

YOUR REF 來函檔號：  
OUR REF 本函檔號：( 25 ) in OMB 2004/4318(I)

FAX 圖文傳真號碼： 2882 8149  
TEL 電話： 2629 0535  
DATE 日期： 21 January 2005

Mr. David M Webb

Hong Kong

Dear Mr Webb,

私人密件  
PRIVATE & CONFIDENTIAL

### **Complaint Against Office of the Government Chief Information Officer**

You e-mailed this Office on 15 November 2004 to complain against the Office of the Government Chief Information Officer (“OGCIO”) for not complying with the Code on Access to Information (“the Code”) in handling your request for information. We acknowledged receipt on 16 November 2004.

Since our interim reply on 16 December 2004, we have completed examination of the case. We now reply substantively.

#### **Your Request**

On 25 October 2004, you filed a request with OGCIO under the Code for the following:

*“The directors’ report and audited financial statements for each accounting period since incorporation of each of the following companies –  
Hong Kong Cyberport Development Holdings Limited,  
Hong Kong Cyberport Management Company Limited,  
Hong Kong Cyberport (Ancillary Development) Company Limited.”*

OGCIO replied on 15 November that the Administration was preparing a comprehensive progress report (“the Report”), including information on the financial status of the Cyberport project, for the Information Technology and Broadcasting Panel (“ITB Panel”) of the Legislative Council (“LegCo”) in January 2005. OGCIO refused your request on the grounds that disclosure of the requested information was premature.

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Your objection resulted in a review of your request. On 6 December, OGCIIO replied and maintained its decision. Upon your further objection on 7 December, OGCIIO informed you on 24 December that the Report was scheduled for discussion by ITB Panel on 10 January 2005 and you could download a copy from the LegCo website.

You made a further query on 29 December 2004 about the information contained in the Report. On 19 January, OGCIIO responded to explain that your request could not be met due to confidentiality of the information.

### **OGCIO's Comments**

In considering your request of 25 October 2004, OGCIIO had taken into account legal advice that the directors' report and audited accounts of the three Cyberport companies contained certain commercially sensitive information and that the companies were bound by the confidentiality provisions in various agreements not to disclose such information. As a result, Government could not disclose the companies' accounts in full to the public, including LegCo and you. To maintain accountability and transparency of Government, OGCIIO had provided to LegCo sanitized accounts without the commercially sensitive information.

Government is required to issue papers to ITB Panel at least one week before a scheduled meeting. The meeting was scheduled for 10 January 2005. OGCIIO issued the Report to ITB Panel on 23 December 2004 because of the intervening holidays in late December 2004.

### **Ombudsman's Comments**

#### *"Premature" disclosure*

Paragraph 2.17 of the Code may be used by Government departments to protect information which will be published within 60 days after a request for such information is made. You made your request on 25 October 2004. In reply, OGCIIO stated that as it was preparing the Report for submission to ITB Panel, disclosure of the requested information to you was premature. However, since the Panel meeting would not take place until January 2005 (i.e. exceeding the 60-day limit specified in paragraph 2.17 of the Code), you were correct in asserting that

OGCIO could not use that provision to reject your request. In the event, the Report was issued on 23 December 2004. Although this turned out to be within the 60-day limit, we consider that OGCI O should have explained more clearly to you its schedule for issue of the report and why disclosure of the requested information was “premature”.

### *Refusal of the request*

Under paragraph 2.16 of the Code, Government may refuse to disclose information containing commercial confidences. Under paragraph 2.18 of the Code, Government may refuse to disclose information if such disclosure would constitute a breach of any obligation arising under common law. In this context, we consider that OGCI O had valid grounds to refuse to disclose the directors’ report and audited accounts of the three companies.

OGCIO knew it was not able to disclose directors’ report and audited financial statements in full, even to ITB Panel. We consider that OGCI O should have explained to you from the outset that its refusal of your request was on grounds of commercial confidentiality under paragraph 2.16 of the Code.

### *Replies to your queries*

As early as 15 November 2004, you had already queried OGCI O whether the Report would contain the information you requested. At that time, OGCI O should have been aware that the Report would only be a sanitized version of the accounts. Again, OGCI O did not explain this in its reply of 6 December 2004.

### *Target response time*

The Code sets a target response time of 21 days for departments to process information requests. OGCI O had responded to your queries within 21 days. While quicker response would be desirable, OGCI O had nonetheless acted within the target response time.

### *Review of your request*

Under paragraph 2.1.2 of the Guidelines to the Code, when a request is refused, the applicant should be informed of the reasons quoting all the relevant paragraphs in Part 2 of the Code, the avenue for review and the option of lodging a complaint with The Ombudsman. Obviously, OGCIO's reply to you on 15 November 2004 had not followed these guidelines.


### **Conclusion**

While OGCIO had valid reasons for refusing your request under the Code, its replies had not been at all clear or helpful. In this light, OGCIO's handling of your request did not comply with the spirit of the Code, which calls for an open and positive attitude.

The Ombudsman, therefore, considers that OGCIO should extend an apology to you. It should also promptly and clearly explain the reasons for not accepting requests for information in the future.

In these circumstances, The Ombudsman considers this case concluded. Thank you for writing to us.

Yours sincerely,

  
(Jenny Tang)  
for The Ombudsman