

Law Society's Submissions

Ombudsman's Investigation into the access to information regime and Government's records management system

On 10 January 2013 the Office of the Ombudsman issued a Press Release on the Ombudsman's decision to initiate a direct investigation into the access to information regime and Government's records management system.

The Law Society notes the following:

1. Code of Access

The Code was first introduced in 1995, almost 20 years ago, and it has remained unchanged ever since. The Ombudsman notes that in the intervening period more than 88 jurisdictions have passed freedom of information laws to protect people's right to access to information.

The Law Society notes the transformation of access to information over the last two decades with the use of the internet and e-mails to conduct business being commonplace.

The Law Society supports the Ombudsman's investigation and considers a review of the Code of Access to be well overdue.

2. Archival Records

The Law Society notes there is no statutory protection of archival records. This matter had been discussed the *Hong Kong Lawyer*, July 2011 in an article "*Good Governance and preserving history: why Hong Kong needs an archive law*"¹ when the following observations were made:

- The provision of open and fair access to public archives enables citizens to find out the reasons behind, and the processes of, government decision making and their impact on people's lives
- In a modern state, it is part of the government's public duty to ensure the proper creation, management, protection, preservation and transfer of records, as it is

¹ Article by William Waung, Founding member of the Archives Action Group

well known that once records are damaged, lost or destroyed they are irreplaceable

- Modern China has enacted archives legislation at both national and regional levels e.g. Shanghai City Archives Regulations
- Hong Kong is the only exception within Asia which does not have archives legislation – even Macau has legislation in place

The Law Society notes with concern that Administration only provides low priority to retention of its records. The Chief Secretary has vast discretionary power to refuse access to particular records which is not subject to any appeal mechanism, and that this closed-door system is completely lacking in transparency.

The Law Society fully supports the Ombudsman's investigation.

The Law Society of Hong Kong
5 February 2013

1171260