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From : Clerk to Panel
To : Hon LAU Kong-wah (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Howard YOUNG, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Michael MAK Kwok-fung
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Panel on Security

Follow-up to special meeting on 10 May 2002

At the special meeting on 10 May 2002, members requested the Legal Adviser to draw up proposed questions for the Administration to respond in order to assist the Panel in its consideration of the issues related to the incident on 25 April 2002 where Police took action to stop the public meeting being staged in Chater Garden and media reporters were handcuffed.

2. The Administration has recently advised that the criminal trial of persons arrested and charged in connection with the incident which occurred at the carpark of the Legislative Council Building on 24 April 2002 was concluded on 6 November 2002. Two of the five persons charged were convicted and they have not appealed against the conviction and/or sentence.

3. I attach for members' consideration a list of proposed questions to the Administration (**Appendix I**) drawn up by the Legal Adviser. To assist the Panel in considering the questions, the Legal Adviser has also drawn up a table showing the questions raised/information sought at the special meeting on 10 May 2002 together with the Administration's responses (**Appendix II**).

4. I should be grateful if members would let me have their comments, if any, by **5 December 2002**, on the list of proposed questions in Appendix I. If no comments are received by then, the list will be forwarded to the Administration for a response.

(Mrs Sharon TONG)
Clerk to Panel

Encl.

c.c. Hon Cyd HO Sau-lan)
Ir Dr Hon Raymond HO Chung-tai, JP)
Hon NG Leung-sing, JP)
Hon LEUNG Yiu-chung) Non-Panel Members
Hon LAU Chin-shek, JP)
Hon Emily LAU Wai-hing, JP)
Hon Andrew CHENG Kar-foo)
Hon Frederick FUNG Kin-kee)
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SALA1

Draft proposed questions for the Administration

1. Would the Administration explain its policy on the enforcement of section 17 of Public Order Ordinance (Cap. 245) which confers the Police with powers over meetings, processions and gathering? Would the Administration also provide the following information:
 - a) in relation to a contravention of a condition which applies to a public meeting, the circumstances under which the power to stop or disperse a public meeting would still be exercised despite the fact that such contravention had ceased to occur;
 - b) the guidelines, if any, for exercising the power under section 17(4) and (5) to cause a public place to be closed to the public.
2. Whether the mere act of refusing to enter a press area set up by the Police would be considered as sufficient to constitute obstructing Police officers in their execution of duty.
3. Since the duties of the Police are to take lawful measures for, among other things, preserving the public peace, preventing injury to life and property, and regulating processions and assemblies in public places or places, under section 10 of the Police Force Ordinance (Cap. 232), in what way was the closure of Chater Garden and establishment of a press area at the material time of the incident on 25 April 2002 a lawful measure?
4. In the light of the Administration's statement given at the Panel meeting on 10 May 2002 that "as they [the two members of the media] were worked up and struggled in the course of arrest, the Police had handcuffed these persons to avoid injuries", could the Administration clarify whether the use of handcuffs on the two persons concerned was an application of force for subduing them rather than for protecting the police officer or the two persons concerned from any injury?

5. How many officers of the Police Public Relations Branch were deployed at the scene of the incident at the material time? Were any of these officers involved in or did any of them witness the handcuffing of the members of the media? If the answer is in the affirmative, to what extent had their presence or involvement led to the Police taking action to arrest and handcuff the members of the media concerned?
6. Were the members of the media arrested subject to any investigation at the scene of the arrests? If not, why not? If yes, was it because the facts upon which the arrests were founded did not constitute a commission of an offence or was it because of other reasons?
7. Had a decision been made by the Police not to refer the case to the Secretary for Justice for deciding whether to prosecute the members of the media arrested when they were released at the scene? If it had, what were the justifications for making that decision?
8. Did the provisions in the extract of Force Procedures Manual provided to the Panel apply to the incident in question? If they did, please explain why the Police did not provide an inner-cordon but a press area instead.
9. In what way was the press area established a vantage point? And, what advantage the press area had given to members of the media and their photographers in the context of paragraph 2 of Chapter 39-06 of Force Procedure Manual?
10. Please advise the Panel when the Complaint Against Police Office will complete investigation of the complaints in question and whether the result of the investigation would be released.
11. According to paragraphs 2 and 3 of the Administration's paper entitled: "Police Operation at Charter Garden on 25 April 2002" (LC Paper No. CB(2) 1852/01-02(01)), the following two particular conditions were imposed by the Commissioner of Police under section 11(2) of the Public Order Ordinance (Cap. 245) in respect of the series of public meetings held at Charter Garden at the material time :

- (a) that the organizer was required to ensure that ROA claimants to be repatriated following the CFA's ruling should not take part in the public meetings; and
- (b) that the organizer was required to ensure that no obstruction was caused to the pedestrian and vehicular traffic in the vicinity of Chater Garden.

Had the Commissioner considered whether the organizer would have the ability to comply with the conditions, bearing in mind that these conditions appeared to relate to activities of persons who might not be subject to the control of the organizer of the public meetings concerned?

**Table showing the questions raised and information sought
at the Special Meeting of the Panel on Security held on 10 May 2002
on the subject of issues relating to the incident on 25 April 2002
where Police took action to stop the public meeting
being staged in Chater Garden and media reporters were handcuffed**

Questions raised or information sought by Members		Administration's response
1.	The legal basis for the establishment of a press area, and the reason why reporters were arrested and handcuffed for refusing to enter the press area.	Section 10 of the Police Force Ordinance (Cap. 232) provided that the Police should adopt lawful measures to preserve public peace, prevent injury to life and property, and regulate processions and assemblies in public places. To discharge such duties, it was sometimes necessary for the Police to cordon off an area.
2.	The criteria for cordoning off an area and the need to cordon off a large area and designate a very small press area within that, even though there was no indication of threat to security or safety hazard to any person.	The need to establish a press area and the size of the area were determined by the Police officer in charge at the scene having regard to the circumstances. The press area had been designated at a reasonable location, as one TV company had managed to cover the entire incident from the press area.

3.	Whether the eight persons arrested on 24 April 2002 were handcuffed in the course of arrest.	On 24 April 2002, the vehicle of Secretary for Security was besieged by the Right of Abode claimants and their supporters. Consequently, eight persons were arrested. They were handcuffed in the course of arrest. (vide letter of the Administration dated 25 June 2002 and circulated to members vide LC Paper No. CB(2) 2414/01-02.)
4.	Details of the provisions in Chapter 29-09 of the Police General Orders which were relevant to the use of handcuff by Police officers to restrain two reporters on 25 April 2002.	During the Police operation at Chater Garden on 25 April 2002, two members of the media who refused to move to the press area were arrested for obstructing Police officers in the execution of duty. As they were worked up and struggled in the course of arrest, the Police had handcuffed these persons to avoid injuries.
5.	Whether there was any difference in the treatment of an arrested person, if he was a member of the media.	There was no difference in the treatment of different people.
6.	Whether flexibility was exercised in handling members of the media performing news reporting work.	Members of the media had already been handled with much flexibility in the incident. Officers of the Public Relations Branch had spent much time persuading members of the media to enter the press area before Police officers were deployed to bring the remaining members of the media into the press area.

7.	Whether the refusal of the two members of the media to enter the press area was the only behaviour that constituted "obstructing Police officers in the execution of duty".	As two members of the media refused to enter the press area and struggled with Police officers who brought them into the area, they were arrested for obstructing Police officers in the execution of the duty to bring members of the media into the press area.
8.	Whether there were clear guidelines on the determination of the size of the area to be cordoned off and that of a press area. Whether members of the media were notified of the exact location of the press area.	<p>It was evident from the TV footage that one could see a lot from the press area. It should be noted that most members of the media were satisfied with the press area.</p> <p>The size of the area to be cordoned off was determined having regard to the circumstances and in such a manner that facilitated the execution of duties by Police officers. As Chater Garden was an open area without any natural barrier, the area was cordoned off by a human wall of Police officers followed by the use of mills barriers. Thus, anyone should find it very easy to notice the area that had been cordoned off. After the area had been cordoned off, a press area was designated inside the area to facilitate news coverage by members of the media. The press area, which was surrounded by mills barriers, was located at a short distance from the major spot of Police operations. Thus, members of the media could clearly see the operation</p>

		<p>After the press area had been designated, officers of the Public Relations Branch of the Police had informed members of the media that a press area had been designated and they had to move into the press area. Police officers had also announced the message with loudhailers for many times. Most but a few members of the media entered the press area. Thus, the problems did not originate from the designation of a press area.</p> <p>Attached to the Administration's letter of 25 June 2002, (and circulated to members vide LC Paper No. CB(2) 2414/01-02), was an extract from Chapter 39 of Force Procedures Manual. Paragraph 2 of Chapter 39-06 of the Manual provides: "Photographers and TV cameramen in particular should be given an opportunity to have vantage points; they have the right to take photographs or TV footage in a public place. The office-in-charge of incident should consider the provision of an outer-cordon which restricts the general public and of an inner-cordon or an area which gives advantage to members of the media and their photographers. This will result in more positive reporting and reduce friction with the media representatives."</p>
9.	<p>Justification for the Police to find it necessary to cordon off Chater Garden when it only wished to stop and disperse the public meeting.</p>	<p>It was necessary to cordon off Chater Garden to facilitate the checking of the identity and conditions of stay of persons in Chater Garden. Apart from illegal immigrants and overstayers, all other persons were allowed to leave Chater Garden after their identities were checked.</p>

10.	<p>Whether it was in breach of the law if a member of the media refused to enter the press area. Whether the two members of the media were arrested once they refused to enter the press area.</p>	<p>Police officers at the scene had used loudhailers to ask people to leave the area that had been cordoned off. Some members of the media refused to enter the press area or leave the area that had been cordoned off. As these people obstructed the Police operations in Chater Garden, they were arrested for obstructing Police officers in the execution of their duties... [W]hether the two members of the media had obstructed Police officers in their execution of duty was being investigated by CAPO.</p>
11.	<p>The Administration was requested to provide information on how the members of the media concerned had obstructed Police officers in the execution of their duties, such as the number of Police officers obstructed and the duties being discharged by these Police officers at that time. The Administration was also requested to provide Members with a video-record of the incident, if available.</p>	<p>During the clearance operation in Chater Garden on 25 April 2002, two members of the media were handcuffed. As the complaint arising from that incident is being investigated by Complaints Against Police Office, it is inappropriate for us to comment in detail on the circumstances leading to the use of handcuffs on that day (vide letter of the Administration dated 25 June 2002 and circulated to members vide LC Paper No. CB(2) 2414/01-02).</p>

12.	Whether representatives of media associations had requested the Administration to conduct an independent investigation into the incident. Whether the Administration would consider conducting an independent investigation.	There was no need to conduct an independent investigation because the CAPO was conducting investigations into complaints relating to Police operations on 25 April 2002 and the Police had a practice of conducting reviews after major operations.
13.	Whether there were arrangements to prevent similar incidents in the future.	<p>At the meeting between the Commissioner of Police (CP) and representatives of media associations, both sides agreed that the incident on 25 April 2002 was an isolated one and should not affect future co-operation between the Police and members of the media. One of the follow-up actions was a review of the Police's guidelines on dealing with the media. In this connection, he met with editors and senior representatives of the media on 9 May. The following points were agreed at the meeting -</p> <ul style="list-style-type: none"> (a) Co-operation between the Police and the media had been good and should be maintained; (b) Police officers should respect the work and stance of reporters; and (c) Reporters should respect the work of and difficulties encountered by Police officers.

		The Police would consider introducing measures to facilitate co-operation between the Police and the media in news reporting and establish mechanisms to resolve at the scene differences in views regarding a press area.
14.	Whether the handcuffing of reporters on 25 April 2002 was the first time when members of the media were handcuffed.	The Police do not keep record of occasions on which members of the media were handcuffed. (vide letter of the Administration dated 25 June 2002 and circulated to members vide LC Paper No. CB(2) 2414/01-02.)
15.	Whether the needs of different members of the media were given consideration in the determination of a press area. Whether it was possible to give earlier notice and more briefing for the media before the designation of a press area.	<p>A press area was designated only when there was a safety problem or obstruction of Police officers in executing their duties. There was a need to designate a press area on 25 April 2002 because reporters were running with ladder and equipment between incident spots within Chater Garden, posing danger to members of the public.</p> <p>The Police was considering the establishment of a mechanism to settle differences in views at the scene. The Police's practice was to consider the needs of different members of the media in the determination of a press area. Where necessary, more than one press area might be designated at the same time. There was also well established measures of pooling of news reporting work in situations where there was a need to designate a press area at a remote location.</p>

16.	The reasons for regarding the incident outside the LegCo Building on 24 April 2002 as constituting a contravention of the conditions imposed by Commissioner of Police on the public meeting at Chater Garden.	Seven people, among whom four were overstayers, were arrested in Chater Garden for being involved in the incident outside LegCo Building on 24 April 2002. The obstruction outside the LegCo Building caused by the participants of the public meeting and the presence of overstayers among the participants of the public meeting at Chater Garden were clear contravention of the conditions imposed on the public meeting. In view of these breaches, the Police took action on 25 April 2002 to stop and disperse the public meeting under section 17 of the Public Order Ordinance (Cap. 245)
17.	Whether the Police General Orders could be publicised.	Police General Orders (PGO) is a restricted police document for internal use only. It touches on the details of policing work. If the full set of orders is made freely available to members of the public, it may be subject to potential misuse. It is also inappropriate to publicize the document as this may hinder or prejudice the efficient conduct of the Force's operations. However, requests for release of certain provisions of the PGOs will be considered on a case-by-case basis. (vide letter of the Administration dated 25 June 2002 and circulated to members vide LC Paper No. CB(2) 2414/01-02.) ¹

¹ The issue of accessibility of the public to Police General Orders was discussed at the meeting of the Panel on 7 November 2002. The Police provided a paper on the subject issued to members vide LC Paper No. CB(2)235/02-03(05).