orders related to sewer misconnections issued before 2021 and is actively following up with these outstanding orders. As at 30 June 2021, for the 55 outstanding orders issued during the period from 2016 to 2020 as mentioned in the report, the sewer misconnections in 26 cases had been rectified. For the remaining 29 outstanding cases, BD has arranged rectification works for eight cases in the owners' default; owners/OCs have arranged contractors to carry out the rectification works for nine cases; prosecution proceedings under the BO for six cases are in progress; issue of superseding order is being arranged for one case due to change in ownership; and warning letters have been issued for the remaining five cases. BD will continue to follow up outstanding orders closely with a view to rectifying the sewer misconnections as early as practicable. In addition, through the Anti-epidemic Fund 2.0 and the allocation of funding for creation of time-limited jobs for a period of 12 months under the 2021-22 Budget, BD has recruited/would recruit contract staff to follow up the outstanding statutory orders relating to sewer misconnections.

Recommendation (e)

824. To better monitor the sewer misconnection cases referred from EPD, BD has enhanced the BCIS since February 2020 for systematic tracking of case progress. In addition, BD and EPD have jointly devised a coordination mechanism as well as established a shared database of case records which would be updated by both departments. A joint inspection mechanism has been set up between BD and EPD to enhance the efficiency of site inspections for identification of the sources of illegal discharge of foul water and location of sewer misconnections in buildings.

Recommendation (f)

825. BD has strengthened the support to owners of three-nil buildings since mid-April 2021. Instead of making the referral to the respective District Office (DO) of HAD according to the wishes of the owners, BD

will proactively notify the concerned DO when serving statutory orders so that DO may provide earlier assistance to the owners. To assist owners of three-nil buildings to deal with sewer misconnection problems, apart from providing them with assistance and technical support (viz. explaining to them on site the sewer misconnection problems and the requirements of rectification works), BD will arrange SST to provide support to the owners or occupants in need and help them to comply with the statutory orders. SST's support includes coordinating owners to organise the investigation and rectification works, assisting them to apply for suitable financial assistance schemes, etc.

Recommendation (g)

826. Under the BO, owners (including owners of three-nil buildings) are legally responsible for compliance with statutory orders to rectify sewer misconnections. If the owners fail to comply with the statutory orders without reasonable excuse, BD will consider instigating prosecution against them in order to impel them to rectify the contraventions or irregularities. BD has stepped up prosecution against those owners who fail to comply with these statutory orders without reasonable excuse. The prosecutions that have been instigated as detailed in the response to Recommendation (d) above are relevant.

Recommendation (h)

827. If the support and assistance provided by BD's SST and DO of HAD cannot urge the owners to comply with the statutory orders or the owners have reasonable excuse for being unable to comply with the orders, and having regard to the circumstances of individual cases, BD will consider carrying out the rectification works in default of the owners and recover the cost of works plus supervision charge and surcharge from the owners afterwards. The default actions that have been arranged as detailed in the response to Recommendation (d) above are relevant.

Food and Environmental Hygiene Department and Buildings Department

Case No. DI/428 – Effectiveness of Joint Office for Investigation of Water Seepage Complaints in Handling Water Seepage Reports

Background

828. The Joint Office for Investigation of Water Seepage Complaints (JO), which comprises staff from Food and Environmental Hygiene Department (FEHD) and Buildings Department (BD), is responsible for conducting investigation to identify the source of water seepage that causes hygiene nuisance and taking necessary enforcement action. Since the last direct investigation of the same topic in 2008, The Office of the Ombudsman (the Office) has received complaints from members of the public against JO continuously. The main allegations of those complaints included JO's failure to identify the source of water seepage despite the lengthy tests of various kinds conducted, and its heavy reliance on the old colour water tests to confirm the source. The Office also noticed that new testing technologies such as infrared thermography and microwave tomography to identify the source of water seepage have not been widely used by JO, and that its prolonged investigation has led to a huge backlog of cases.

The Ombudsman's observations

(I) Effectiveness of Handling of Water Seepage Reports

<u>Huge Backlog of Cases</u>

829. In 2018 and 2019, JO had 13,889 and 17,034 uncompleted cases respectively. The backlog was huge. As at June 2020, JO had 23,403 active cases, 8,437 cases of which were received in or before 2019. The Office considers that JO should proactively examine the reasons for having backlog and take effective action to clear it. The Government should consider allocating more resources to JO, if necessary, so that JO can clear the backlog as early as possible.

Many Cases Require More Than 90 Working Days to Complete Investigation

830. According to JO's operational guidelines, JO can usually complete its investigation into a case and inform the informant of the findings within 90 working days if it is straightforward and the owner/occupant concerned is cooperative. Take 2019, in which JO completed its actions in 30,910 cases, as an example, 64% of the cases were completed within 90 working days while 36% required more than 90 working days to complete. Of the 8,605 cases that JO completed its investigation, 31% were completed within 90 working days while 69% required more than 90 working days, with 41% requiring more than twice the aforesaid processing time. These statistical figures show that many cases (including those where investigation had or had not been conducted) required more than 90 working days to complete actions and it was also common to complete investigations beyond 90 working days. The Office considers that JO should explore devising practicable reference/performance indicators, examine thoroughly the reasons why some cases required prolonged time to complete actions and formulate improvement measures. Besides, the Office recommends that JO review its workflow and explore the feasibility of shortening the 20-working-day time-frame for consultants to visit the suspected premises upon case assignment so as to expedite the processing of cases.

Failure to Analyse the Reasons for Prolonged Time (More Than 90 Working Days) to Complete Actions and Compile Relevant Statistics

831. JO explained that as special circumstances might vary in different cases, it could not categorise the reasons why it needed prolonged time to complete actions for some cases, hence no compilation and analysis of relevant statistics. The Office considers that given the huge number of cases to be handled, JO should compile relevant statistics to examine in a systematic manner the various reasons for taking prolonged time to complete its actions so that it can formulate coping strategies. The Office understands that as at November 2020 the Review Task Force that was formed to review JO's operation has implemented some measures to streamline the work procedures. The Office recommends that JO refer to its experience gained in handling cases and devise a case management strategy to enhance the efficiency of handling water seepage reports.

Operational Guidelines Should Be Revised to Require That Staff Call Owner/Occupant Concerned to Arrange First Visit to Suspected Premises

832. According to JO(FEHD)'s operational guidelines, staff are not required to call the owner/occupant of the suspected premises to arrange the first visit. As a result, they may not be able to gain entry for investigation. The Office recommends that JO revise the relevant guidelines to state clearly that staff can make good use of investigation resources and call the owner/occupant concerned to arrange the first visit if the informant has provided, among others, the contact telephone number of the owner/occupant of the suspected premises.

Failure to Update Informants Regularly on Investigation Progress during Stage III Investigation and When Conducting Confirmatory Test

833. Prior to September 2019, JO would not update the informants regularly on the progress of investigation when encountering difficulty during Stage III investigation. From September 2019 onwards, the consultants will only update the informants on the progress in writing within 20 to 35 working days after visiting the affected premises, but they will not write to the informants with updates again in case the delay dragged on. JO has planned to revise the terms of contracts offered to its consultants from the first quarter of 2021 to stipulate that if the consultants cannot visit the suspected premises within 20 working days upon case assignment, they should update the informant in writing on the progress and explain the reasons for not initiating investigation within these 20 working days. If the situation persists, the consultant should update the informant on the progress every 20 working days. The Office recommends that before introducing this arrangement, JO regularly update the informant on the progress of cases where the consultant has written to the informant and further delays happen. Where it is necessary to conduct confirmatory tests, JO should also write to the informant regularly to provide updates.

Explore Simplification of Investigation Reports to Expedite Completion of Stage III Investigation

834. In the period from 2017 to October 2019, there were about 100 cases on average each year where JO instituted prosecution against the owner/occupant concerned for non-compliance with the Nuisance Notice (Notice) or Nuisance Order. In each of the years in the same period, the

consultants submitted about 10,000 investigation reports to JO. In other words, only a small fraction of investigation reports JO received was produced to the Court. The Office understands that investigation reports are crucial to water seepage cases and JO should not issue a Notice unless there has been sufficient evidence. However, JO should also consider how to optimise resource utilisation. In this regard, the Office recommends that JO seek advice from the Department of Justice (DoJ) and explore the feasibility of simplifying investigation reports without compromising its enforcement actions so that resources can be better utilised and Stage III investigation can be expedited.

(II) Effectiveness of Use of New Testing Technologies

Higher Success Rate of New Testing Technologies in Identifying Source of Water Seepage

835. For instance, in 2019, JO achieved a success rate of 76% in identifying the source of water seepage by using new testing technologies including infrared thermography (IT) and microwave tomography (MT). On application of new testing technologies in pilot districts, JO's success rate in identifying the source of water seepage was 32 percentage points higher than that of the conventional colour water tests. This shows that new testing technologies are more effective than the conventional colour water tests in identifying the source of water seepage. Moreover, compared with the conventional colour water tests, the new testing technologies allow the investigator to collect data instantly, hence more effective in improving the efficiency of water seepage investigation. The Office recommends that JO proactively consider extending the use of the new testing technologies used in the eight pilot districts to other districts for identifying the source of water seepage for more cases.

(III) Effectiveness of Monitoring

Failure to Use Water Seepage Complaint Management System to Compile Statistics and Management Reports Though The System Has Been in Place for More Than Two-and-A-Half Years

836. The Water Seepage Complaint Management System (WSCMS) can compile data on the time required for completing different investigation stages and actions, which are crucial in monitoring the work of JO's staff and the consultants. Given that the WSCMS has been in

place since March 2018, the Office finds it difficult to understand why it was not until November 2020 that JO completed inputting and checking the information of cases handled between 2018 and June 2020, tested the function and accuracy of the WSCMS in compiling statistics and management returns, and started preparing management reports regularly. The Office urges JO to learn from experience so that it would not face the same situation again.

Ineffective Monitoring of Consultants

837. The case studies in Chapter 5 of the Office's investigation report reflect the inadequacies of the consultants in handling water seepage reports, which include failure to activate early the application procedures for the Warrant of Entry, late submission of investigation reports, failure to keep properly investigation information and making multiple corrections to investigation reports. Although the consultants concerned eventually rectified their mistakes or implemented remedial measures, the investigation had been delayed, causing inconvenience to the owner/occupant concerned. The Office considers it necessary for JO to step up its monitoring of consultants. On the other hand, a case showed that JO issued warning letters and adverse reports to a consultant that had delays in initiating investigation and submitting the investigation report. The consultant was subsequently debarred from the tender for providing consultancy service for BD for three months only. The Office doubts the deterrent effect of the penalty and whether it can improve the consultant's performance. The Office recommends that JO(BD) discuss with its bureau on enhancing penalty for consultants with poor performance so as to create deterrent effect.

Devising Reference/Performance Indicators

838. JO intends to act on the Review Task Force's recommendation and formulate practicable performance indicators for straightforward cases, and to publish regularly its service performance. The Office recommends that JO devise practicable reference/performance indicators for complicated cases as well so that the public will be informed of, and its staff will abide by, such indicators, and JO will have benchmarks for internal monitoring, thereby avoiding prolonged investigation and slow progress.

(IV) Other Aspects

Moisture-content Threshold for Initiating Investigations

839. Among the public views the Office received, some consider the threshold of investigation set by JO to substantiate the presence of water seepage condition too high. JO explained that concrete and the surface of plaster are susceptible to the relative humidity of the surroundings. Based on its experience in handling water seepage cases and relevant data, it is difficult to identify the source of water seepage if the moisture content of concrete and the surface of plaster is below 35%. Hence, JO has set the moisture-content threshold at 35% or above to ensure effective use of resources. The Office refrains from commenting on JO's threshold of investigation regarding moisture content because it is a professional judgement of JO.

Issuing Notices and Instituting Prosecutions during Stage III Investigation

840. Regarding the public view that the practices of having JO(FEHD) staff issue Notices according to the results of Stage III investigation and instituting prosecutions against owners failing to comply with the Notices are inefficient, the Office is of the view that the nuisance caused by water seepage is essentially related to environmental hygiene. Given that FEHD is the department enforcing the Public Health and Municipal Services Ordinance (PHMSO), it is not unreasonable for its staff to take up the two tasks. What members of the public are most concerned about is the efficiency of enforcement action rather than which department should undertake those tasks. The Office considers that JO should review the existing arrangements and decide whether they are the best way to ensure efficiency. Otherwise, it should look into the reasons and make improvement.

Appoint a Lead Department to Coordinate and Monitor JO's Operation and Establish a Case Manager System

841. JO is jointly operated by FEHD and BD, and this mode of operation may cause the enforcement responsibilities to split up. The Office learns from the public views that some JO staff consider the division of labour between the two departments unreasonable while others find that the absence of a lead department has caused conflicts and disputes among staff of different professional backgrounds. The Office is concerned that

staff from FEHD and BD may work in silos, lack coordination and lack determination to resolve problems in the absence of a coherent management structure overseeing JO's operation. The inadequacies in JO's handling of water seepage reports including prolonged investigation and ineffective monitoring of consultants have persisted for many years. Hence, it is necessary for JO to have a lead department coordinate and monitor its operation and be accountable for its performance. The setting up of regional joint offices (RJOs) has helped improve the communication between JO staff from FEHD and BD, but it is insufficient for tackling the said problems. The Office recommends that JO promptly explore and confirm the designation of a lead department so that the lead department will coordinate and monitor JO's operation. While The Office agrees that the current work arrangement of JO could achieve synergy between the two departments, the Office is of the view that appointing a lead department would enhance the synergy between the two departments, given the public's expectation of resolving water seepage problems early and JO's prolonged structural problem. Currently, JO does not have a "case manager" system. The Office considers establishing a "case manager" system would facilitate close monitoring of case progress and provide members of the public with a single contact point to enquire about case progress. The Government's intervention of water seepage problems is fundamentally to deal with hygiene nuisance and safeguard public health. The Office recommends that JO proactively consider appointing a lead department and establishing a "case manager" system, and putting forward this recommendation to the Review Task Force for consideration.

Whether Composition of JO Should Include the Water Supplies Department

842. Some are of the view that the Water Supplies Department (WSD) should be included in the composition of JO. In the Office's opinion, the establishment of JO aimed at identifying the source of water seepage that causes nuisance and taking necessary enforcement action. Normally, leakage of fresh water mains does not constitute environmental hygiene nuisance as the water seepage is not caused by unclean water. It is, therefore, justifiable not to include WSD in the composition of JO. For members of the public, nuisance arising from water seepage at the ceiling will always be disturbing regardless of the source of seepage being fresh water or otherwise, and they certainly have a reasonable expectation that JO would resolve the problem for them. In fact, every year JO refers to WSD several hundred water seepage cases allegedly caused by leakage of fresh water mains for follow-up action. The Office considers it more

important to have WSD's early involvement than having the Department itself included in the composition of JO. The Office is pleased to note that JO will discuss with WSD about making it a regular arrangement to refer water seepage reports involving continuous dripping at a steady rate to WSD for early intervention.

Handling Water Seepage Caused by Unauthorised Building Works

843. There are views that BD lacks initiative in handling cases referred to its headquarters by JO(BD), which involve water seepage caused by unauthorised building works (UBWs), and simply requests that the owner of premises with unauthorised subdivided flats, which causes water seepage, resolve the seepage problem instead of eradicating the UBWs. In the Office's opinion, it is BD's professional judgement to determine whether the UBWs have caused the water seepage and whether the UBWs should be eradicated, hence the Office will not comment on this. As to whether the owner concerned should handle the problem of water seepage or UBWs first, the Office considers that if the UBWs in question fall into the priority categories of actionable cases, BD should issue a removal order to demand the owner concerned to eradicate the structures. Otherwise, JO should issue a Notice to the owner concerned to resolve the environmental hygiene nuisance caused by water seepage and BD should take enforcement action against the UBWs in accordance with its enforcement priorities.

Resolving Water Seepage Disputes by Way of Mediation

844. Among those cases where actions were completed between 2018 and June 2020, JO discontinued its follow-up in around 14% to 17% of them during investigation each year either because the water seepage had stopped or the informant had withdrawn the report. The Office believes it is possible that in some cases the water seepage stopped because the owner/occupant of the premises that have water seepage made the necessary repairs after JO's intervention. The Office recommends that JO make reference to the Free Mediation Service Scheme for Building Management offered by the Home Affairs Department and explore the introduction of mediation services to help owners find win-win solutions for disputes over water seepage and improve communication and mend fences between neighbours.

845. The Ombudsman recommended that JO –

(a) proactively identify causes of and devise strategies to clear the backlog. Where necessary, the Government should consider allocating more resources to JO in order to clear the backlog as early as possible;

(b) review and improve its workflow: explore shortening the time-frame for consultants' visits to the suspected premises upon case assignment; call the owner/occupant of the suspected premises to arrange the first visit where possible; update the informant on the case progress regularly; review whether the practice of having FEHD staff issue the Notice according to the results of Stage III investigation and institute prosecutions against owners are the best way to achieve the aim;

(c) explore, in consultation with DoJ, the feasibility of simplifying investigation reports without compromising its enforcement actions;

(d) explore the setting up of a mechanism for finding the reasons for prolonged time (more than 90 working days) needed to complete actions and compiling statistics so as to devise a case management strategy to enhance the efficiency of handling water seepage reports, and devise practicable reference/performance indicators for handling complicated cases;

(e) proactively consider extending the initiative of using new testing technologies in the pilot districts to other districts for identifying the source of water seepage;

(f) JO(BD) to step up monitoring of its consultants, and discuss with its bureau on enhancing penalty for consultants with poor performance;

(g) proactively consider restructuring its setup so as to put itself under a lead department and establishing a "case manager" system; and

(h) implement as early as possible the interim recommendations made by the Review Task Force formed by the relevant bureaux and departments, including setting up the New Territories East Regional Joint Office (RJO) as planned, discussing with WSD the regularisation of JO's referral of water seepage reports, enhancing the WSCMS and publishing its performance results regularly,

setting up a customer service team and streamlining work procedures, and explore introducing mediation service to resolve disputes over water seepage.

Government's response

846. JO accepted recommendations (a) to (f) and (h) and has taken the following follow-up actions.

Recommendation (a)

847. Having identified the causes affecting the progress of investigation, JO has devised and implemented the following strategies to clear the outstanding cases –

(a) establishment of RJOs to strengthen communication between staff of JO(FEHD) and JO(BD) and enhance operational efficiency of JO;

(b) early referral of water seepage reports involving continuous dripping or visible leakage of water supply pipes to WSD for speedier follow-up actions;

(c) enhancement of the WSCMS so as to facilitate monitoring of progress of individual cases such as alert of delay and compilation of management reports;

(d) expansion of the use of new testing technologies including IT and MT in Stage III professional investigation to a total of 12 pilot districts as of March 2021;

(e) streamlined workflow including reducing the number of prior visits and standardising the documents for application of entry warrants; and

(f) FEHD and BD will continue to deploy resources to speed up the handling of water seepage reports.

Recommendation (b)

848. For cases using conventional testing methods, JO(BD) has reviewed the past performance records and major problems encountered by consultants in arranging investigation at the suspected premises. It was found that given the need to arrange access and conduct investigation and tests at the suspected premises, the room for reducing the timeframe for carrying out such investigation is unlikely. However, such timeframe could be reduced for cases involving the use of IT and MT under the new consultancy agreements for pilot districts since IT and MT are conducted at the affected premises and visit to the suspected premises is usually not required. Furthermore, to ensure timely handling of assignments by consultants and to speed up liaison with the owners/occupants, JO(BD) has streamlined its procedures by issuing encrypted assignments to consultants via emails instead of hard copies. After the issue of assignments, JO(BD) will closely liaise with the consultants and where necessary, for cases using conventional testing methods, liaise directly with the owner/occupant of the suspected premises to facilitate entry by the consultants for carrying out the investigation.

849. For Stages I and II investigations, staff of JO(FEHD) will call the owner/occupant of the suspected premises to arrange the first visit if the telephone number of the owner/occupant concerned is available. The relevant procedures will be incorporated into the investigation protocol. JO(FEHD) will also keep the informant posted in writing of the case progress at various stages of the investigation.

850. For Stage III investigation, it is an established practice for the consultants to call the owner/occupant of the suspected premises (for conducting conventional tests) to arrange the first visit based on the contact information obtained from Stages I and II investigation. Enhanced requirements on the consultants to update the informants on the progress of investigation have been stipulated in new consultancy agreements awarded in March 2021.

851. Upon review, the Review Task Force concluded that FEHD should continue to issue Notice according to the result of Stage III professional investigation and instigate prosecutions against the owners when needed.

852. JO aims to synergise the legal authority of FEHD under the PHMSO and the building surveying expertise of BD in handling water

seepage nuisance in buildings. Specifically, the designated authority under section 127 of the PHMSO (which deals with nuisance caused by water seepage) is the Director of Food and Environmental Hygiene. The exercise of legal authority to issue Notice and prosecution under the PHMSO are under the expert purview of FEHD. On the other hand, the main duties of BD staff are to provide professional advice on aspects of building surveying and to carry out professional investigation for the more complicated cases. The current arrangement taps the respective expertise of the departments and makes an effective use of resources.

Recommendation (c)

853. For Stage III professional investigation using conventional testing methods, the Review Task Force is exploring the feasibility of requiring the consultants to first submit the investigation result and then the full investigation report in two stages with a view to shortening the time for issuing Notice for positive cases as ownership check and preparatory work for issuing Notice could be conducted upon receipt of the investigation result at Stage I. When the full report is received, JO may then issue the Notice to the owner at Stage II.

Recommendation (d)

854. JO(FEHD) will enhance the WSCMS to systematically collate the reasons of cases requiring more than 90 working days to complete investigation for compilation of statistics for monitoring/updating case management strategies to enhance the efficiency of handling water seepage reports. In parallel, JO is examining the past performance data and will devise practicable performance indicator(s) for regular promulgation.

Recommendation (e)

855. Since the second half of June 2018, JO has applied new testing technologies including IT and MT in Stage III professional investigation in pilot districts where applicable. With the experience gained through the pilot application of the new testing technologies, JO has extended the use of these technologies to a total of 12 districts as of March 2021. It should be noted that in cases whereby these technologies cannot be effectively applied due to, for example, spalling of concrete ceilings at the locations of water seepage and blockage from pipes and other facilities, the consultants have to continue to employ the conventional tests. JO will continue to consolidate the experience and refine the related technical

guidelines and procedures and keep in view the availability of a competitive supply of service providers in the market for planning the gradual extension of such technologies to other districts.

Recommendation (f)

856. JO(BD) is formulating more stringent standards for assessing the performance of consultants and will promptly issue warning letters and adverse reports to consultants with unsatisfactory performance based on progress generated from the WSCMS. Advice from the Works Branch (WB) of the Development Bureau given their experience in managing consultants was also sought. In formulating the policy, BD is inclined to introduce greater flexibility and heavier punishment (e.g. a longer period of tender suspension) should be imposed for consultants with seriously poor performance.

Recommendation (h)

857. The following interim recommendations made by the Review Task Force have already been implemented –

(a) the New Territory East RJO is scheduled for occupation in the last quarter of 2021;

(b) WSD started on 15 March 2021 to regularise the arrangement of early referral of water seepage reports involving continuous dripping at 20 or more drops per minute or visible leakage of water supply pipes to WSD for expedited follow-up actions;

(c) JO(FEHD) has enhanced the WSCMS for generation of management reports to facilitate effective case monitoring. Meanwhile, JO is examining the past performance data and will devise practicable performance indicator(s) for regular promuglation;

(d) the customer service team of JO, steered by JO(FEHD), is expected to be set up in the last quarter of 2021;

(e) streamlined work procedures including alignment of testing procedures of colour water test in Stage II and Stage III investigations as well as reducing the number of prior visits and

standardizing the documents for application of entry warrants have already been implemented; and

(f) introducing mediation service to owners to resolve disputes over water seepage will be one of the tasks of the customer service team to be established in JO in the last quarter of 2021.

Recommendation (g)

858. The Review Task Force has considered the setup of JO. JO did not accept recommendation (g) and concluded that the current setup should be maintained in view of following grounds –

(a) JO aims to synergise the legal authority of FEHD under the PHMSO and the building surveying expertise of BD under one office in handling water seepage nuisance in buildings;

(b) the current JO arrangement allows staff of JO(FEHD) and JO(BD) to be effectively supported and supervised by the parent departments according to their specialised expertise and experience;

(c) putting JO under the joint steer of FEHD and BD can effectively monitor the different stages of investigation and enforcement actions while creating synergy in handling water seepage reports and serving the public under a one-stop shop approach; and

(d) given their expertise and role, if staff from either department are appointed as the "case manager", it may render progress monitoring difficult. To ensure effective communication with the informants, JO provides names and contact details of case officers from both departments in the interim replies to the informants so that they can contact the appropriate officers for enquiries concerning different stages of the investigation.

859. JO has informed The Ombudsman of the above on 23 April 2021. On 21 June 2021, The Ombudsman requested JO to provide supplementary information for its consideration. JO provided The Ombudsman with the relevant information on 3 November 2021.

860. On 3 January 2022, The Ombudsman replied JO. For recommendations (a), (b), (c) and (e), The Ombudsman considered JO to

have implemented the recommendations and hence no further reporting is necessary. For recommendations (d), (f) and item (c) of recommendation (h), The Ombudsman noted the updated situation and requested JO to report the latest progress by 3 April 2022. For recommendation (g) that is not accepted by JO, The Ombudsman accepted that JO has contemplated their recommendation and put in place other measures for improvement. Thus, The Ombudsman considered JO to have implemented this recommendation and no further reporting is required.

Food and Environmental Hygiene Department

Case No. DI/430 – Monitoring of Outsourced Street Cleansing Services by the Food and Environmental Hygiene Department

Background

861. Cleansing services for streets in Hong Kong are mainly the responsibility of the Food and Environmental Hygiene Department (FEHD). Since 2000, the Department has been outsourcing street cleansing services to cleansing contractors (contractors) through tendering and contracting procedures. There have been public views that the process or practice of awarding contracts to the lowest bidder has led to inconsistent and varying service quality, and that FEHD's monitoring of the performance of contractors is inadequate, resulting in frequent piling of rubbish on streets, thereby affecting environmental hygiene. Against this background, The Office of The Ombudsman (the Office) initiated this direct investigation to examine the Government's monitoring mechanism for outsourced street cleansing services and its effectiveness, with a view to making recommendations for improvement to the Government where necessary.

The Ombudsman's observations

(I) Tendering Mechanism for Selecting Contractors

862. FEHD's tendering exercises for street cleansing contracts have all along been conducted in accordance with the Government's procurement regulations and procedures by adopting the "marking scheme" approved by the Central Tender Board for tender evaluation. Prior to 1 April 2019, the weightings accorded to "price score" and "technical score" under the marking scheme were respectively 70% and 30% of the total score. The 2018 Policy Address initiated an adjustment: for service contracts involving non-skilled employees tendered on or after 1 April 2019, the weightings of "price score" and "technical score" under the marking scheme were modified to become 50%:50%. FEHD then followed suit in its tender evaluation. Between April 2019 and March 2020, a total of 14 street cleansing service contracts were awarded by FEHD, of which 10 (71%), as compared to 40% in the past, were not awarded to the lowest price bidders, indicating a departure from the past when the "lowest bid wins" situation prevailed. Of these 14 service contracts, the winning

contractors were ranked either first or second in "technical score" among the bidders.

863. The Office considered it a positive move by FEHD to adopt the new 50%:50% weighting of "price score" and "technical score" in the tendering exercises for street cleansing service contracts, as it has tackled the problem at source by imposing a more stringent technical requirement. The change has just taken place for about a year, and as at March 2020, only 14 new service contracts have been awarded. The Office, therefore, considered that FEHD should closely monitor the street cleansing services tendered in or after April 2019 to see whether service quality has improved, conduct timely reviews as necessary and report the findings to the Government with a view to further refining the tendering mechanism. In particular, FEHD should pay constant attention to the welfare of non-skilled workers of contractors, identify any room for improvement and take corresponding action where warranted in order to enhance protection for frontline cleansing workers' well-being, thereby enhancing the services delivered by contractors.

(II) Monitoring Mechanism for Performance of Contractor

<u>DPS and Default Notices of limited deterrent effect</u>

864. FEHD relies heavily on the issuance of various types of Default Notices (DNs) in tackling problems associated with poor services of contractors. The DPS is only applicable to "employment-related" defaults and does not cover "poor performance" of contractors.

865. Under the current DPS, FEHD had only issued one DN and given one demerit point to a contractor for "employment-related" defaults in 2018 and 2019. During the 10 years between April 2009 and March 2019, no contractor had accumulated three demerit points over a rolling period of 36 months immediately preceding the month of a tender closing date to cause its disqualification from tendering. This shows that insofar as "employment-related" defaults are concerned, the DPS has been effective in monitoring contractors' compliance with obligations in employment issues. In situations where DNs are ineffective, FEHD should consider widening the scope to include "poor performance" in the DPS in order to step up monitoring of the service quality of contractors.

866. Take the street cleansing service contracts tendered in 2019 as examples. The lowest contract price for a two-year service contract

awarded by FEHD was $39.72 million and the highest was $158.52 million. The average contract price was $109.71 million. In 2019, FEHD issued a total of 2,162 verbal and written warnings and 1,157 DNs to trigger deduction of monthly service charge for defaults of contractors. The total amount of deduction was about $2.75 million, equivalent to an average deduction of about $81,000 for each of the 34 service contracts in force in 2019.

867. The system of deducting monthly service charge by FEHD has not incorporated any deterrent element. The amount deducted represents only the administrative cost recovered by the Department for supervising the contractor in discharging its contractual duties. It can hardly create sufficient deterrent effect on the contractors in breach of contractual obligations.

868. The Office was of the view that even though the deduction is not a "fine", the deduction amount should create deterrent effect so that contractors will be vigilant and take steps to avoid recurrence. In fact, the price of each contract awarded to a contractor ranged from tens of millions to more than a hundred million dollars. In comparison, the deduction in monthly service charge was relatively insignificant and cannot create adequate deterrent effect on contractors with unsatisfactory performance.

869. FEHD stated that the more DNs a contractor has received, the lower its score in "past performance" would be, which may in turn affect its chance of tender award. The Office has scrutinised the 14 street cleansing service contracts awarded by FEHD between April 2019 and March 2020, and found that the successful tenderers of the 14 service contracts only scored between 0 and 3 in "past performance" (the full score being 7.5 for this item). The variation was only 3 marks. Among them, 6 scored 3 in "past performance" and 2 scored 1.5. The remaining 6 scored 0 and ranked last among the tenderers in this item; yet, they were still awarded the tender eventually. The Office found that the unfavourable effect of DNs and "past performance" score on contractors was not impactful. An unsatisfactory score in "past performance" does not necessarily cost a contractor a new service contract.

870. The Office noticed that in tender evaluation, FEHD normally would only give a score between 0 and 3 for "past performance". This indicates that FEHD had not fully utilised the 7.5 marks accorded to the item for distinguishing good from bad "past performance". This may weaken the deterrent effect that DNs and "past performance" assessment would have on contractors.

Current monitoring mechanism fails to incentivise contractors to improve services rendered by employees

871. Currently, FEHD seeks to ensure compliance of contractual requirements through enforcement action and supervision on services of contracts. Nevertheless, save for encouraging tenderers to include "innovative proposals" in their tenders under the new tendering mechanism effective since 1 April 2019, FEHD's current monitoring mechanism includes no measures that directly incentivise contractors to proactively improve services rendered by their employees after obtaining a contract. Under the current mechanism, a contractor's chance of contract award would not be affected so long as it meets the minimum contract requirements on the existing contract and avoid demerit points or DNs from FEHD. The mechanism fails to motivate contractors to improve the services rendered by their employees.

872. The Office considered that contractors delivering services that just meet contract requirements can only reach the minimum standard of compliance. For continuous improvements in service quality and in recognition of the excellent performance of some contractors and their employees, FEHD should consider setting up an incentive or reward system outside the current enforcement framework so that contractors would have greater motivation to enhance service quality.

(III) Effectiveness of Monitoring Efforts

Lack of regulatory coordination

873. On whether the day-to-day performance of contractors complies with the contract requirements, FEHD relies on the contract management staff of its 19 District Environmental Hygiene Offices (DEHOs) to conduct inspections, regulatory examinations and take enforcement action on contractors. If non-compliance with contract requirements is found during day-to-day inspections and regulatory examinations, the contract management staff would take enforcement action to issue DNs to contractors concerned and deduct their monthly service charge.

874. The Office considered that FEHD should monitor the overall performance of individual contractors, identify and recognise contractors with excellent performance to encourage other contractors to follow their examples. It should also implement specific measures to help contractors

with substandard performance to improve. However, the system for management and monitoring of the overall performance of individual contractors is not a coordinated one. The monitoring responsibility is taken up individually by DEHOs. Our investigation found that while the DEHOs have separately maintained data of cases in which contractors have been issued DNs and had their monthly service charge deducted because of poor performance, statistical analysis on such data had not been carried out. Consequently, FEHD has no clear idea as to which contractors have performed relatively less satisfactorily.

Lower ratios of inspections by Quality Assurance Section during non-office hours, weekends and holidays

875. One of the functions of the Central Quality Assurance Section (QAS) is to monitor contractors' performance in providing mechanical cleansing services. The Office's investigation found that inspection ratios of the QAS during non-office hours, weekends and holidays were relatively low. Data between 2015 and 2019 show that, of all the inspections conducted by the QAS, 72% to 82% were conducted on weekdays, 18% to 28% were on weekends and holidays; 68% to 76% were conducted during office hours, 24% to 32% were during non-office hours. Many popular spots of tourist attraction and consumption require enhanced cleansing services during the night time, weekends and holidays because of heavy flow of visitors, and contractors would continue to provide cleansing services during non-office hours. The Office, therefore, held the view that the QAS should step up its inspections during non-office hours, weekends and holidays.

Failure to make good use of complaint data and compile a list of hotspots of complaints about street cleanliness

876. There are a lot of hotspots of complaints about street cleanliness in the territory and members of the public and Members of the District Councils (DCs) and Legislative Council (LegCo) have expressed concerns and made complaints about these locations. Between 2015 and 2019, FEHD had received 56,821 to 69,423 complaints about street cleansing services each year. The number of complaints shows a rising trend.

877. However, FEHD has not drawn up a list of hotspots of complaints about street cleanliness. FEHD explains that the follow-up actions taken in respect of each complaint at various locations and the before-and-after situation of that locations were recorded on its complaint management

information system. It will also explore long-term measures to continuously monitor the contractors to ensure improvement in service quality. However, it had not provided us with illustrated examples other than figures of its prosecution actions. The Office considered that good complaint management is conducive to a department's proper use of resources and service improvement. The details and types of complaints, the locations and times concerned, as well as other relevant data can help the department understand and analyse the problems and eventually identify inadequacies. With regard to street cleansing services, FEHD should make good use of complaints and views received from different channels, grasp relevant information for in-depth analysis so as to understand public concerns and service gaps of contractors. This will facilitate systematic deployment of resources to resolve persistent problems.

878. The Office's investigation confirmed that FEHD had followed up on daily complaints, kept in touch with the DCs and local groups for handling individual complaints and issues at locations of concern. The Department had also drawn up a list of "illegal refuse deposit blackspots" and installed Internet Protocol cameras at these locations, which had facilitated its efforts in monitoring and combating the problem of illegal deposit of refuse. However, illegal refuse deposit is just one of the problems at environmental hygiene blackspots. Other problems, such as the cleanliness of streets near market stalls, locations where wild pigeons and birds frequent, back alleys of restaurants etc. also constantly attract public concern. The Office considered that FEHD should make good use of the data entered into its computer system after inspections, combine such data with the information received from outside sources and conduct analysis with a view to compiling a list of hotspots of complaints about street cleanliness for different districts and reviewing the list periodically. It should formulate specific measures and require contractors to step up cleansing services at these locations constantly. Furthermore, with respect to the list of hotspots of complaints about street cleanliness, FEHD should consider devising guidelines for follow-up actions and require contractors to enhance cleansing services at these locations.

879. The Office understood that environmental hygiene problems may involve the jurisdiction of other Government departments and require their assistance and collaboration for proper handling. As such, FEHD may refer the problems involved in hotspots of complaints about street cleanliness and update the list from time to time to facilitate more effective management of the hygiene condition at the hotspots.

Continuous Improvement in Service Efficiency of contractors

880. FEHD has been bringing in new technologies from time to time and adopting mechanisation and automation techniques. For example, it has increased the number of street-washing vehicles and grab lorries, and explored the option of procuring more small mechanical sweepers for continuous improvement in contractors' service efficiency. The Office considers these measures effective in allowing contractors more room for re-deploying resources, thereby further enhancing their services in the other aspects specified in the contract. For instance, the time and manpower resources thus released can be deployed to focus on improving the cleanliness of environmental hygiene blackspots.

Monitoring of and Support for contractors in Protecting Frontline Cleansing Workers during the Pandemic

881. It is stated clearly in the relevant legislation and service contracts signed between FEHD and contractors that the contractors, as employers, have a duty to safeguard the occupational health and safety of their frontline cleansing workers. Although street cleansing services have been outsourced to contractors, FEHD still owns the responsibility to monitor the contractors' compliance with relevant legislation and contract requirements in providing legal and proper protection to their frontline cleansing workers. FEHD should follow up and take enforcement action in a timely manner when a contractor fails to comply with relevant legislation and contract requirements.

882. Concerning the shortage of supply of protective gear during the pandemic in early 2020, the Office noticed that FEHD had gradually increased the number of face masks distributed to contractors between February and May of the year, and taken measures to ensure priority delivery of face masks to their frontline workers. Given the acute shortage of supply of protective gear around that time, which was a well-known fact, it was really not easy for frontline workers to maintain street cleansing services under the situation. FEHD should learn from the experience during the pandemic, proactively intervene and provide support when the contractors have tried their best but still failed to provide their employees with due protection (e.g. failure in procuring sufficient protective gear). This can ensure that the protection of workers' occupational health and safety, such that they can help maintain street cleansing services, keep the environment hygienic and help fight the pandemic.

883. The Ombudsman recommended that FEHD –

(a) closely monitor whether the quality of street cleansing services tendered on or after 1 April 2019 has improved, conduct timely reviews of service efficiency as necessary and report the findings to the Government with a view to further refining relevant tendering mechanism;

(b) explore with the relevant policy bureau the mechanism or measures for rectifying the unsatisfactory performance of contractors. In particular, FEHD may consider including "poor performance" in the DPS, or setting up a new system with reference to DPS under which demerit points may be given to contractors against serious defaults in performance so as to achieve greater deterrent effect;

(c) review the mechanism for deducting monthly service charge. Include a deterrence element in calculating the amount of deduction, so that the effect of the deduction would not be limited to recovering the administrative cost only but also deterrent Contractors would then be more proactive in enhancing service performance;

(d) review the marking scheme for tender evaluation and utilise fully the scores for distinguishing good from bad "past performance" such that DNs can exert stronger deterrent effect on contractors;

(e) consider formulating more proposals that offer greater motivation to contractors to proactively enhance the service quality of their employees. Encouragement should be given when the performance of contractors and their employees exceeds requirements;

(f) review the regulatory regime to monitor the overall performance of contractors, conduct analysis on complaint data to facilitate the monitoring of contractors in improving performance;

(g) step up the QAS inspections during non-office hours, weekends and holidays. Arrange inspections in a flexible manner in accordance with inspection results and needs, so as to better meet the inspection objective;

(h) compile and analyse information of complaints about poor street cleansing services frequently lodged by members of the public/the DCs and LegCo/local groups, like details of unsatisfactory performance and locations concerned; draw up a list of hotspots of complaints about street cleanliness to constant monitoring and consider devising guidelines for follow-up such that timely actions can be taken to strengthen cleansing services and improve the situation;

(i) continue to explore and bring in new technologies to enhance the efficiency of street cleansing services; and

(j) keep a close watch on the pandemic and situations unforseeable at the time of drawing up service contracts. Intervene proactively and provide thorough support as needed in order to protect the occupational health and safety of workers and maintain the standard of street cleansing services.

Government's response

884. FEHD accepted all of The Ombudsman's recommendations and has taken the following follow up actions.

Recommendation (a)

885. FEHD reviews from time to time the tendering operations for all service contracts involving non-skilled workers (including street cleansing service) that have been in place under the new mechanism since 1 April 2019. Consequential amendments have been made in accordance with the recommendations and latest guidelines from the relevant tender board and policy bureau. FEHD reported to the Labour and Welfare Bureau in December 2020 the welfare protection of non-skilled workers in the service contracts awarded under the new mechanism.

886. To ensure that the service performance of its outsourced contractors meets the requirements of the conditions of contract, FEHD monitors their performance by conducting regular spot checks and surprise inspections in accordance with the frequency and patterns of inspections determined by the established mechanism. In addition, FEHD maintains effective communication with its outsourced contractors through verbal exchanges, telephone messages, emails, meetings, etc., to advise and

remind them of the areas requiring attention, follow-up and improvement in the provision of street cleansing service.

Recommendation (b)

887. There is now a greater deterrent effect on contractors with poor performance following FEHD's improvement of the mechanism for issuing default notices (DNs) and the assessment criteria for evaluating the "past performance" of tenderers (i.e. responses to Recommendations (c) & (d) below). As regards the Demerit Point System (DPS), it is implemented by FEHD in accordance with Financial Circulars Nos. 4/2006 and 3/2019. The DPS aims to enhance the welfare protection of non-skilled workers, and is not used for monitoring the service performance of contractors. Nevertheless, FEHD will, together with the relevant policy bureau, explore the possibility of including "poor performance" in the DPS, or setting up a new system with reference to the DPS under which demerit points may be given to contractors for serious defaults in performance, and inform The Ombudsman of the findings.

Recommendation (c)

888. FEHD has changed the mechanism for deducting monthly charge for "performance-related DNs", from raising the amount of deduction by one tier for every 10 DNs to raising it by one tier for every 5 DNs. The revision applies to street cleansing service contracts tendered since 1 April 2021.

889. In parallel, FEHD continues to maintain effective communication with its outsourced contractors through various communication platforms, such as verbal liaison, telephone messages, emails, meetings, etc., to encourage them to deliver their services in accordance with contractual requirements. Through measures such as formal and surprise inspections, FEHD demands its outsourced contractors to follow up and improve within a reasonable period of time any inadequacies in their performance of contractual services.

Recommendation (d)

890. FEHD has reviewed and revised the assessment criteria for the item "past performance" to fully utilise the scores for distinguishing good from bad "past performance" so that DNs can exert stronger deterrent

effect on contractors. The revision applies to street cleansing service contracts tendered since 1 April 2021.

Recommendation (e)

891. As stipulated in Financial Circular No. 2/2019, FEHD has, since 1 April 2019, included "innovative proposals" as an assessment criterion in the technical marking scheme under the "execution plan" (with a maximum score of 24), with a maximum score is 9, so as to assess the innovative proposals submitted by tenderers. In line with the latest revision of Financial Circular No. 2/2019, FEHD has, since November 2020, divided innovative proposals into two assessment criteria, namely, directly relevant to the service and not directly relevant to the service. The maximum score for innovative proposals that are directly relevant to the service is 6, while that for innovative proposals not directly relevant to the service is 3, giving a maximum total score of 9 for the two criteria. Tenderers are encouraged to put forward innovative proposals that are directly relevant to the service for service enhancement. If the innovative proposal of a tenderer can effectively enhance service or is beneficial to the Government/public, marks will be accorded under "technical score". The revision applies to street cleansing service contracts tendered since 1 November 2020.

Recommendation (f)

892. FEHD is enhancing its Complaints Management Information System (CMIS), and integrating it with the Departmental Geographic Information System to record the location of each street cleansing and refuse related complaint in geocodes. Besides, more details on such complaints will be captured, so as to enable more effective data searching function and meaningful analysis, as well as the identification of complaint hotspots for poor cleansing services, in order to improve complaints management.

893. FEHD will further refine the categories of refuse collection, removal and street cleansing in the CMIS to strengthen the analysis of data on street cleanliness complaints. Moreover, data will be collected from the CMIS and revamped Contracts Management System for compilation of consolidated management returns, so as to facilitate the collection and analysis of information on the number of complaints and follow-up actions to be taken (e.g. issuance of Default Notices), which assists the monitoring of outsourced contractors and improvement of performance.

Recommendation (g)

894. The Quality Assurance Section (QAS) only carries out regulatory inspections to mechanical cleansing services provided by street cleansing contractors according to planned working schedules.

895. Separately, thematic inspections of street cleansing services were conducted to check the supervisory and contract management skill of the Senior Foreman concerned. Good practices adopted by individual district/section for sharing would also be shared with other officers in the same grade to enhance the general performance of contract management staff of the department. We do not carry out thematic inspections for the purpose of monitoring the performance of the street cleansing contractors.

896. Table 6 of the direct investigation report by The Ombudsman showed that 72% to 82% of the inspection were conducted by QAS on weekdays, 18 to 28% on weekdays and holidays; 68% to 76% were conducted during office hours, 24% to 32% during non-office hours. It came to our notice that inspections carried out during non-office hours on weekdays were also counted as inspections on weekdays. After adjustment, 50% to 59% of the inspections were conducted by QAS on normal working hours on weekdays, 41% to 50% of the inspections were conducted during non-office hours, weekends and public holidays. Although the Office and FEHD have adopted different methodologies, FEHD accepts The Ombudsman's recommendation. QAS is arranging more inspections on mechanical cleansing services provided by street cleansing contractors during non-office hours, weekends and holidays.

Recommendation (h)

897. FEHD is enhancing its CMIS and integrating it with the Departmental Geographic Information System to record the location of each street cleansing and refuse related complaint in geocodes. Besides, more details on such complaints will be captured, so as to enable more effective data searching function and meaningful analysis, as well as the identification of complaint hotspots for poor cleansing services, in order to improve complaints management.

898. FEHD will strengthen analysis of information such as the complaint details of unsatisfactory performance and locations concerning poor street cleansing service, and draw up a monitoring list for street cleanliness in various districts. FEHD will review the existing guidelines

and apply the principle of risk management to take follow-up actions against the locations on the monitoring list in a timely and prioritized manner so as to improve street cleanliness.

Recommendation (i)

899. FEHD will continue to explore and bring in new technologies to enhance the efficiency of street cleansing service, including the trial use of solar-powered compacting refuse bins, street leaf vacuum cleaners and solar-powered mobile refuse compactors. A recent example is the introduction of low-entry refuse collection vehicles (RCVs) since 1 December 2020. The low-floor design of the cab makes it more convenient for drivers and cleansing workers to get on and off the vehicles, reduces risk of accidents, improves occupational safety and health, and is more time-saving. It also provides drivers with a wider vision for better safety of both drivers and road users.

Recommendation (j)

900. FEHD strikes a balance between respecting the contracts and using public funds prudently, and intervenes as appropriate to protect the welfare and safety of workers and maintain the standard of street cleansing service. In fact, since 17 February 2020, it has been distributing masks to the frontline workers of outsourced street cleansing contractors for use in discharging duties. Initially, one mask was provided for each worker daily. Thereafter, the number has progressively increased as appropriate. Currently, three masks are provided for each worker daily.

901. FEHD will continue to keep a close watch on the pandemic and situations unforeseeable at the time of drawing up service contracts. It will intervene proactively and provide support as needed, in order to protect the occupational safety and health of workers and maintain the standard of street cleansing service.

Response of The Ombudsman on the implementation of the recommendation by FEHD

902. The FEHD provided progress report to The Office on the implementation of its recommendations on 10 March 2021 and 21 September 2021. The Office replied to the FEHD on 24 December 2021. Regarding recommendation (b), The Office stating that although FEHD

had not established another “Demerit Point System”, it had adopted other alternative measures to increase the deterrent effect on contractors' poor service, including amendment to the mechanism for issuing “Default Notices” and the scoring criteria for “Past Service Performance” in the tendering exercise. The Office believed that the FEHD had implemented the said recommendation. In addition, The Office also believed that the FEHD had fully implemented the improvement recommendations (a), (c) to (j) and the follow-up work on the case was ended.

Government Secretariat - Food and Health Bureau, Department of Health and Customs and Excise Department

Case No. DI/442 – Government's Mechanism for Monitoring Vaccines Provided by Private Healthcare Facilities

Background

903. Advances in medicine have brought us more and more vaccines against diseases such as diphtheria, measles, pneumonia and influenza, etc. In recent years, a much talked-about vaccine is the human papillomavirus (HPV) vaccine. In Hong Kong, some vaccines have been included in the Government's Vaccination Schemes and members of the public can receive scheduled vaccinations as they grow up. For vaccines not included in the Schemes, people can make their own arrangements according to their need and wish for vaccination.

904. Vaccines enter the human body through either injection or oral administration. Vaccines of defective quality would, therefore, directly affect or even jeopardise the health of those who are administered the products. Proper monitoring of vaccines by the Government is of paramount importance.

905. In mid-2019, there had been media reports that some private healthcare facilities (PHFs) were suspected of providing defective nine-valent HPV vaccines. The Department of Health (DH) and the Customs and Excise Department (C&ED) subsequently took joint actions and uncovered counterfeit HPV vaccines in some PHFs. This had aroused public concern over the effectiveness of the Government's monitoring of vaccines.

906. The direct investigation, covering the Food and Health Bureau (FHB), DH and C&ED, aims at examining the Government's mechanism for monitoring vaccines provided by PHFs and exploring room for improvement, if any, as well as enhancing public understanding of the Government's monitoring efforts.

The Ombudsman's observations

907. The Ombudsman has the following findings and comments with regard to the Government's mechanism for monitoring vaccines provided by PHFs –

(a) Quite comprehensive monitoring mechanism already in place for vaccines less prone to parallel import or counterfeit;

(b) Inadequate monitoring for vaccines with excessive demand in the past;

(c) DH and C&ED had taken prompt actions in the wake of the incidents involving nine-valent HPV vaccines;

(d) The Government failed to explain in detail to public its monitoring mechanism and the strengthened monitoring measures introduced after the incidents; and

(e) When the COVID-19 vaccines become available in the local private market, Government must keep relevant information accurate and transparent and ensure the vaccines meet quality criteria.

908. The Ombudsman recommended that FHB, DH and C&ED –

(a) keep a close watch on the effectiveness of the newly introduced strengthened monitoring measures, and make adjustments or amendments when necessary;

(b) include the pharmaceutical product's supply and demand in the market as a risk assessment factor under DH's market surveillance mechanism;

(c) review the information dissemination mechanism. Should serious incidents involving pharmaceutical products occur, they should promptly and proactively explain to the general public their monitoring mechanism, actions taken and the monitoring measures to be introduced so as to allay public doubts; and

(d) enhance the transparency of information about newly introduced vaccines and proactively provide the public with information

about the safety, efficacy and supply of the new vaccines in a timely manner so that they can understand how to protect their health and welfare.

Government's response

909. FHB, DH and C&ED accepted The Ombudsman's recommendation and has taken the following follow-up actions.

910. DH has been closely monitoring the effectiveness of the newly introduced strengthened monitoring measures through various channels, including enquiries and complaints from the public, reports of malpractice from the pharmaceutical industry, and intelligence exchanges with other law enforcement agencies. DH found that, following the implementation of the strengthened monitoring measures, the numbers of related complaints, reports of malpractice and referrals for investigation so received have gone down substantially. DH will continue to implement those measures while keeping a close watch, and will make adjustments as and when necessary.

911. DH has revised the risk assessment factors under the market surveillance mechanism to include in the list, among others, information provided by suppliers relating to supply shortage, complaints against certain products, and whether the vaccines are newly introduced.

912. DH attaches importance to the transparency of information dissemination, and has been proactively explaining to the general public the monitoring mechanism for pharmaceutical products by, for example, laying out on the Drug Office's website the measures for regulation of pharmaceutical products as well as the law enforcement work. DH will continue to strengthen communication with the public by, for instance, keeping the public posted via different channels on the enforcement actions and relevant measures taken in the case of a serious incident involving pharmaceutical products.

913. The Government is committed to enhancing the transparency of information on newly introduced vaccines for a more informed public of knowledge to safeguard their own health. To this end, upon the introduction of COVID-19 vaccines for emergency use, the Government has been disseminating information on the safety, efficacy, vaccination fact sheet and safety surveillance of the vaccines to the general public and

healthcare professionals through different channels and media for greater public confidence in vaccination.

Government Secretariat - Food and Health Bureau, Department of Health and Hospital Authority

Case No. DI/433 – Utilisation of Low-charge Hospital Beds in Private Hospitals

Background

914. Two private hospitals in Hong Kong (hereunder referred to as Hospital A and Hospital B) are required to comply with the land grant conditions and provide no less than 20% of their total beds as low-charge hospital beds.

915. The Office of The Ombudsman (the Office) appreciated the Government's positive attitude and efforts in monitoring the hospitals' compliance with land grant conditions with regard to their provision of low-charge beds and in encouraging the two hospitals to introduce measures to improve the utilisation rates of their low-charge beds.

916. The direct investigation has revealed room for improvement in the Government's promotion of the use of low-charge beds as well as in the referral arrangements between the Hospital Authority (HA) and the two private hospitals during influenza surges.

The Ombudsman's observations

917. The Office has identified the following inadequacies and areas of improvement for the Government –

(a) Government should keep observing and reviewing policy of low-charge beds;

(b) HA should better utilise low-charge beds to divert patients to private healthcare sector; and

(c) The Government should explore ways to further publicise use of low-charge beds.

918. The Ombudsman recommended that the Food and Health Bureau (FHB) and the Department of Health (DH) –

(a) proactively explore ways to better utilise low-charge beds and revisit the relevant policy when reviewing the policy of service packages;

(b) make good use of various channels to strengthen its promotion of low-charge beds among members of the public, such as putting up posters or notices in public hospitals;

(c) proactively explore other means to make low-charge beds more appealing, such as making suggestions to the two private hospitals about using their low-charge beds to offer service packages at lower prices;

(d) discuss with Hospital B on further increasing the number of low-charge beds in its New Wing; and

(e) suggest the two private hospitals enhance the publicity of their low-charge beds, such as providing regular information to all private medical practitioners in Hong Kong on the low-charge bed services, and addressing the misunderstanding and negative impression that patients might have about those beds;

919. The Ombudsman recommended that HA –

(a) review the arrangement for referral of patients during influenza surges to investigate why it has been ineffective, review the existing arrangements and make improvement. For example, relaxing the restrictions on referral of patients and simplifying the relevant administrative work;

(b) improve the reservation arrangement for low-charge beds when the referral agreements are activated during influenza surges to avoid wasting resources;

(c) depending on the effectiveness of referrals in future, proactively consider allowing such referrals to be made beyond influenza surges; and

(d) collaborate with the two private hospitals to explore other feasible measures to better utilise the low-charge beds for diversion of public hospital patients, such as encouraging patients who have made appointments or are waiting to receive treatment to use the

low-charge beds in private hospitals, and to explore the possibility of referring patients to low-charge beds under public-private partnership (PPP) programmes.

Government's response

920. FHB and DH accepted The Ombudsman's recommendations to continue the efforts to explore further ways to better utilise low-charge beds and improve publicity of low charge-bed by the two private hospitals. FHB and DH have undertaken the following follow-up actions –

(a) FHB will revisit the low-charge bed policy when reviewing the policy of service packages, as well as in the formulation of price transparency measures under the Private Healthcare Facilities Ordinance;

(b) FHB will discuss with HA the recommendation to strengthen promotion of low-charge beds among members of the public in public hospitals at an appropriate time after the epidemic;

(c) DH suggested the two private hospitals concerned to enhance the publicity of their low-charge hospital beds, such as making use of various channels to strengthen its promotion of low-charge beds, providing regular information to all private medical practitioners in Hong Kong on the low-charge bed services, and addressing the misunderstanding and negative impression that patients might have about those beds;

(d) DH discussed with Hospital B to further increase the number of low-charge beds in its New Wing where practicable; and

(e) DH suggested the two private hospitals concerned to make low-charge beds more appealing, such as using their low-charge beds to offer service packages at lower prices.

921. It is noted that the two hospitals have responded positively and put in place measures and plans addressing the above suggestions where feasible.

922. HA accepted The Ombudsman's recommendations and has taken the following follow-up actions –

(a) HA has all along made the best and all reasonable effort to improve the referral arrangement by proposing to the two private hospitals concerned to further relax admission criteria and reduce referral logistics. The two private hospitals have agreed with HA to improve and streamline the referral arrangements such as extending the length of stay from 7 days to 10 days and 14 days respectively, releasing the upper limit of age for patients to be admitted, increasing flexibility of reserving beds for transfer and minimising paper work. If the private hospitals further allow longer-stay patients (e.g. infirmary long-stay patients) to be admitted, HA may be able to identify more suitable patients for referral;

(b) The two private hospitals have agreed to relax the one-day prior notice requirement, and to reserve beds for transferred patients on the day of booking;

(c) HA will regularise the low-charge bed referral arrangement to cope with service demand surge; and

(d) HA will invite eligible private service providers to participate in PPP programmes. It welcomes the two private hospitals to participate in more PPP programmes and use their low-charge beds to provide the required services.

Housing Department

Case No. DI/439 – Maintenance and Repair of Play and Fitness Equipment in Public Rental Housing Estates Managed by Housing Department

Background

923. In recent years, there have been reports about many play and fitness equipment in public rental housing (PRH) estates being in a state of disrepair or delays in repairing these facilities, rendering them unavailable for a prolonged period. Moreover, some people find the design of these facilities to be outdated and uninspired, falling short of meeting the leisure and fitness needs of the public.

The Ombudsman's observations

(I) Setting Reasonable Time Frames for Different Procedures for Repairs

924. The Housing Department (HD) has established basic procedures for following up on repairs of play and fitness equipment in PRH estates, and time frames for some of the procedures. Nevertheless, no time frames are set for two procedures, namely estate management staff to report damage of facilities and works staff to issue inspection orders. Where the PRH estate concerned comprised divested properties, HD often needed to consult residents and other stakeholders. The investigation by The Office of The Ombudsman (the Office) has found that the consultation and discussion involved usually take several months.

(II) Stepping Up Monitoring of Whole Repair Process

925. While HD's Enterprise Resource Planning System (ERP System) records and manages information relating to the repair works undertaken by the contractors, there are no systematic records but only handwritten entries in the PRH estates' routine inspection records as to when estate management staff found out the damage of play equipment, whether works staff had been requested to conduct inspection and when they conducted the inspection. It is necessary for the HD to enhance the mechanism by taking a more proactive and comprehensive approach in monitoring the

whole repair process regarding playground facilities in PRH estates to ensure timely follow-up action for each case.

(III) Strengthening Training of Frontline Staff Regarding Condition of Damaged Facilities And Necessary Temporary Measures

926. Individual frontline staff had failed to report and follow up on the aging and damage of rubber tiles in a timely manner. If frontline staff fail to identify accurately the condition of damaged facilities and potential safety risks, it will undermine the effectiveness of maintenance and repair of facilities, thereby causing inconvenience and even safety risks to residents.

927. Moreover, HD requires estate frontline staff to fence off damaged playground facilities where necessary. In some cases, the staff concerned did not have the awareness to implement temporary measures as soon as practicable, nor had they paid attention to the adequacy of temporary measures implemented by the contractors. Frontline staff also failed to provide adequate information at the site to notify members of the public of the repair arrangement. HD must strengthen the training of frontline staff and provide clear and specific guidelines to foster their awareness about safety.

(IV) More Stringent Supervision over Contractors

928. Contractors undertaking the maintenance and repairs of play/fitness equipment in PRH estates under the Hong Kong Housing Authority (HKHA) must be the sole agent of the relevant manufacturers in Hong Kong. As there are only a few contractors, it can be expected that competition is limited. HKHA and HD should therefore take positive steps and exercise more stringent supervision over the contractors to urge them to enhance their efficiency and provide services properly.

<u>Monitor proactively progress of repair orders</u>

929. HD should proactively monitor the commencement and progress of works after issuing a repair order. That will include holding regular meetings to monitor works progress and requiring the contractors to report the works progress on their own initiative. In case any sign of delay is detected, it can be followed up immediately so that the possibility and extent of delay could be minimised.

Take serious follow-up action against delays

930. HD should review the existing system for monitoring contractors and promptly demand follow-up action and improvement by the contractors when problems are found. HD should also introduce tougher measures to monitor and manage contractors with poor performance and increase the penalty, which include exploring the feasibility of providing other Government departments with the performance rating of those contractors as reference so that other departments can take the information into account when examining the tenders for other works submitted by the contractors concerned.

Centralised review on performance rating of contractors

931. Some works staff deviated from the technical guide when rating contractors' performance. HD stated that it was planning to introduce a centralised review mechanism to ensure works staff's compliance with the technical guide in assessing contractors' performance in repair works so that the performance rating could truly reflect the contractors' performance. The Office considered such a mechanism necessary, and that HD should also provide works staff who are responsible for giving performance rating with more specific guidelines on performance rating, including listing the factors to be considered and trying to provide examples for reference.

(V) Proactively Improve Design of Play and Fitness Equipment

932. HD should explore designs that can improve playground facilities in PRH estates in future so as to accommodate the needs of the public. Besides, the Office hoped that HKHA could be more proactive in exploring ways to bring in more contractors to provide more choices in procuring facilities and increase competition among contractors, thereby improving their performance in carrying out repair works. HD might need to prepare a survey for soliciting views on the play and fitness equipment in PRH estates particularly, covering residents of different age groups so as to better understand the residents' comments and enable HD to draw up design/procurement proposals that suit users' needs most. Although playgrounds in PRH estates are mainly for residents of the estates, HD can still engage the community to gather opinions from different parties on the design or replacement of facilities as well as consider launching more channels for public engagement in the design of playgrounds in PRH estates.

933. The Ombudsman recommended that HD –

(a) set reasonable time frames for estate management staff to report damage of facilities and for estate works staff to conduct inspections after receiving reports and issue inspection orders to the contractors;

(b) set reasonable time frames for the procedures on consulting other owners in PRH estates with divested properties on repairs of play/fitness equipment within the estates;

(c) establish an effective mechanism and specific measures for more stringent monitoring of the whole repair process regarding playground facilities in PRH estates;

(d) consider recording in the ERP System the dates on which damage is found and other procedures taken care of by HD's frontline staff are completed and the outcomes thereof;

(e) strengthen the training of frontline staff regarding inspections of play and fitness equipment and provide clear guidelines so that frontline staff will properly record and report damage of play and fitness equipment, engage contractors to follow up on repairs in a timely manner and provide residents with information about the repair works concerned and/or suspension of facilities as appropriate;

(f) monitor more proactively the commencement and progress of works after issuing repair orders for play and fitness equipment, and draw up guidelines to set out relevant instructions for estate frontline staff;

(g) review the existing system for monitoring contractors and promptly demand follow-up action and improvement by the contractors when problems are found, and discuss with HKHA's Contractors Review Committee (Building Maintenance) (The Committee) and Play/Fitness Equipment Review Board on stepping up measures to monitor and manage the contractors with poor performance and increasing the penalty;

(h) set up a centralised review mechanism for checking the rating of contractors' performance by frontline works staff, and provide more specific guidelines on assessment criteria;

(i) explore ways to bring in more contractors in order to provide more choices in procuring facilities; and

(j) consider introducing different methods to increase public participation in the design and procurement of play and fitness equipment in PRH estates so as to enhance the quality of leisure space.

Government's response

934. HD accepted The Ombudsman's recommendations and has taken the following follow-up actions.

Recommendation (a)

935. HD will update the guides to require estate management staff to notify works staff within three working days upon identification of damage of facilities, with the latter having to complete the preliminary inspection and issue inspection orders within five working days.

Recommendation (b)

936. HD has discussed with some owners of divested properties on ways to speed up the repair time and have reached a consensus. HD will discuss with other owners regarding the reply deadline of the consultation with a view to having a common set of criteria for reference by frontline staff to facilitate future operation. The discussion is currently underway and is expected to be completed by the end of 2021.

Recommendation (c)

937. HD has completed the follow-up action. HD has set up a monitoring task force, which will conduct monthly review on the progress of facilities repair in various PRH estates. Should delays in repair works be found, the monitoring task force will take the initiative to assist frontline works staff in solving problems on spare parts ordering, material supply or construction works to speed up the repair process. The monitoring task

force will also report to the Committee on a quarterly basis to step up monitoring of the process of facilities repair.

Recommendation (d)

938. HD has completed the follow-up action. HD has enhanced the existing IT system in April 2021 to keep detailed records of important information, such as the respective dates on which the damage of facilities is found, the damage is reported by estate management staff and the inspection order is issued by works staff. This facilitates subsequent monitoring and more effective tracking of the whole repair progress.

Recommendation (e)

939. Work in this regard is on-going. On the intranet of the HD, HD has updated the self-learning course on "Playground Equipment Inspection and Maintenance" in PRH estates. Relevant guides are introduced to frontline staff in various meetings, seminars, experience sharing sessions and forums to help them understand the procedures for facilities repair. HD will continue to provide training on this aspect to familiarise frontline staff with the work requirements and enable them to take appropriate measures to expedite repair progress.

Recommendation (f)

940. Apart from direct supervision by frontline works staff of the estates over the contractors' repair progress, the newly established monitoring task force will also conduct monthly review on the progress of facilities repair, take proactive steps to check with contractors on their delay in works progress and request immediate improvement measures to complete the repair works as soon as possible. The monitoring task force will also report to the Committee about the contractors' performance on a quarterly basis. HD is revising the guides, which are expected to be completed by the end of 2021.

Recommendation (g)

941. The Committee and the Play/Fitness Equipment Review Board are reviewing the existing system for monitoring contractors and exploring ways to step up measures to monitor contractors with poor performance and penalty. The review is expected to be completed by the end of 2021.

HD has reminded frontline works staff that when contractors show any sign of delay in works but fail to make significant improvement nor provide reasonable explanation after being reminded, a warning letter should be issued immediately. The case will be reported to the Committee and the performance of the contractor concerned will be assessed accordingly under the relevant performance assessment scoring system.

Recommendation (h)

942. The monitoring task force set up will be responsible for the centralised review on the ratings given by frontline works staff as well as reporting to the Committee. The monitoring task force has also reminded frontline works staff about the assessment criteria. HD will incorporate specific guidelines and examples into the revised guides, which is expected to be issued by the end of 2021.

Recommendation (i)

943. Work in this regard is on-going. HD reviews from time to time the Guide to Registration of Housing Authority on Play/Fitness Equipment Agents Reference List (Reference List) in the light of market situation. Without compromising the quality of maintenance, HD has revised the requirements concerning Approved Playground Safety Inspectors. The revised requirements allow contractors (i.e the agents as referred to in the Reference List) to engage a third party Approved Playground Safety Inspector, as an alternative to employing their own staff, for discharging relevant duties, thereby alleviating contractors' burden of employing Inspectors on a long-term basis. This is a way to attract more contractors to apply for inclusion in the Reference List. HD will also proactively contact qualified playground equipment contractors in the market to gauge their interest and encourage them to join the Reference List.

Recommendation (j)

944. Work in this regard is ongoing. HD always attaches great importance to residents' views on play and fitness equipment. This area has already been included in the questionnaire survey for residents of newly completed PRH estates to collect their opinions. These views form an important basis for reference in optimising the design of new development projects. HD will provide the most suitable facility design according to the features of each project. For some large-scale district open space development projects, HD's design team will timely arrange

public engagement and residents consultation. HD's design team will select suitable play and fitness equipment through discussions so as to enhance the community's sense of recognition and belonging towards the project.

945. Before replacing play and fitness equipment in existing PRH estates, HD will collect and listen to residents' views on the facilities through the Estate Management Advisory Committee so that HD can keep up with the times in the selection of suitable facilities.

946. HD replied to The Ombudsman on 27 April 2021 regarding the implementation progress of the various recommendations. HD will update further implementation progress on or before 25 November 2021.

Leisure and Cultural Services Department

Case No. DI/424 – Leisure and Cultural Services Department's Allocation of Swimming Lanes in Public Swimming Pools and Its Monitoring Mechanism

Background

947. The Leisure and Cultural Services Department (LCSD) has implemented the Central Lane Allocation Scheme (CLAS) since 2005 for the main pools of public swimming pools, whereby major relevant national sports associations (NSAs) are assisted to hire the main pool swimming lanes for long-term sports development and training. Under CLAS, LCSD first coordinates with the NSAs on the allocation of number and sessions of swimming lanes in the main pools. Subsequently, each NSA, based on a set of fair and reasonable mechanism and procedures, should coordinate and nominate its own affiliated clubs to hire the allocated sessions. Such applications should then be submitted to LCSD for approval.

948. However, some swimming clubs and members of the sector pointed out that the internal allocation mechanism of certain NSAs are unfair. Yet, LCSD has not regulated how the NSAs allocate the swimming lanes. After allocation of swimming lanes, some clubs would subsequently cancel a large number of bookings for those lanes. Notably, there were media reports that some clubs allegedly used the allocated public swimming lanes for organising profit-making swimming courses.

The Ombudsman's observations

Unclear Use of Public Swimming Lanes Allocated under CLAS

949. The Office of The Ombudsman (the Office)'s investigation has revealed that many swimming clubs would subsequently cancel bookings for the swimming lanes allocated under CLAS. If those clubs actually using the swimming lanes for long-term training, they are unlikely to frequently cancel bookings for the allocated swimming lanes.

950. It is necessary for LCSD to liaise with the NSAs and stakeholders and review the use of swimming lanes allocated under CLAS. LCSD should also draw up relevant guidelines and hire terms which are

compatible with the current training needs of the sector and public expectations.

951. The Office considered LCSD should scrutinise jointly with the NSAs the number of swimming lanes required, and proactively consider reducing the number of lane hours available under the scheme. More swimming lanes, especially for those popular sessions should be released for booking by other organisations through established procedures in an open and fair manner, or for public use.

Failing to Monitor Allocation of Swimming Lanes by NSAs

952. The Office considers that LCSD should not only ensure that the swimming lanes allocated under CLAS are properly used, but also oversee that the swimming lanes are allocated under a fair mechanism to stakeholders in need, so as to prevent any NSAs/swimming clubs from taking advantage of CLAS to gain overwhelming control over swimming lane resources.

953. The Office recommended that LCSD consider setting up an independent panel/committee to review the objective mechanism/criteria for allocation of swimming lanes, and consult the NSAs, swimming clubs, members of the sector and stakeholders to collectively draw up the objective mechanism and criteria for allocation of swimming lanes, thereby enhancing the transparency and fairness of the mechanism, and balancing the demands of various stakeholders.

954. Moreover, LCSD should explore setting an upper limit on the number of lanes allocated to each club to prevent the allocation of swimming lanes from being overly concentrated in certain swimming clubs.

Failing to Effectively Verify Whether Swimming Clubs Have Used Public Swimming Lanes for Profit-making Purposes

955. The Office noted that the Hong Kong China Swimming Association, during its investigation, could not obtain the financial reports of the affiliated clubs concerned regarding the income and expenditure of their swimming courses, it shows that the NSAs are not in a position to regulate or individually scrutinise whether their affiliated clubs have derived profits from organising activities. It is based on wishful thinking that LCSD accepts all activities organised by swimming clubs are not for

profit simply on the grounds that they are non-profit-making organisation, it also reflects that LCSD has failed to effectively verify and enforce the provision that swimming clubs should only use public swimming lanes for non-profit activities.

956. On preventing swimming clubs from using the swimming lanes for profit-making purposes, the Office was aware that introduction of improvement measures to strengthen the declaration and review systems of relevant swimming clubs. The Office urged LCSD to step up monitoring the effectiveness of those improvement measures and conduct timely reviews of those measures, thereby ensuring that all activities organised by swimming clubs under CLAS are non-profit in nature.

Too Lenient in Regulating Cancellation of Bookings for Public Swimming Lanes by Swimming Clubs

957. Under CLAS, the NSAs and their affiliated clubs should have conducted internal "coordination" before applying to LCSD for hiring of swimming lanes, there should not be frequent changes or cancellations by swimming clubs. However, the Office found the opposite after scrutinising the situation of bookings and cancellations record in five public swimming pools. LCSD has not rejected the applications, nor adopted any follow-up measures.

958. The Office considered that LCSD should impose stringent restrictions on swimming clubs for cancellation of allocated swimming lanes, and raise the cost of cancellation (such as charging an administration fee) to deter swimming clubs from obtaining swimming lanes under CLAS and cancelling them subsequently.

959. In the long run, LCSD should also liaise with the NSAs to jointly devise a specific mechanism for cancelling the bookings of swimming lanes allocated under CLAS, As a deterrent, LCSD should take decisive action to impose more rigorous penalties on swimming clubs found to have lightly cancelled the allocated swimming lanes.

Inadequate Regulatory Action against Unauthorised Transfer of Swimming Lanes

960. The Office received a number of comments about swimming clubs evading the inspection of LCSD by various means. To address the

unauthorised sharing or transfer of swimming lanes by swimming clubs, the Office considers it essential for LCSD to strengthen the relevant regulatory efforts and measures.

961. Through our improvement recommendations, the Office hoped that LCSD can be prompted to improve CLAS, leading to more effective and fair allocation of precious swimming lane resources to stakeholders in need, and higher transparency of the allocation mechanism for better monitoring by the public.

962. The Ombudsman recommended that LCSD –

(a) liaise with the NSAs and representatives of the sector for stipulating clearly the use of main pool swimming lanes allocated under CLAS (for instance, the swimmers/swimming squads using those lanes are subject to some eligibility criteria, such as cumulative attendance rate in training programmes or certain levels of swimming skills), and draw up relevant guidelines and hire terms;

(b) stringently review the number of lane hours in the main pools allocated under CLAS, especially for those popular sessions, thereby releasing more swimming lanes for booking by other organisations through established procedures, or for public use;

(c) consider establishing an independent panel/committee and consulting the NSAs, swimming clubs, members of the sector and stakeholders to collectively draw up the allocation mechanism and criteria in an objective and transparent manner;

(d) explore setting an upper limit on the number of main pool swimming lanes allocated to each swimming club, especially for the peak hours or swimming lanes in popular main pools, so as to give other interested swimming clubs or organisations more opportunities to hire the swimming lanes in those sessions;

(e) step up monitoring the effectiveness of the improvement measures regarding the declaration and review systems of swimming clubs, and conduct timely reviews of those measures, thereby ensuring that all activities organised by swimming clubs under CLAS are non-profit making;

(f) impose restrictions on swimming clubs for cancelling their bookings of main pool swimming lanes allocated under CLAS, and explore ways to raise the cost of such cancellations by swimming clubs;

(g) in the long run, to liaise with the NSAs to jointly devise a specific mechanism for cancellation of main pool swimming lanes allocated under CLAS, and impose more rigorous penalties on those swimming clubs found to have lightly cancelled their bookings; and

(h) strengthen the regulatory efforts and measures against unauthorised transfer of swimming lanes by swimming clubs.

Government's response

963. LCSD accepted The Ombudsman's recommendations by reviewing the existing mechanism for allocating swimming lanes in public swimming pools and taking the following follow-up actions.

Recommendation (a)

964. LCSD has established a working group to review the allocation of swimming lanes under CLAS. Its membership includes representatives from NSAs/sports clubs concerned and three meetings were held. After discussion at its third meeting, the working group has set the eligibility requirements for swimmers/swimming squads from the NSAs/sports clubs concerned.

Recommendations (b) and (d)

965. To provide more swimming lanes for open application by other organisations according to normal procedures, or for public use, the working group has decided after discussion to revise the hiring sessions of the swimming lanes allocated under CLAS and set an upper limit on the number of swimming lanes allocated to each swimming club.

Recommendation (c)

966. LCSD has established a working group to review the allocation mechanism under CLAS and the basic criteria adopted by individual NSAs for allocating swimming lanes to their affiliated clubs.

Recommendation (e)

967. To step up the monitoring of the use of public swimming pool facilities by organisation hirers, LCSD has revised the Terms and Conditions of Hire of Public Swimming Pools of the Leisure and Cultural Services Department ("Terms and Conditions of Hire"), requiring that organisation hiring LCSD swimming lanes at "normal rates" must be non-profit-making in nature and the hired swimming lanes are used for non-profit-making activities. No income of any non-profit-making activities organised by the hirer at any hired facilities shall be paid or transferred directly or indirectly to any individual, firm, body corporate or unincorporated. LCSD may require the hirer to submit the audited accounts or statement of accounts certified by a certified public accountant for verification. In view of the COVID-19 epidemic, public swimming pools have to be closed temporarily and hence block booking applications have to be suspended, making the department unable to review the effectiveness of the new measures. LCSD will conduct review on the arrangements concerned after the current financial year.

Recommendations (f) and (g)

968. Members of the working group have agreed unanimously that punitive measures against arbitrary cancellation of use of swimming lanes should be formulated, and actions by the department are needed in this regard. Details are as follows –

(a) NSAs/sports clubs agree to establish a notification mechanism for cancellation of use of swimming lanes allocated under CLAS by swimming clubs;

(b) To provide record of cancellation of use of swimming lanes allocated under CLAS to NSAs on a monthly basis;

(c) To review the overall arrangements of CLAS, e.g. the time of announcement, the time required for handling application,

payment due date, etc. and co-ordinate the time limit for the general application for booking of swimming lanes; and

(d) To expedite the handling of application of swimming lanes under CLAS to allow NSAs/sports clubs more time to discuss with their affiliated clubs about the booking arrangements.

969. As it takes time to discuss with the District Leisure Services Offices and determine the implementation details of the above-mentioned recommendations for further discussion on the feasible arrangements by the working group, the department will report on the issues concerned in due course.

Recommendation (h)

970. NSAs/sports clubs have agreed to step up the monitoring of the regulation of transfer of swimming lanes and pledge to deploy the necessary manpower for inspection, taking into consideration the total number of hours hired by their affiliated clubs in an effort to step up the monitoring of the regulation of transfer of swimming lanes. Besides, LCSD will also impose sanctions against the non-compliant swimming clubs according to the current sanction system.

971. The progress report concerned was submitted to The Ombudsman on 10 September 2021.

Leisure and Cultural Services Department

Case No. DI/436 – Leisure and Cultural Services Department's Regulation of Public Coaching Activities at Public Swimming Pools

Background

972. The Public Swimming Pools Regulation (the Regulation) stipulates that no person, within a swimming pool or the precincts thereof, shall do any act which is likely to endanger, obstruct, inconvenience or annoy any person. In order to promote swimming and ensure water safety, the Leisure and Cultural Services Department (LCSD) generally allows coaching activities (including coaching by private tutors or family and friends) at the public swimming pools under its management. Such activities must be carried out in an orderly manner without causing nuisance to other swimmers. Otherwise, the Department would take enforcement action in accordance with the Regulation.

973. Nevertheless, views and complaints received from the public indicated that some individual or group coaching activities at public swimming pools had caused nuisance to other swimmers. The problem had persisted due to ineffective regulation by LCSD.

The Ombudsman's observations

974. The Office of The Ombudsman (the Office) considered that there are three areas for improvement in LCSD's regulation of public coaching activities at public swimming pools.

Need for a Uniform Policy and Mechanism for Designation of Public Coaching Areas

975. Designating a Public Coaching Area has helped to balance the needs of different swimmers evidently. The Office opines that LCSD should proactively consider separating those swimmers engaged in coaching activities from general swimmers by designating Public Coaching Areas. In addition, LCSD should seriously contemplate drawing up a uniform and specific policy and mechanism regarding the designation of Public Coaching Areas. All coaching activities (including fee-charging coaching lessons and coaching given by family and friends) should be

confined to the Public Coaching Areas, in order to separate different types of pool users.

Need for More Rigorous Management of Public Coaching Areas

976. The Office considered that LCSD should lay down specific conditions of use for Public Coaching Areas. For example, it can impose a maximum on the number of users, restrict the coach-learner ratio for each coaching session. This would help to maintain the order at Public Coaching Areas.

Need for More Proactive Collection and Analysis of Data on Public Coaching Activities

977. The Office considered that LCSD should be more proactive in the collection and analysis of data relating to public coaching activities at public swimming pools, including the peak periods of such activities, number of participants, pool facilities most frequently used and the modes of coaching activities, etc. so that pool staff can record and review public coaching activities.

978. Given the limited resources in public swimming pools, designation of a Public Coaching Area would inevitably reduce the space available to swimmers. Under the current mechanism, only groups can apply to LCSD for hiring swimming lanes. Private coaches, therefore, can only conduct coaching lessons at Public Swimming Areas which may cause nuisance to other swimmers. The Office opines that designation of Public Coaching Areas can fill this gap under the current mechanism so that public coaching activities can be carried out in an orderly manner.

979. In the long run, LCSD should examine the number and distribution of Group Hiring Areas, Public Coaching Areas and Public Swimming Areas, with a view to setting and adjusting a proper balance to cater for the needs of different swimmers.

980. The Ombudsman recommended LCSD –

(a) to formulate a uniform and specific policy and mechanism regarding the designation of Public Coaching Areas, and confine coaching activities to such area upon designation in swimming pools for separating different types of pool users;

(b) to study proactively the feasibility of designating a Public Coaching Area at more public swimming pools (including newly constructed or redeveloped ones);

(c) to strengthen the management of Public Coaching Areas and formulate specific conditions for using those areas for coaching activities; and

(d) to step up the collection and analysis of data relating to public coaching activities at public swimming pools to facilitate the formulation of a policy and mechanism regarding the designation of Public Coaching Areas, as well as management measures for those areas.

Government's response

981. LCSD accepted The Ombudsman's recommendations to study the regulation of public coaching activities at public swimming pools. The following follow-up actions have been taken and a progress report was submitted to the Office on 13 September 2021 –

(a) A working group has been established by LCSD to study the formulation of a uniform and specific policy and mechanism regarding the designation of Public Coaching Areas. Two meetings had been held and the mechanism and criteria for the designation of Public Coaching Areas were initially formulated. Pursuant to the directions issued under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F), the maximum capacity of public swimming pools has to be limited to not more than 50%. The data gathered under this requirement cannot reflect the actual circumstances of swimming pools during normal opening times, nor could they justify implementation of the mechanism for the designation of Public Coaching Areas and the conditions of use of those areas. In this connection, the arrangements initially devised by the working group will only be taken forward after the normal service of public swimming pools resumes;

(b) To strengthen the management of Public Coaching Areas, the working group, having consolidated and examined the views of the District Leisure Service Offices, agree to draw up specific conditions of use for Public Coaching Areas at its second meeting.

LCSD will notify the District Leisure Service Offices under its purview of the arrangements and the establishment of the mechanism on the designation of Public Coaching Areas; and

(c) To enhance the collection and analysis of data relating to public coaching activities at public swimming pools, the working group has initially determined the data to be collected and the collection method, so as to provide reference for the further formulation of a policy and mechanism regarding the designation of Public Coaching Areas, as well as management measures for those areas.