

立法會
Legislative Council

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LC Paper No. CB(2)2951/05-06
(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of special meeting held on Thursday, 4 May 2006
at 4:30 pm in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung

Member attending : Hon Emily LAU Wai-hing, JP

Members absent : Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Hon CHEUNG Man-kwong
Hon CHOY So-yuk, JP
Hon CHIM Pui-chung

Public Officers attending : Item I

Miss CHEUNG Siu-hing
Deputy Secretary for Security

Miss Jane LEE
Assistant Secretary for Security

Ms Ada CHUNG
Deputy Law Officer (Civil Law)
Department of Justice

Mr Howard C DICKSON
Government Chief Information Officer
Commerce, Industry and Technology Bureau

Mr Stephen MAK
Deputy Government Chief Information Officer (Operation)
Commerce, Industry and Technology Bureau

Attendance by invitation : Independent Police Complaints Council

Mr Ronny WONG, SC
Chairman

Mr Alan LEONG, SC
Vice-Chairman

Ms Priscilla WONG
Member

Mrs Brenda FUNG
Secretary

EDPS Systems Limited

Mr Ken NG
President

Mr Jimmy POON
General Manager

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Ms Joanne MAK
Senior Council Secretary (2) 2

Miss Helen DIN
Legislative Assistant (2) 1

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I. Report on Leakage of Personal Data issued by the Independent Police Complaints Council on 8 April 2006

(LC Paper Nos. CB(2)1097/05-06(01), CB(1)1278/05-06(01), CB(2)1896/05-06(01) - (02), CB(2)1906/05-06(01) and CB(2)1908/05-06(01))

Briefing

The Chairman reminded representatives of the Independent Police Complaints Council (IPCC) and EDPS Systems Limited (EDPS) that when addressing the Panel, they were not covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and neither were their submissions and documents provided to the Panel. The Chairman also reminded Members that as requested by EDPS, the circulation of the chronology of events provided by EDPS [LC Paper No. CB(2)1908/05-06(01)] was restricted to Legislative Council (LegCo) Members only.

2. The Chairman of IPCC and the President of EDPS respectively spoke on the incident of disclosure of the personal data of persons who had complained against the Police on the Internet. Members noted that the bilingual speaking note of the President of EDPS was tabled at the meeting for members' reference. At the request of the Panel, the Chairman of IPCC agreed to provide his speaking note after the meeting for Members' reference.

(Post-meeting note: the speaking note of the President of EDPS and that of the Chairman of IPCC (Chinese version only) were issued vide LC Paper Nos. CB(2)1936/05-06 and CB(2) 1945/05-06 respectively.)

3. Deputy Secretary for Security (DS for S) said that the Administration was very concerned about the incident and it appreciated the prompt actions taken by IPCC in dealing with the incident. She further said that the Administration had been maintaining close liaison with IPCC and would continue to provide the necessary support to IPCC in dealing with the incident. She added that the Administration was highly appreciative of the valuable contribution made by the current and the past IPCC members in enhancing the integrity and credibility of the police complaints system.

4. DS for S said that the Administration had provided a paper [LC Paper No. CB(2)1896/05-06(01)] setting out the Government's guidelines on information security which applied to all bureaux and departments. She further said that as legal proceedings arising from the incident might be imminent and the Privacy Commissioner for Personal Data (the Privacy Commissioner) was conducting an

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investigation into the incident under the Personal Data (Privacy) Ordinance (Cap. 486) (PDO), the Administration might be constrained in what it could appropriately discuss with Members in order not to prejudice the legal proceedings and the pending investigation.

Discussion

5. Mr Ronny TONG said that as the Report on Leakage of Personal Data (the Report) had shown, the IPCC Secretariat actually had the opportunity on eight occasions between 1998 and 2006 to remind the selected information technology (IT) contractor of the confidentiality of the IPCC data made available to the contractor and to request the contractor to take appropriate measures to protect the data to guard against unauthorised disclosure. He said that it appeared that the IPCC Secretariat had failed to take any measure to protect the data on any one of the occasions. He asked the Chairman of IPCC whether he agreed that IPCC was the relevant data user under PDO in relation to the confidential data in question and it had the responsibility to take the necessary security measures to protect such data under its custody.

6. The Chairman of IPCC said that information on the eight occasions given in the Report was compiled based on records held by the IPCC Secretariat. He, however, had no information showing whether Ms X had made any request to Mr Kirren HEUNG on any one of the eight occasions to observe the confidentiality of the IPCC data. The Chairman of IPCC considered that it was not appropriate to discuss the issue of responsibility in relation to this incident at this meeting since legal proceedings arising from the incident might be imminent. He clarified that according to the legal advice rendered to IPCC, it was the IPCC Secretariat, not the Council, which controlled the collection and holding of the IPCC data.

7. Referring to paragraphs 22 to 24 of the IPCC Secretariat Internal Circular No. 33/98 (Appendix IV to the Report), Mr Ronny TONG asked who was responsible for ensuring that IPCC staff followed the steps stated therein in relation to the copying of the classified documents and information kept by the IPCC Secretariat. The Chairman of IPCC responded that the IPCC Secretariat was responsible for overseeing the implementation of the security arrangements set out in the circular under reference. He invited the Secretary/IPCC to provide further details on the implementation arrangements, adding that the Secretary/IPCC would provide information only based on records kept by the IPCC Secretariat because she had assumed duty after occurrence of the incident.

8. Secretary/IPCC said that the circular under reference was an IPCC Secretariat internal circular on handling classified documents. She informed Members that in line with the security regulations of the Government, a Senior Assistant Secretary (Planning and Support) of the IPCC Secretariat was designated as the Departmental Security Officer whose duties included overseeing the security arrangements for copying of the classified documents and information kept by the IPCC Secretariat.

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Secretary/IPCC further said that the Departmental Security Officer was a staff member of the IPCC Secretariat, and all the Secretariat staff members were civil servants.

9. Mr Albert HO said that it should be noted that all the IPCC members were busy professionals. Their appointment to IPCC was on a voluntary basis and their main duties were to review the investigations by the Complaints Against Police Office (CAPO) of complaints made against the Police by members of the public. Mr HO pointed out that IPCC members were not expected to shoulder the administrative responsibilities of the IPCC Secretariat.

10. Mr Albert HO asked whether the IPCC Secretariat was set up by the Security Bureau (SB) and if so, what training on administrative management and information security had been provided to the Secretary/IPCC and what ranking of the post was. He further said that the information security protection measures proposed in paragraph 6.3 of the Report were, in his view, common sense requirements which should have been stipulated in the operation manual of the IPCC Secretariat. He considered that in order to prevent recurrence of similar incidents, SB should ensure that other statutory and non-statutory organisations under its purview, e.g. the Independent Commission Against Corruption, had implemented those information security protection measures.

11. DS for S responded that the post of Secretary/IPCC was pitched at the rank of directorate officer 2. She clarified that the IPCC Secretariat had not been set up by SB. She pointed out that pursuant to the decision of the Finance Committee in 1985, the Government had set up the IPCC Secretariat to provide administrative support to IPCC. Staff members of the IPCC Secretariat were deployed by the Civil Service Bureau.

12. DS for S further said that as the head of the IPCC Secretariat, the Secretary/IPCC, like all other department heads, was responsible for overseeing the administrative and day-to-day operation of the Secretariat and ensuring compliance with Government rules and regulations on information security.

13. Deputy Government Chief Information Officer (Operation) said that the information security protection measures including those related to management responsibility and staff awareness proposed in paragraph 6.3 of the Report could be found in the existing information security policies and guidelines for use by government bureaux and departments. He said that at the meeting of the Panel on Information Technology and Broadcasting (ITB Panel) on 17 March 2006, the Administration had already provided, amongst other things, a detailed account on the Government's internal information security framework. He echoed the point earlier made by DS for S that department heads were responsible for the implementation of information security protection measures in their respective departments and ensuring that their staff members were conversant with the relevant regulations and guidelines.

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He stressed that the Government placed great emphasis on information security, and all departments were required to appoint a senior officer to be the Departmental IT Security Officer who was charged with the responsibility for the overall information security management and operation of the department. In addition, the Office of the Government Chief Information Officer had provided technical advice and published guidelines on proactive preventative actions for reference by government bureaux and departments and regularly organised training on information security issues for technical as well as non-technical staff.

14. Mr Albert HO further asked what contingency measures had been taken by the Administration to minimise the adverse impact of the incident. He said that the incident had also aroused general concern about the legal responsibility borne by non-official members of advisory and statutory bodies arising from administrative blunders of their respective bodies. He requested the Administration to explain what legal support it would render to such members and the extent of Government involvement in legal proceedings or claims arising from their performance of public service brought against them.

15. DS for S responded that in the incident, the Administration considered that IPCC members should not be held financially liable for their work for IPCC carried out in good faith. She said that since the incident, the Administration had arranged for and funded IPCC to obtain legal advice on matters of legal concern.

16. Ms Margaret NG took the view that the truth could be known only if a hearing of the case was conducted by the court. She recalled that the IPCC Bill introduced into LegCo in 1996 (the 1996 Bill) had sought to make IPCC a statutory body. When the Second Reading debate on the 1996 Bill resumed at a LegCo sitting in June 1997, the then Secretary for Security, however, withdrew the 1996 Bill at the beginning of proceedings for Third Reading. Given that IPCC was a non-statutory body and not a legal person, Ms NG asked against whom legal actions should be brought by people affected by the leakage.

17. DS for S said that people who would like to take legal action should seek their own advice. Nevertheless, the Administration would take over all legal proceedings against IPCC members and the IPCC Secretary, with the Department of Justice (DoJ) conducting the proceedings in the name of IPCC members or the IPCC Secretary, as the case might be. Any related legal document should, therefore, be passed to DoJ. She added that the Administration had planned to submit its legislative proposal to establish IPCC as a statutory body to the Panel as soon as possible. Ms Margaret NG considered that the Administration should provide the information to the public so that the affected persons would know what action they could take. The Chairman of IPCC referred to paragraph 6.4(c) of the Report which read 'EDPS/Mr HEUNG was the immediate and proximate cause of the data being rendered accessible to the public.' Considering that EDPS was engaged to provide services for the IPCC Secretariat, and the latter was a government department, he opined that the

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Government should be responsible for handling claims arising from the incident.

18. The Chairman said that he did not totally agree to the view that the truth could be known by taking the case to the court. He said that as he saw it, there were incentives on both sides for them to settle the case outside the court, and there might not be a chance for the case to be heard by the court. He pointed out that there were discrepancies between the information presented in the Report and that provided by EDPS in its submissions. For example, the Report made no reference to Mr Kirren HEUNG's record of his meeting with the IPCC Task Force on 11 March 2006. However, according to the chronology of events provided by EDPS, the record was signed by a witness, Mr Edward YU, and was submitted to IPCC on 4 April 2006. The Chairman considered that the Government should appoint an independent committee of inquiry to investigate the incident in order to restore public confidence in IPCC.

19. DS for S said that as the Privacy Commissioner was conducting an investigation of the incident under PDO, the Administration did not see the need for another independent investigation. She pointed out that the Privacy Commissioner was empowered under PDO to summon before him any person to provide any information relevant to the investigation and to carry out any public hearing for the purpose of an investigation. In addition, the Privacy Commissioner might, after completing an investigation, publish a report setting out the result of the investigation and any recommendation. She noted that the staff of IPCC were liaising with the Office of the Privacy Commissioner to facilitate its investigation of the incident.

20. The Chairman of IPCC explained that the Report made no reference to Mr Kirren HEUNG's record of his meeting with the IPCC Task Force on 11 March 2006 because according to the recollection of members of the Task Force, Mr HEUNG and his two colleagues present at the meeting had not made any record of the meeting. The Task Force considered that after the incident had been widely reported, Mr HEUNG and his two colleagues had then realised that the meeting on March 11 was very important. On April 4, Mr HEUNG had, for the first time, submitted the so-called written record, signed by his colleague concerned, to the Task Force. The Chairman of IPCC pointed out that the Task Force did not accept the record. He considered that this had nothing to do with non-disclosure of any particular information provided by EDPS in the Report. The Chairman said that while he appreciated the reason given by the Chairman of IPCC for the omission, he considered that this might have aroused concern as to whether there was omission of any more other information in the Report.

21. Ms Emily LAU and Mr LEUNG Kwok-hung expressed support for the Chairman's view of appointing an independent committee of inquiry. Mr LEUNG further said that it was not sure whether the Privacy Commissioner would conduct public hearings for his investigation. Ms LAU said that she had not much confidence in the Privacy Commissioner's investigation and pointed out that the

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Privacy Commissioner had made little progress in his investigation of the case of Yahoo.

22. Dr LUI Ming-wah declared that he was an IPCC Vice-chairman. He did not consider it necessary for the Administration to appoint an independent committee of inquiry since IPCC had conducted its investigation and published the Report, and EDPS had provided detailed submissions. He was concerned that the work of IPCC would be further affected if there was a separate investigation. He added that the President of EDPS had also mentioned that he did not believe that another investigation would necessarily shed light on the incident.

23. Referring to the speaking note of the President of EDPS, Ms Emily LAU sought the response of IPCC to the view submitted by EDPS that IPCC had “cleverly disguised” its faults ‘under “recommendations” in Paragraph 6.3’ of the Report. She considered that should IPCC and EDPS decide to take the case to the court, there would be considerable impact on the IT industry. She asked whether IPCC had come to a view that it was inevitable for it to bring legal proceedings against EDPS or whether it would explore alternative ways of handling the incident.

24. The Chairman of IPCC stressed that IPCC had no intention to conceal any material fact leading to the leakage. He explained that IPCC had to adopt the current approach for presenting paragraph 6.3 of the Report, because IPCC had to avoid drawing any conclusions which might prejudice Ms X in any future litigation or disciplinary proceedings arising from the incident.

25. Ms Emily LAU requested IPCC to respond to the view submitted by the President of EDPS on page 3 of his speaking note that “there is a dramatic contrast between the premature release of the IT contractors’ identities and the protection afforded to IPCC’s staff involved who to this date, is only known to the public as Ms. X”.

26. The Chairman of IPCC said that in the first draft of the Report, the identities of Ms X, Mr Kirren HEUNG and EDPS had all been disclosed, and the relevant extracts from the draft Report had been issued to the three parties for comments. He said that Ms X had then pointed out that according to civil service regulations, her identity should not be disclosed, whereas EDPS and Mr Kirren HEUNG had not raised objections to the disclosure of their identities.

27. The President of EDPS, however, pointed out that at the meeting of the ITB Panel on 17 March 2006, the Chairman of IPCC had already named EDPS, and many reporters had approached EDPS for interviews that afternoon. Therefore, EDPS had been named before EDPS received the draft Report on 31 March 2006 and even before its first meeting with the IPCC Task Force on 29 March 2006. He added that EDPS had also been named by Mr Alan LEONG, Vice-chairman of IPCC and Dr LO Wing-lok, IPCC member, in their open statements made in public.

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28. With reference to the minutes of the meeting of the ITB Panel on 17 March 2006, the Chairman of IPCC read out the following –

“As revealed in the initial findings, the contractor had, for his own convenience, uploaded the data he obtained from IPCC onto a FTP server to facilitate his working at his office/home. The contractor however did not realize that no password was required...(*paragraph 8 of the minutes*)”

“The Chairman of IPCC highlighted that while there was no express provision in the contract about secure transmission of personal data provided by IPCC, the contractor was fully aware of the nature of IPCC's work (*paragraph 28 of the minutes*).”

29. Dr LUI Ming-wah asked the President of EDPS whether he agreed that the direct cause of the incident was Mr HEUNG's placing the IPCC data in a folder on a FTP server and after that, the data had become accessible to the public.

30. The President of EDPS said that in the IT industry, as long as the client had told the IT contractors the nature of the data it was dealing with and the level of security at which the client expected the IT contractors to handle his/her data, the IT contractors would handle the client's data at the level of security as required by the client. The President of EDPS pointed out that in this incident, if EDPS had known from the outset that the data was live data, it would have returned the data to IPCC and requested another set of test data. He said that EDPS had provided services to many government departments including the Police and there had never been any security breach. In the incident, the data had been understood by EDPS as dummy data for testing purpose only. The test data had been stored in a private server, which was used only for testing and internal purpose, and uploading or downloading of the data was protected by user-id and password. He explained that the way of the test data was stored had been compromised by the occurrence of a short circuit in the file directory, which had created an additional route enabling the public to gain access to the data. The error was of a technical nature and it was all right within the testing environment. He pointed out that if the data in question were indeed dummy data for testing purpose only, it would have been all right for EDPS to have put it on the server. He stressed that if EDPS had known the secured nature of the data, it would certainly have handled it only at the IPCC offices and would not have put it on the server. He added that, in fact, when it came to the final stage of the programming and testing and when live data was required for use, EDPS had done the data conversion on-site at the IPCC offices.

31. Dr LUI Ming-wah further asked whether it was a common practice in the IT industry for an IT contractor to upload its client's data on the Internet. The President of EDPS stressed that nobody had deliberately uploaded the data on the Internet for

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access by the public. He reiterated that the creation of the additional route was unintended and it was due to the short circuit problem which had occurred in the access path. He added that once the EDPS staff had been aware of that, it had immediately been shut down.

32. Dr LUI asked whether EDPS would require its staff not to upload its clients' data on the Internet in future in order to prevent recurrence of similar incidents. The President of EDPS said that the submission of EDPS made to IPCC had included recommendations on how to prevent recurrence of similar incidents which, in his view, echoed to a large extent those set out in paragraph 6.3 of the Report.

33. Ms Emily LAU said that she had written to the Chairman of IPCC conveying requests from a person affected by the incident for changing his name and his Hong Kong identity card number. She urged IPCC and the Administration to promptly respond to the requests.

34. The Chairman of IPCC said that he and the Vice-chairman of IPCC were meeting with those who had expressed genuine concerns on the incident. He pointed out that among a total of 72 affected persons who had asked to meet with them to date, they had met with 30-odd and 39 were waiting to see them. He said that he and the Vice-chairman of IPCC hoped to finish meeting with all of them as soon as possible and see what measures could be taken to address their concerns. He added that IPCC had also been discussing with the Administration the possibility of changing Hong Kong identity card numbers as requested by some of the affected persons. The Chairman requested the Administration to explain its policy in this regard.

35. DS for S responded that the Administration would carefully look at requests for changing Hong Kong identity card numbers on a case-by-case basis. She explained that such requests would be considered if the applicant concerned could prove that his circumstances warranted the change, e.g. there was illegal use or abuse of his identity card number to such an extent that genuine and serious nuisance had been caused to him. DS for S pointed out that changing one's identity card number had significant implications, because in Hong Kong the identity card number of a citizen was used in his many important documents, e.g. conveyance documents, leases and bank documents, etc. She advised that the relevant parties should give extremely careful consideration to their case before putting forward such requests.

36. Mr LEUNG Kwok-hung declared that he was one of the victims in the incident and he was going to make claims. He said that he had long been waiting to meet with the Chairman of IPCC. The Chairman of IPCC clarified that he was also anxious to meet with Mr LEUNG, who was amongst the 39 persons in the queue.

37. Mr LEUNG Kwok-hung considered that the IPCC members should not be held responsible. He took the view that there were intrinsic structural flaws of IPCC due to its non-statutory status. He said that in making appointments of the IPCC

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members, the Government, however, had not endeavored to provide IPCC with an independent secretariat to assist it to perform its functions. He pointed out that as revealed in this incident, the Secretariat staff member concerned was protected by civil service regulations whereas the IPCC members might take the blame as they were not entitled to any protection and privileges. He also opined that SB had failed to provide the necessary technical and manpower support to IPCC in handling this incident.

38. The Chairman of IPCC said that he quite agreed to what Mr LEUNG had said. He expressed regret that after the incident, IPCC members had devoted time and effort to handle the various issues arising from the incident and substantial backlog had been built up. He said that IPCC had not held regular meetings for a long time to review the investigation reports received from CAPO. He added that IPCC members hoped that they would soon be able to resume attending to their normal duties of reviewing the investigations by CAPO. The Chairman said that as advised by Senior Assistant Legal Advisor 1, IPCC members should perform their official duties as stated in the terms of reference of IPCC, which did not include handling the issues arising from the incident.

39. Ms Emily LAU said that it was imperative for the Administration to step in and provide assistance to IPCC. She urged the Administration to ensure that IPCC was given all the necessary support to discharge its duties. She considered it unacceptable that IPCC members were burdened with the work of meeting with the affected persons and handling their claims and could not attend to their official duties, i.e. reviewing the investigation reports from CAPO.

40. DS for S reiterated that the Administration was deeply appreciative of the prompt follow-up actions that IPCC had taken after the leakage incident. She said that the Administration had provided support to IPCC, including re-deploying additional temporary staff from SB to the IPCC Secretariat to strengthen the administrative support to IPCC in taking follow-up actions, providing legal support, and liaising with the financial industry associations to seek their assistance in implementing credit monitoring measures to prevent the data disclosed from being used fraudulently to obtain credit from financial institutions. She also reiterated that DoJ would handle legal proceedings or claims which might arise from the incident.

41. In response to the Chairman, the Chairman of IPCC said that what IPCC needed was not mere assistance of the Administration but its direct involvement in resolving the situation. He said that he and the Vice-Chairman of IPCC could not afford the time and resources to interview so many affected persons and handle their requests. The Chairman suggested that the Chairman of IPCC could provide the Panel with a submission on how the Administration should be directly involved. The Chairman of IPCC said that he would consider the suggestion.

IPCC

42. Mr Albert HO also considered that it was time for the Administration to take

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over the follow-up actions so that IPCC members could attend to their official duties. Mr LEUNG Kwok-hung and the Chairman asked whether the Administration would consider setting up a task force for handling the administrative work arising from this incident, including meeting with the affected persons and examining measures to address their concerns. DS for S responded that the Administration would be pleased to discuss with IPCC what further assistance and support it could render to IPCC.

Adm

43. Mr Albert HO said that it was reported by the media that the leaked information was on sale on the Internet for \$20. He asked whether SB had looked into this and taken actions to stop further circulation of the information on the Internet.

44. DS for S responded that the Administration was also aware of the relevant media reports, but the investigations conducted by the Police through its cyber patrol had not revealed anything. She said that the Police would continue with the work and it would take appropriate actions if any illegal use of the leaked data on the Internet was found. She pointed out that according to the Police, the leaked information pertaining to the exposed list was no longer available on the Internet. If there was any abuse of the leaked information, the Police would take into consideration the circumstances of individual cases and take appropriate actions.

Adm
45. At the suggestion of Ms Emily LAU, the Chairman requested the Administration to provide a paper within two weeks' time detailing what actions it would take to deal with the issues arising from this incident. DS for S agreed to provide the paper.

(Post-meeting note: a letter dated 19 May 2006 from the Secretary for Security to the Clerk was issued to members vide LC Paper No. CB(2) 2096/05-06 on 22 May 2006).

46. The Chairman said that he disagreed with the view expressed by some Members that turning IPCC into a statutory body was a solution to the problem. He said that given its manpower and resources, it would still be difficult for IPCC to monitor the investigations by CAPO efficiently and effectively even if IPCC was established as a statutory body. He considered that the ultimate solution was to make CAPO independent of the Police Force.

47. There being no other business, the meeting ended at 6:45 pm.