

HONG KONG ARTS DEVELOPMENT COUNCIL

CODE ON ACCESS TO INFORMATION

INTRODUCTION

The Hong Kong Arts Development Council (HKADC) is a statutory body set up by the Government to plan, promote and support the broad development of the arts including literary arts, performing arts, visual arts as well as film and media arts in Hong Kong. Aiming to foster a thriving arts environment and enhancing the quality of life of the public, the HKADC is also committed to facilitating community-wide participation in the arts and arts education, encouraging arts criticism, raising the standard of arts administration and strengthening the work on policy research.

HKADC recognises the need for the community to be well informed about the HKADC, the activities it undertake and the processes and procedures that it adopts.

This Code, which has been developed in conformity with the principles of the Government's Code on Access to Information, defines the scope of information that will be provided to the general public, sets out how the information will be made available either routinely or in response to a request, and lays down procedures governing its prompt release.

The Code authorises and requires the HKADC staff, routinely or on request, to provide information unless there are specific reasons for not doing so. These reasons are set out in Part 2 and will normally be referred to if a request for information is refused.

Requests for information will be handled as promptly and helpfully as possible and if necessary, members of the public may be approached to clarify their requests. Procedures will be kept as simple as possible.

The Code also sets out procedures for review or complaint if a member of the public considers that the provisions of the Code have not been properly applied.

PART 1

PROVISION OF INFORMATION

Information to be published or made available routinely

- 1.1 Information that the HKADC will publish, or make available routinely for inspection at its offices and/or its website are listed at Appendix A.

Information to be provided on request

- 1.2 The HKADC will also, on request, provide additional information relating to its policies, services, decisions and other matters falling within its area of responsibility, except that requests for information in the areas listed in Part 2 may be refused.

Legal obligations and restrictions

- 1.3 The Code is administrative in nature and does not affect statutory rights of access to information. Equally the Code does not affect legal restrictions on access to information whether these are statutory prohibitions, or obligations arising under common law or international agreements which apply to Hong Kong.

PROCEDURES

Access to Information Officer

- 1.4 The HKADC has designated an Access to Information Officer who is responsible for ensuring that requests for access to information are properly dealt with in accordance with specific procedures.

Requests for information

- 1.5 Requests for information may be made orally or in writing.
- 1.6 Oral requests will usually suffice where the information sought can be provided readily and simply, for example by oral replies or provision of leaflets or standard forms. The HKADC staff may, however, ask for an oral request to be confirmed in writing where necessary or appropriate.
- 1.7 Written requests may be made by letter or by completing the application form at Appendix B, and should be addressed to the Access to Information Officer of the HKADC.

Mailing Address: Hong Kong Arts Development Council

Access to Information Officer
10/F, 1063 King's Road,
Quarry Bay,
Hong Kong

Fax: (852) 2519 9301 / (852) 2824 0585

Email: hkadc@hkadc.org.hk

Responses to requests for information

- 1.8 Responses to requests for information will be given as quickly as possible.
- 1.9 Where a request, whether written or oral, cannot adequately be met by an oral reply or provision of a standard leaflet, form, etc., the information may be given by
- providing a copy of the relevant record or part thereof
 - providing a transcript of the relevant record or part thereof
 - affording a reasonable opportunity to inspect, hear or view the relevant record or part thereof, or
 - providing a summary of the relevant record or part thereof.
- So far as possible, information will be provided in the form in which it exists. Where disclosure of certain information in a record is to be refused, access will normally be provided to the remaining part of the record.
- 1.10 The Code does not oblige the HKADC to
- acquire information not in its possession,
 - create a record which does not exist,
 - provide on request information which is already published, either free or at a charge.

Target response time

- 1.11 Where possible, information will be made available within ten days* of receipt of a written request. If that is not possible, the applicant will be so advised by an interim reply within ten days of receipt of the request. The target response time will then be twenty-one days from receipt of the request.

* Whenever the term "days" is used in the Code this means "working days".

- 1.12 If a request is to be refused, the applicant will be so informed within the timeframe set out in paragraph 1.11 above.

- 1.13 Response may be deferred beyond twenty-one days only in exceptional circumstances, which should be explained to the applicant. For cases requiring clarification of the requests from the applicant, the target response time should be counted from the day on which the clarification is received. Any deferral should not normally exceed a further thirty days.
- 1.14 These targets may be extended if necessary to accommodate the third party procedures set out in paragraphs 1.15 - 1.17, or where the applicant fails to pay any charges levied in accordance with paragraph 1.18 or fails to provide sufficient details to enable the HKADC to identify the information.

THIRD PARTY INFORMATION

Procedures and timeframe

- 1.15 Where information requested is held for, or was provided by, a third party under an explicit or implicit understanding that it would not be further disclosed, and where such information is disclosable under the Code, the HKADC will so advise the third party and invite the latter to consent to, or make representations against disclosure. The third party will be asked to respond within thirty days or such reasonable longer period as he may be granted on request.
- 1.16 On receipt of consent from the third party, the information may be disclosed.
- 1.17 If the third party makes representations against disclosure, or fails to respond within the stipulated time, the HKADC will not disclose the information requested in honour of its explicit or implicit undertaking to the third party.

CHARGES

- 1.18 Processing requests for information uses resources and the HKADC may therefore require payment for this service. Any charges levied will reflect the cost of providing the information, and the information will not be released until the requisite payment has been made.

REVIEW

- 1.19 Any person who believes that the HKADC has failed to comply with any provision of the Code may ask the HKADC to review the situation. The target response time set out in paragraphs 1.11 to 1.14 above also applies to requests for review.

- 1.20 Any person who believes that the HKADC has failed to properly apply any provision of the Code may also complain to The Ombudsman.

PART 2

INFORMATION WHICH MAY BE REFUSED

- 2.1 The HKADC may refuse to disclose information, or may refuse to confirm or deny the existence of information, in the categories and for the reasons set out below, which will normally be referred to if a request is refused.
- 2.2 References in this Part to "harm" and "prejudice" include both actual harm and prejudice and the risk or reasonable expectation of harm and prejudice. In such cases the ADC will consider whether the public interest in disclosure of the information outweighs any harm or prejudice that could result.
- 2.3 The HKADC may refuse to disclose information received in confidence from and conveyed in confidence to governments, courts in other jurisdictions, and international organisations.

Law enforcement, legal proceeding, public safety and security

- 2.4 (a) Information the disclosure of which would harm or prejudice the administration of justice, including the conduct of any trial and the enforcement or administration of the law.
- (b) Information the disclosure of which would harm or prejudice the conduct or impartial adjudication of legal proceedings or any proceedings conducted or likely to be conducted by a tribunal or inquiry, whether or not such inquiry is public or the disclosure of the information has been or may be considered in any such proceedings.
- (c) Information which relates to proceedings which have been completed, terminated or stayed, or which relates to investigations which resulted in or may have resulted in proceedings, whether any such proceedings are criminal or civil.
- (d) Information which would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (e) Information the disclosure of which would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders.
- (f) Information the disclosure of which would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property or the security of Hong Kong.

- (g) Information the disclosure of which might identify the source of information or assistance given in confidence for the enforcement or administration of the law.

Management and operation of the HKADC

- 2.5 (a) Information the disclosure of which would harm or prejudice negotiations, commercial or contractual activities.
- (b) Information the disclosure of which would harm or prejudice the competitive or financial position or the property interests of the HKADC.
- (c) Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of the HKADC.
- (d) Information which could only be made available by unreasonable diversion of the HKADC's resources.

Internal discussion and advice

- 2.6 Information the disclosure of which would inhibit the frankness and candour of discussion within the HKADC, and advice given to the HKADC. Such information may include (but not limited to):-
 - (a) papers for and records of discussion at any internal HKADC meeting, or at any meeting of a government advisory body;
 - (b) drafts of papers or other documents circulated within the HKADC for comment before production of the final published version;
 - (c) papers, reports, opinions, advice, recommendations, consultations and deliberations by HKADC members, staff, advisers or consultants to the HKADC;
 - (d) papers, reports, opinions, advice and recommendations provided in confidence to a third party by the HKADC.
 - (e) legal advice to the HKADC.

Staff employment and public appointments

- 2.7 Information which would harm or prejudice the management of the HKADC staff or the appointments to advisory boards/committees.

Improper gain or advantage

- 2.8 Information the disclosure of which could lead to improper gain or advantage.

Research, statistics and analysis

- 2.9 (a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the HKADC or any other person of priority of publication or commercial value.
- (b) Information held only for preparing statistics or carrying out research, and which relates to individuals, companies or products which will not be identified in reports of that research, or in published statistics.

Third party information

- 2.10 Information held for, or provided by, a third party under an explicit or implicit understanding that it would not be further disclosed. However, such information may be disclosed with the third party's consent in writing.

Privacy of the individual

- 2.11 Information about any person (including a deceased person) other than to the subject of the information, or other appropriate person, unless -
- (a) such disclosure is consistent with the purposes for which the information was collected, or
- (b) the subject of the information, or other appropriate person, has given consent to its disclosure, or
- (c) disclosure is authorised by law

Business affairs

- 2.12 Information including commercial, financial, scientific or technical confidences, trade secrets or intellectual property the disclosure of which would harm the competitive or financial position of any person.

Premature requests

- 2.13 Information which will soon be published, or the disclosure of which would be premature in relation to a planned announcement or publication.

Legal restrictions

- 2.14 Information the disclosure of which would constitute -

- (a) a contravention of any law which applies in Hong Kong, or
- (b) a breach of any obligation arising under common law or under any international agreement which applies to Hong Kong