

SUBMISSION TO THE LAW REFORM COMMISSION OF HONG KONG IN RESPONSE TO ITS CONSULTATION ON ACCESS TO INFORMATION

February 2019

Introduction

This submission sets out the views of Justice Centre Hong Kong (Justice Centre) in response to the consultation of the Law Reform Commission of Hong Kong (the Commission) on the access to information regime.

Justice Centre calls upon the Commission to extend the deadline for responding to the consultation. The consultation covers a wide range of technical legal issues and significantly more time is needed for civil society to give our considered views on all aspects of the consultation.

This submission relates to the Commission's recommendation to introduce a charge for data only.

Proposed charges for data

In chapter eight of the Commission's consultation paper, it recommends the introduction of an application fee for data to prevent abuse.¹ Justice Centre opposes this proposal as it hinders the exercise of the right to information.

Justice Centre makes more than 15 requests under the Code on Access to Information (the Code) a year to inform our policy work, research and services. We have never been charged for data obtained through these requests. Depending on the amount, the introduction of a fee may hinder the ability of our organization and other civil society organisations to obtain information and conduct evidence-based research or policy advocacy.

Facilitating access to information for all also attracts investment and promotes good governance. In its Business Sentiment Survey 2018, the American Chamber of Commerce in Hong Kong found that the Government's mindset, bureaucracy and a lack of access to official data was considered by most members as the top challenge Hong Kong faced in the smart city race.² Data is also essential to policy deliberations and

¹ Access to Information Sub-Committee, Law Reform Commission of Hong Kong. (2018). *Consultation Paper: Access to Information*. Retrieved from: https://www.hkreform.gov.hk/en/docs/accesstoinfo_e.pdf.

² American Chamber of Commerce in Hong Kong and Ipsos Business Consulting. (2018). *AmCham Hong Kong 2018*

advocacy of civil society. Whether charging for data for the prevention of abuse will outweigh these benefits has not been considered in the consultation paper of the Commission.

There has been no evidence of abuse under the Code either. Specifically in the experience of Justice Centre, we have never received any complaints or heard any concerns from the Administration that the Code is abused.

It is unclear how the application fee can be implemented in a fair or consistent manner. Some of the information to be requested under the new regime will have been provided by the Administration to the Legislative Council free of charge. For example, Justice Centre has requested the nationality breakdown of non-refoulement claimants under the Code, which had been provided to the Legislative Council in a previous year. Information requested may also be very similar to that routinely published by the Administration. For example, the Immigration Department publishes on its website data relating to non-refoulement claims at the Department evaluation stage every quarter, including the number of claims received, handled and outstanding. Justice Centre requests the same information at the Torture Claims Appeal Board stage every quarter from the Security Bureau. The Security Bureau responds quickly with the data every quarter. It is hard to justify why the former is made available free of charge but the latter should not be.

Recommendation

We recommend the Commission to withdraw its recommendation for charges for data.

For further information, please contact Jade Anderson, Head of Research (jade@justicecentre.org.hk).

About Justice Centre Hong Kong

Justice Centre Hong Kong is a non-profit human rights organisation working to protect the rights of Hong Kong's most vulnerable migrants: refugees, other people seeking protection, and survivors of torture, human trafficking and forced labour.

For more information, please visit: www.justicecentre.org.hk

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