



Right to Access to Information

There were no recommendations made on the Hong Kong Special Administrative Region, China (HKSAR) for the Second UPR Cycle.

Framework in Hong Kong

HKSAR currently does not have a freedom of information law or a law regarding archives. There is a Code on Access to Information, which has been in place since 1995, but this is largely inadequate and not legally binding. There is also no legislation regulating government records. The Government relies on administrative directives, guidelines and publications, with a small proportion of documents transferred to the Government Records Service. Delays in considering the implementation of freedom of information laws or archives laws, have been explained by noting that the Hong Kong Law Reform Commission is currently conducting a research study. However, they have been ongoing since May 2013 and June 2013.

Activists, journalists, historians and Legislative Council members have urged the government to make these legislative changes for more than 30 years as a way to enhance government accountability and transparency. The ICCPR has been extended to HKSAR. Article 39 of the Basic Law provides it shall be implemented through HKSAR laws. However, there have been extensive delays in taking action realise rights to access information.

Challenges

- HKSAR limits rights to access information held by public bodies in a manner which is inconsistent with Article 19 of the ICCPR.
- Access to information is difficult due to a lack of legislation, responses for information taking extensive time, even if successful. This limits the accountability of the HKSAR Government.

Cases, facts and comments

- The exemptions allowed in the Code of Access to information are framed too broadly, allowing the government to refuse almost all requests for disclosure. For example, a refusal can be made that the information is premature to disclose, along with 16 other grounds. Additionally, a large number of public and statutory bodies are excluded from the Code.
- In a Direct Investigation Report in March 2014, the Ombudsman issued a recommendation calling on the government to introduce freedom of information legislation.
- In July 2017, the Office of the Ombudsman said in a report that there were 85 complaints in 2016/17 related to access information. The Ombudsman said that government departments often inappropriately withheld information because they were unfamiliar with the Code, or claimed that documents were internal.
- Journalists routinely have government agencies routinely denying requests for information. For example, a refusal from Registration and Electoral Office to provide details of nominees of voters in the



	<p>Chief Executive election after information was removed from the public domain.</p> <ul style="list-style-type: none">• Business also finds lack of access to official data one of the greatest challenges in being a smart city according to an American Chamber of Commerce June 2018 survey.
<ul style="list-style-type: none">• The HKSAR Government is not sufficiently recording information, limiting the realisation of rights to access information under Article 19 of the ICCPR. There is no archives legislation.	<ul style="list-style-type: none">• Archives related to government policies decisions or important events could be lost or deliberately destroyed with such a law. Veteran journalist Connie Lo Yan-wai realised while researching Hong Kong's 1967 riots that many of the archives related to that incident no longer existed. This led her to produce the 2017 documentary film Vanished Archives about the issue.• In 2014, the offices of Chief Executive, Chief Secretary and Financial Secretary transferred only 130 records to the Government Records Service. That was 0.2 per cent of the records from all government departments that year.• In a Direct Investigation Report in March 2014, the Ombudsman issued a recommendation calling on the government to introduce archives legislation.

Recommendations

- **HKSAR should adopt a Freedom of Information Ordinance that establishes maximum disclosure and minimal exemption requirements, within one year.**
- **HKSAR should adopt an Archives Ordinance, incorporating mandatory public sector compliance and penalties for non-compliance, destruction of records and denial of access, within one year.**

Questions to ask in advance

- *How is HKSAR responding to the Ombudsman's finding that departments are often inappropriately withhold information? What actions is HKSAR taking to proactively put in the public domain government information of public interest, consistent with Article 19 of the ICCPR?*
- *What is the time frames to introduce freedom of information and archives laws? In the interim, what measures will be taken to enhance Article 19 ICCPR rights?*

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