

Legislative Council Panel on Security

Police Cooperation on Exchange of Information in the Detection of Crime

Purpose

This paper outlines the circumstances in which the Police exchange information with their counterparts in other jurisdictions to facilitate the detection of crime.

Exchange of information

(A) General

2. Like all other police forces, the Police receive requests for information from their counterparts in other jurisdictions from time to time. These requests may cover factual information or intelligence. Given the ease of international travel and communication, cooperation among the relevant law enforcement authorities is of critical importance to preventing and combating crime.

3. Hong Kong is a part of the Interpol network. As the world's largest international police organization, Interpol has the aim of facilitating international police cooperation on the understanding of reciprocity. The ground rule for the exchange of information within the Interpol framework is to promote the widest possible mutual assistance among all criminal police authorities in the prevention and suppression of crime.

(B) Legal basis

4. As a matter of *common law*, the Police may exchange information with their counterparts in other jurisdictions. In this regard, the judgment of Huggins J.A. in *Attorney General v. Ocean Timber Transportation Ltd.* [1979] H.K.L.R. 298, 300 elucidates this point-

“Here I would interpose that nothing I am about to say should be construed as discouraging the police from extending to their counterparts in other states, directly or through Interpol, every assistance they can, provided only that they do not thereby put themselves outside the law of Hong Kong.The Royal Hong Kong Police, if they think fit, may share any documents which belong to them with other police forces, provided always that there is no statutory limitation on the use which may be made of any particular class of documents. As criminals seek to take more and more advantage of international boundaries so the need for international cooperation in fighting crime increases.....”.

5. There are other cases where the power of the Police to exchange information with their counterparts in other jurisdictions has been upheld. An example is *X v. Commissioner of the Police of the Metropolis* [1985] 1 W.L.R. 420.

6. The release of information by the Police to law enforcement agencies in other jurisdictions is for general intelligence and investigative purposes. If a request for information is with a view to adducing the evidence in prosecution following the investigation, foreign law enforcement agencies will be advised to send their requests to Hong Kong under the *mutual legal assistance regime*. Such requests will be processed in accordance with the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and the provisions of any relevant bilateral or multilateral agreement.

7. At common law, materials which have been acquired by compulsory or statutory processes for domestic purposes will generally not be transmitted to other jurisdictions. To enable the Police to transmit relevant information to their counterparts in other jurisdictions for the purpose of promoting international cooperation in preventing and suppressing serious crimes, specific provisions facilitating such transmission are stipulated under *individual ordinances* as follows -

- (a) section 25A(9)(b) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) provides that the law enforcement agencies (including the Police) may transmit information in relation to drug trafficking which they have obtained by virtue of “suspicious

transaction” disclosures under section 25A(1) to relevant authorities in other jurisdictions, for the purpose of combating drug trafficking;

- (b) section 6 of the Organized and Serious Crimes Ordinance (Cap. 455) provides that the law enforcement agencies (including the Police) may transmit information which they have obtained by the use of compulsory powers under sections 3 (requirement on a person to furnish information or produce material), 4 (order on a person to make material available) and 5 (authority to search premises) to relevant authorities in other jurisdictions, for the purpose of assisting such authorities in combating crime;
- (c) section 25A(9)(b) of Cap. 455 provides that the law enforcement agencies (including the Police) may transmit information in relation to an indictable offence which they have obtained by virtue of “suspicious transaction” disclosures under section 25A(1) to relevant authorities in other jurisdictions, for the purpose of combating crime;
- (d) section 12(6)(b) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) provides that the law enforcement agencies (including the Police) may transmit information which they have obtained by virtue of “suspicious transaction” disclosures under section 12(1) to relevant authorities in other jurisdictions, for the purpose of preventing and suppressing the financing of terrorist acts; and
- (e) section 12D of Cap. 575 provides that the law enforcement agencies (including the Police) may transmit information which they have obtained by the use of compulsory powers under sections 12A (requirement on a person to furnish information or produce material), 12B (order on a person to make material available) and 12C (authority to search premises) to relevant authorities in other jurisdictions, for the purpose of assisting such authorities in preventing and suppressing terrorist or terrorist financing offences.

(C) Internal guidelines

8. The Police have prescribed internal guidelines on the release of information to the relevant agencies in other jurisdictions to facilitate the detection of crime. The main points of the guidelines are as follows-

- (a) All requests for information must explain the reason of the request and it should contain sufficient details to satisfy the Police that the requests arise from the prevention and detection of crime;
- (b) The Police are bound by the fundamental principles of Interpol in international police co-operation and information exchange. This is in addition to the bilateral agreements, international treaties and conventions on international co-operation for the prevention and suppression of transnational crime that apply to the Hong Kong Special Administrative Region;
- (c) The release of information should be carried out in line with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486). The exemption from data protection principle 3 under section 58(2) of the Ordinance shall be considered on a case-by-case basis and no law enforcement agency can be granted a blanket exemption. In case of doubt, advice is to be sought from the Department of Justice;
- (d) Generally, information shall only be released to accredited agencies of Interpol member jurisdictions;
- (e) All information to be released will be passed by way of written communication. Verbal release of information will only be made out of operational necessity and will have to be confirmed in writing within 48 hours;
- (f) All written replies shall contain the following declaration -

“Confidential – Information contained herein is supplied for police/intelligence purpose only. It should not be disseminated to another agency or third party without the author’s express consent, and not be retained longer than is necessary for the

fulfillment of the purpose for which the information is to be used. All practicable steps shall be taken by the recipient to ensure that information is protected against unauthorized access or processing”; and

(g) If a written reply contains personal data, it will also carry the chop of “PERSONAL DATA”.

**Security Bureau
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