

***ESTATE AGENTS AUTHORITY***

***CODE ON ACCESS TO INFORMATION***

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## INTRODUCTION

The Estate Agents Authority (EAA) exists to serve the community well within available resources through an efficient and effective system of regulation of estate agency practice in Hong Kong. To this end, it recognises the need for the community to be well informed about the EAA, the services it provides and the rights and obligations of various parties under the EAA regulatory regime.

Subject to the data retention policy of the EAA from time to time in force, this Code 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 EAA 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 or the requests may be directed to the most appropriate section. 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.

The Code is available on the Internet. It can be accessed at <http://www.eaa.org.hk>.



# *PART 1*

## SCOPE

### *FUNCTIONAL SECTIONS*

- 1.1 The Code applies to all functional sections of the EAA.

### *INQUIRY HEARINGS*

- 1.2 The Code does not apply to information held by the EAA in relation to disciplinary inquiry hearings conducted or to be conducted under the Estate Agents Ordinance (EAO), the disclosure of which is subject to the Proceedings Rules on Inquiry Hearings of the EAA from time to time in force.

## PROVISION OF INFORMATION

### *INFORMATION TO BE PUBLISHED OR MADE AVAILABLE ROUTINELY*

- 1.3 The EAA will publish, or make available for public inspection at its offices or website –
- (a) information on the EAA and its services
    - details of its organisation
    - the services it provides
    - its performance pledges and the extent to which they have been met on a yearly basis.
  - (b) public registers established under the EAO
  - (c) publications, including its annual reports, booklets, pamphlets, press releases
  - (d) the procedures and any charges for access to information
- 1.4 Whenever a service for the public is introduced or changed, the EAA will publish sufficient information to explain the nature of the new service or change, and who will be affected by it.

### *INFORMATION TO BE PROVIDED ON REQUEST*

- 1.5 The EAA 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*

- 1.6 The Code 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. If there is any inconsistency between the Code and any statutory provision, or between the Code and common law or international agreement, the latter shall prevail.

## PROCEDURES

### *ACCESS TO INFORMATION OFFICER*

- 1.7 The EAA has designated its Director of Services as the Access to Information Officer who will be responsible for promoting and overseeing the application of the Code.

### *REQUESTS FOR INFORMATION AND CHARGES*

- 1.8 Requests for information should be made in writing.
- 1.9 Oral requests may be acceded to where the information sought can be provided readily, simply and in a straightforward manner, for example by oral replies or provision of leaflets or standard forms. EAA staff may, however, ask for an oral request to be made in writing where necessary or appropriate.
- 1.10 Written requests may be made by letter or email or by the application form prescribed by the EAA, and should be addressed to the Access to Information Officer of the EAA.
- 1.11 Processing requests for information requires use of EAA resources. The EAA will charge a processing fee, to be announced from time to time, for each piece of information requested in writing. The requisite processing fee must accompany the request for information or, at the discretion of the EAA, be paid before the release of information.
- 1.12 Other than publications which are available free of charge or at cost specified (while stock lasts), photocopying charge for black and white printouts of information on the EAA website will also be levied at HK\$1.00 per page of A4 size and HK\$1.50 per page of A3 size, subject to revision.

- 1.13 Requests for access to and/or correction of an individual's own personal data held by the EAA will be dealt with separately pursuant to the requirements of the Personal Data (Privacy) Ordinance and EAA's data retention policy, and this Code shall not apply to such requests.

### *RESPONSES TO REQUESTS FOR INFORMATION*

- 1.14 Responses to requests for information will be given as quickly as possible.
- 1.15 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.

- 1.16 The Code does not oblige the EAA 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
  - provide information available through an existing charged service; or
  - fulfil a request where all reasonable steps have been taken to find the record or document requested, but it cannot be found or does not exist.

In these circumstances, an applicant for information will, where possible, be directed to the appropriate source of the information.

- 1.17 Where the EAA receives a written request for information which is not in its possession, it may transfer the request to the appropriate source and so advise the applicant.

### *TARGET RESPONSE TIMES*

- 1.18 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.

- 1.19 If a request is to be refused, the applicant will be so informed within the timeframe set out in paragraph 1.18 above.
- 1.20 Response may be deferred beyond twenty-one days only in exceptional circumstances, which should be explained to the applicant. Any deferral should not normally exceed a further thirty days.
- 1.21 These targets may be extended if necessary to accommodate the third party procedures set out in paragraphs 1.22 - 1.24, or where the applicant fails to pay any charges levied in accordance with paragraph 1.25.

*\*\* The term “days” whenever it appears in this Code shall mean “working days”.*

## THIRD PARTY INFORMATION

### *PROCEDURES AND TIMEFRAME*

- 1.22 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, but such information is disclosable under this Code, the EAA 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 twenty-one days or such reasonable longer period as he may be granted on request.
- 1.23 On receipt of the consent in writing from the third party, the information may be disclosed.
- 1.24 If the third party makes representations against disclosure, or fails to respond within the stipulated time, the EAA will not disclose the information requested, in honour of its explicit or implicit undertaking to the third party.

## CHARGES

- 1.25 Processing requests for information uses resources and the EAA 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

- 1.26 Any person who believes that the EAA has failed to comply with any provision of the Code may ask the EAA to review the situation. The target

response times set out in paragraphs 1.18 to 1.21 above also apply to requests for review.

- 1.27 Any person who believes that the EAA has failed to properly apply any provision of the Code may also complain to The Ombudsman. The Ombudsman's address is -

30/F, China Merchants Tower  
Shun Tak Centre  
168-200 Connaught Road Central  
Hong Kong

Telephone : 2629 0555

Fax : 2882 8149





## PART 2

### INFORMATION WHICH MAY BE REFUSED

- 2.1 The EAA 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 considering if “harm” or “prejudice” would be caused by a disclosure of information, the EAA would take into account whether the public interest<sup>1</sup> in disclosure of such information outweighs any harm or prejudice that could result from disclosure.
- 2.3 The Code is not intended to affect the rules, legal requirements and policies (where applicable) from time to time in force relating to disclosure in legal proceedings or EAA’s disciplinary proceedings.
- 2.4 In determining whether to refuse disclosure of information requested, the EAA may consider along the lines in the Guidelines on Interpretation and Application of the Government’s Code on Access to Information.

### *EXTERNAL AFFAIRS*

- 2.5 (a) Information the disclosure of which would harm or prejudice the conduct of external affairs, or relations with organizations in other jurisdictions.
- (b) Information received in confidence from and conveyed in confidence to organizations in other jurisdictions.

### *LAW ENFORCEMENT AND LEGAL PROCEEDINGS*

- 2.6 Subject to the Proceedings Rules on Inquiry Hearings of the EAA from time to time in force,
  - (a) Information the disclosure of which would harm or prejudice the administration of justice, including the conduct of any inquiry hearing 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

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<sup>1</sup> “Public interest” will mean something in which the public has a vital interest in either a pecuniary or personal sense. It can mean a purely inquisitive interest as well as material interest.

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 may or may not result in proceedings, whether any such proceedings or intended proceedings are criminal or civil or disciplinary.
- (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 non-compliance, crime and offences, or the disciplinary actions against the respondents and 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.
- (g) Information the disclosure of which might endanger the life or physical safety of any person (whether or not such person is in Hong Kong), or identify the source of information or assistance given in confidence for security purposes, or for the enforcement or administration of the law.

#### *MANAGEMENT AND OPERATION OF THE EAA*

- 2.7
- (a) Information the disclosure of which would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by the EAA.
  - (b) Information the disclosure of which would harm or prejudice the competitive or financial position, the business or the property interests of the EAA.
  - (c) Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of the EAA or its relationship with various stakeholders.
  - (d) Information which could only be made available by unreasonable diversion of the EAA's resources.

#### *INTERNAL DISCUSSION, COMMUNICATION, INFORMATION OR EXPERIENCE SHARING AND ADVICE*

- 2.8
- (a) Papers prepared for, and minutes and records of meetings and deliberations of, the EAA Board, its standing committees, work groups or panels.
  - (b) Information the disclosure of which would inhibit the frankness and candour of discussion within the EAA Administration or EAA Board, and advice given to or by the EAA Administration or EAA Board. Such information may include -

- (i) documents for and records of discussion (including minutes of staff and senior management meetings), communication, information or experience sharing at any internal EAA meeting or staff training, or at any meeting of a government or foreign government or other advisory body, organisation, board or committee;
  - (ii) opinions, advice, recommendations, consultations and deliberations by EAA staff or advisers or consultants to the EAA.
- (c) Records, papers, documents and information mentioned in paragraphs 2.8(a) and (b) above shall include records and information in whatever form, including without limitation, computer records and email exchanges.

### *STAFF EMPLOYMENT AND PUBLIC APPOINTMENTS*

- 2.9 Information which would harm, impede or prejudice the management of the EAA Administration, the employment of the EAA workforce, or the appointments to statutory / advisory boards / committees.

### *IMPROPER GAIN OR ADVANTAGE*

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

### *RESEARCH, STATISTICS AND ANALYSIS*

- 2.11 (a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the EAA 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 services which will not be identified in reports of that research, or in published statistics.
- (c) Information relating to analysis, research or statistics done for internal consumption, where disclosure could harm or prejudice the effective and efficient operation of the EAA.

### *THIRD PARTY INFORMATION*

- 2.12 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 prior consent in writing.

### *PRIVACY OF THE INDIVIDUAL*

- 2.13 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 authorized by law

### *BUSINESS AFFAIRS*

- 2.14 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*

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

### *LEGAL RESTRICTIONS*

- 2.16 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.

