

Your Ref : CB2/PL/SE

Our Ref : LM C9/2004

15 May 2004

Mrs Sharon TONG  
Clerk to Panel  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Mrs TONG,

**Panel on Security**

Thank you for your letter of 26 April 2004 concerning the letter from “a group of investigators” and the statement issued by the Commission on 11 February 2004.

As requested, I provide below the information and clarification sought in the order of the issues raised in your letter.

**Issues concerning the posting of seven Senior Investigators**

**(a) When and how internal recruitment for the posts for collection of intelligence and analysis was conducted**

To fill the seven Assistant Investigator (AI) vacancies then existed in an intelligence section in the Operations Department, the ICAC conducted an internal recruitment in December 2003. Recognising the specialised nature of these posts and the usefulness of the investigative experience to intelligence work, applications were invited from serving investigating officers who might have an interest in taking up the posts in the

intelligence section, which was confined to indoor work with relatively stable working hours. A total of 10 Senior Investigators (SIs), most of whom were over 50 years of age, had responded. All 10 officers were considered in a selection exercise that included an interview to assess their aptitude for intelligence analysis work, and their suitability and willingness for transfer to the posts. As a result, seven officers were selected and were offered re-appointment as AI in their next employment contract. All have accepted the offer but one has recently decided to leave the ICAC. The whole arrangement is one of re-appointment of staff on a purely consensual basis. It is a human resource management issue and is not a “demotion” exercise.

**(b) The practice, procedures and precedents for investigating officers to apply for lower rank posts**

There are no laid down procedures or precedent cases of investigating officers applying for lower rank posts in their grade. However, officers who wish to be transferred may indicate their intention to their supervisors either verbally or in writing.

**(c) Whether the nature of work of the new posts of the seven SIs are similar to that of the posts before the transfer**

No. In the intelligence section, they are only required to perform intelligence analysis work. They are not involved in active investigative work including field operations, and are usually deployed to work during normal office hours.

**(d) The reasons for these officers applying for the transfer**

These officers indicated at the selection interview that they found the job nature of intelligence analysis work and the relatively stable working hours more suitable to them.

**(e) Whether there is any plan to fill the vacancies of these seven SIs**

Yes. The vacancies will be filled by promotion.

- (f) **The respective number of investigating officers “transferred”, “demoted” and “offered no contract” between January 2002 and December 2003 because they had made “inappropriate decisions” or “did not meet the desired standard of the ICAC senior management”**

No officers were demoted as explained in this letter during this two-year period.

Posting conferences chaired by the Director of Investigation are regularly held to review and consider the postings of investigating officers having regard to the officers’ operational exposure, expertise, service history, need for career development and the department’s manpower deployment.

There were three investigating officers who were not offered further contracts on grounds of substandard performance in 2003 and none in 2002. The three officers included one Chief Investigator (CI) and two SIs.

**Disciplinary action against conviction for “drink driving”**

- (g) **Is the ICAC aware of how the Police and other disciplined forces in Hong Kong deal with officers convicted of “drink driving”**
- (h) **Whether it is a normal practice that a police officer convicted of “drink driving” would be dismissed from the Police**
- (i) **Whether there is any difference between ICAC and these disciplined forces in handling such matters and if so, the reason for the difference**

Given the different nature of work involved, the ICAC considers it not appropriate to compare with the other disciplined services the manner and level of punishment to be awarded in handling such disciplinary cases. In determining the appropriate level of punishment, the ICAC takes into account the circumstances surrounding the case, whether the offence is duty-related, the officer’s previous record of offence and his service records. In all the past cases handled, ICAC officers convicted of “drink driving” were not related to their duty. They were normally given a reprimand and a warning of dismissal.

**Suicide of suspect in Housing Department corruption case**

- (j) Whether ICAC had conducted an inquiry into the events which took place whilst the suspect was in ICAC custody before the suspect in question was released on bail, say 12 hours, and if so, the outcome of the inquiry**

An internal investigation was conducted in August 2001 and a report submitted to the ICAC Complaints Committee. The Committee concluded that no disciplinary action against any ICAC officer was warranted. Prior to the commencement of the investigation, the Coroner's Court had concluded that the suspect had committed suicide and pointed out that his death had no connection with ICAC officers. Nevertheless, the court recommended that some improvements be made to the ICAC procedures for handling suspects. The court's recommendations are set out in the attached letter dated 24 August 2001 from the Clerk to Coroner. A recommendation was that the suspect should be accompanied home, where necessary, by an ICAC officer not related to the investigation. The ICAC, after careful deliberations, decided not to rigidly implement the recommendation because of the staffing implications involved, particularly during early hours and other logistical issues. The ICAC would take appropriate action based on the circumstances of the case. The other recommendation concerning the suspect's rights had been considered by the Secretary for Security, the ICAC and other law enforcement agencies. As a result, appropriate improvement measures, including asking the suspect to acknowledge receipt of the Notice to Persons under Investigation advising him of his rights, were introduced by the ICAC in July 2002.

- (k) Before the suspect was released on bail, whether ICAC had any assessment on the emotional state of the suspect, whether the officer in charge of the case had personally made assessment or was informed of the assessment, and is there a practice or guidance for making such an assessment**

A SI had assessed the physical health condition of the suspect when the suspect told an AI that he was feeling a bit dizzy shortly after making a telephone call to his family at 2348 hrs on 2 March 2001. The suspect had not then behaved in any manner that gave cause for concern as to his mental or emotional state. The SI offered to take him to a hospital to receive medical attention. He, however, declined.

At 0020 hrs on 3 March 2001, he was arrested by the SI and was released on bail at 0030 hrs. He then appeared to be very tired and had difficulty in maintaining his balance. The SI reported the situation by telephone to the CI in charge of the case, and proposed that he and an AI should use a Commission vehicle to convey the suspect to his home in Tuen Mun. This was agreed by the CI. Before leaving the ICAC offices at 0040 hrs and during the journey, the SI had twice offered to take the suspect to a hospital but the suspect declined the offer. The SI and the AI eventually handed the suspect to the care of his wife and son at his home. It was only then that they learnt from the suspect's wife that the suspect had a stress problem and was taking medication.

**(l) Who made the decision that the suspect was suitable for release on bail, and the rank and name of this officer**

In accordance with S.10A(a) and (b) of the ICAC Ordinance, an officer in the rank of Principal Investigator (PI) or above may detain an arrested person if he considers it necessary for the purpose of further inquiries and to release an arrested person on bail. In this case, the decision to release the suspect on bail was made by a PI in accordance with standard procedure. The PI did not consider it necessary to detain the suspect as investigation into the aspect concerning the suspect had completed. In this case, the suspect had declined to be sent to a hospital and he was escorted home by ICAC officers.

**(m) Whether the officer-in-charge of the case was on duty shortly before the suspect was released on bail**

No. He finished duty at 1800 hrs on 2 March 2001.

**(n) When an officer is off duty, is he or she still under duty to give instructions or direction to junior officers when the circumstances require**

Yes.

**(o) Whether officers are allowed to play mahjong game in the ICAC Staff Canteen while on duty or off duty**

ICAC officers may carry out recreational activities in the Staff Club

when they are not on duty. The ICAC Staff Club is managed by an ICAC Staff Club Committee.

- (p) Whether the Coroner had made any observation on the emotional state of the suspect before his release from ICAC, and whether such evidence had been put before the Coroner**

The ICAC was not aware of any observation made by the Coroner on the emotional state of the suspect nor of any such evidence put before the Coroner.

- (q) If there is any, to provide a summary of the statement(s) of ICAC witness(es) concerning the emotional state of the suspect before he was released on bail**

The statements given by ICAC witnesses are summarised in the answer to (k). Although appearing to be tired and not able to maintain his balance, the suspect had not behaved in any manner that gave cause for concern as to his mental or emotional state.

- (r) To provide a copy of the transcript of evidence and the findings of the Coroner**

The only court findings made available to the ICAC are contained in the attached letter dated 24 August 2001 from the Clerk to the Coroner. The ICAC does not have a copy of the transcript of evidence.

Yours sincerely,

( Mrs Betty CHU )  
for Commissioner  
Independent Commission Against Corruption

Encl

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東區法院大樓  
香港西灣河太安街 29 號十樓



CORONER'S COURT

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貴署檔號 YOUR REF:

敬啟者：

事由：死因研訊編號：CCDI 442/2001

死者：梁造財，男 / 46歲

有關上述死者之死因研訊，陪審團對該宗死亡個案的結論為“自殺”，並附加建議如下：-

1. 若有需要，由ICAC人員陪同涉案人士回家，應由非直接調查該案之人員護送。
2. 在問涉案人士之前，加強涉案者對其權利之認知，e.g. 播放標準化的錄影帶，讓受問話者之權利如休息、飲食、聯繫家人或律師。

本人懇請台端注意上開建議，並盡早告知死因裁判官擬採何種步驟以落實該等建議，謹此言謝。

甄玉玲  
署理死因裁判官書記  
(梁甄玉玲)

二〇〇一年八月二十四日

此致

廉政專員/廉政公署

副本送：政府新聞處處長

/sl

