

**Bills Committee on
Independent Police Complaints Council Bill**

**Administration's response to the issues raised by
the Independent Police Complaints Council (IPCC)**

At its meeting held on 13 December 2007, the Bills Committee requested the Administration to provide a response to the issues raised by the IPCC in its submission of 6 December 2007 to the Bills Committee, and a response to other comments raised by the IPCC on the draft IPCC Bill on other occasions but not accepted by the Administration.

2. A table setting out the Administration's response to the issues raised by the IPCC in its submission to the Bills Committee and other comments raised by the IPCC on the draft IPCC Bill on other occasions is at the Annex for Members' reference.

Security Bureau
January 2008

Administration's response to the issues raised by the Independent Police Complaints Council (IPCC)

	Provisions in the IPCC Bill	IPCC's comments	Administration's response
(A)	Issues raised in the IPCC's submission of 6 December 2007 to the Bills Committee		
1.	<p>Clause 20 – the IPCC may require the Commissioner of Police (CP) to provide information etc. relating to reportable complaints</p>	<p>Clause 20 requires the CP to provide any information or material relating to a reportable complaint to the IPCC. The IPCC understands however that it is the Administration's and the Police's intention to withhold relevant legal advice which has been obtained by the Police and which may be part and parcel of a complaint investigation on grounds of legal professional privilege (LPP), and that CP will consider waiving his right to LPP on a case-by-case basis.</p> <p>In the matter of the relationship between the IPCC and CP on police complaint investigations, the IPCC does not accept that LPP should be invoked to allow the CP to withhold relevant information from the IPCC. As an oversight body whose role is to monitor the investigation work of the Complaints Against Police Office (CAPO), the IPCC firmly</p>	<p>We are committed to ensuring that the IPCC has access to the relevant information for monitoring the handling of reportable complaints by the Police. The Bill has been drafted to enable the IPCC to have wide access to such information. In this connection, we consider that the well-established principle of LPP under the common law should be preserved. Indeed, LPP is the cornerstone of the legal system. LPP is enshrined and safeguarded in the Basic Law (BL). BL 35 provides that "Hong Kong residents shall have the right to confidential legal advice ...". BL 35 does not expressly distinguish between a Hong Kong resident acting in his personal capacity and a Hong Kong resident acting in his official capacity in respect of the right to confidential legal advice. The Bill does not abrogate this principle, and permits the Police to consider waiving their right to LPP on a case-by-case basis in ensuring that the IPCC</p>

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		<p>believes that it should be given full and unrestricted access to information pertaining to complaint investigations to enable it to be satisfied that CAPO has undertaken full and impartial investigations and considerations of complaint allegations. It would be undesirable for the integrity of the police complaints system for CP to have discretion to waive his LPP and let the IPCC see the information as he deems fit. To do so would be perceived as conferring on CP the advantage of being selective in disclosing to the IPCC legal advice to the advantage of the Police and would discredit the police complaints system.</p> <p>The IPCC insists on full and unrestricted access to information pertaining to any complaint investigation which is made available to CAPO in its investigation. Such complete access to information should be provided for by an explicit provision in the Bill.</p>	<p>is provided with sufficient relevant information pertaining to the reportable complaints concerned for performing its function of monitoring and reviewing the handling of police complaints. The IPCC may rest assured that CP will not deliberately withhold information from the IPCC to the advantage of the Police.</p>
2.	<p>Clause 8(3) – a list of non-reportable complaints submitted by CP to the IPCC</p>	<p>In line with the principle stated above, the IPCC also considers that it should be given full and unrestricted access to information or</p>	<p>In accordance with the current practice, the Police will continue to provide sufficient information to enable the IPCC to consider</p>

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	<p>must include a brief description of all non-reportable complaints and the reasons for categorizing the complaints as non-reportable complaints</p> <p>Clause 15(3) – the IPCC may require CP to provide explanations to support the categorization of a complaint as a non-reportable complaint</p>	<p>material relating to a non-reportable complaint for the purposes of determining if the complaint should be re-categorized as a reportable complaint where necessary, in line with current practice. Complete access to such information should be provided for by an explicit provision in the Bill (similar to clause 20(1) which requires the CP to provide any information or material relating to a reportable complaint).</p>	<p>whether a non-reportable complaint should be re-categorized. In this connection, clause 8 already requires the Police to submit a list containing brief description of all non-reportable complaints received by the Police and the reasons for categorizing the complaints as such. Such reasons should have already provided sufficient justification for categorizing the complaints as non-reportable complaints. Clause 15(3) empowers the IPCC to require the Police to provide explanations to support the categorization of a complaint as a non-reportable complaint. If the IPCC considers that additional information is needed, the Police stand ready to provide such information. The general provision under clause 7(2) which empowers the IPCC to do all such things as are reasonably necessary for, or incidental or conducive to, the performance of its functions under the Bill should sufficiently enable the IPCC to require the Police to provide additional information in relation to non-reportable complaints. We therefore consider that a specific provision similar to clause 20(1) for the purpose of the IPCC's consideration of</p>

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			re-categorization of non-reportable complaints is not necessary.
3.	Clause 27 – CP to comply with requirements of the IPCC	<p>Clause 27 provides that CP must comply with any requirement made by the IPCC unless he is satisfied that compliance would likely prejudice the security of Hong Kong or the investigation of any crime. The IPCC is concerned that the term “any crime” is unnecessarily wide, such that CP may choose to decline to comply with the IPCC’s requirement by the mere reason that compliance would likely prejudice the investigation of a crime of a minor nature. The term “any crime” should therefore be qualified.</p> <p>The IPCC has previously suggested “any crime” be replaced by “indictable offence” or setting a time limit for CP not to comply with the IPCC’s requirements.</p>	<p>We have carefully considered the IPCC’s previous suggestions of replacing “any crime” by “indictable offence” or setting a time limit for CP not to comply with the IPCC’s requirements, and concluded that they may not be practicable. In many cases, a crime which initially appears to be a non-indictable offence and triggers an investigation may turn out to be an indictable one upon detailed investigation. It may also not be practicable to set a time limit, as the time required for investigating different crimes varies.</p> <p>Under the Police Force Ordinance (Cap. 232), CP, subject to the orders and control of the Chief Executive (CE), shall be charged with the supreme direction and administration of the police force. Under section 10 of Cap. 232, the duties of the police force shall be to take lawful measures for, among others, preventing and detecting crimes and offences, and apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds</p>

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			<p>exists. In essence, CP is statutorily responsible for law and order issues and has the obligation to safeguard the integrity of any crime investigation. While CP is committed to providing sufficient information to the IPCC to facilitate the IPCC in the discharge of its functions to monitor and review CAPO's investigation reports on reportable complaints, he has the duty to ensure that disclosure of the information or materials concerned would not prejudice any crime investigation.</p> <p>CP will not lightly rely on clause 27 to decide not to comply with the IPCC's requirements. In response to the IPCC's requirement, CP will take into account the facts and evidence available, and assess the risk of the security of Hong Kong or crime investigation being prejudiced if the IPCC's requirements are complied with. In the very rare circumstances where CP makes a decision of non-compliance, he will provide an explanation to the IPCC as to why the IPCC's requirement cannot be complied with. If the IPCC is not satisfied with CP's explanation, it may under clause 28 make a report to CE. CE</p>

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			<p>may direct CP as he sees fit.</p> <p>In the very rare circumstances where CP decides not to provide information or materials required by the IPCC at a certain point in time having regard to clause 27, it is possible that such information or materials can be provided to the IPCC when CP is subsequently satisfied that such provision will no longer affect the security of Hong Kong or crime investigation.</p>
4.	<p>Clause 7(1)(b) – the IPCC's function to monitor actions taken or to be taken in respect of any member of the police force by CP in connection with reportable complaints, and to advise CP or CE or both of them of its opinion on such actions</p> <p>Clause 24 – the IPCC may require CP to provide explanation in relation to actions taken or to be taken in</p>	<p>The two operative clauses setting out the IPCC's functions and the requirement for CP to report back to the IPCC on the IPCC's recommendations are clauses 7 and 25(b). Whereas the IPCC accepts that it is CP's prerogative to discipline or administer other administrative actions on a member of the police force, the IPCC is more concerned with CP's overall response to its recommendations arising from the monitoring of a reportable complaint. In this connection, the IPCC considers that the current clause 7(1)(b) should be amended to allow the IPCC to give recommendations on CP's action taken or to be</p>	<p>Clause 7(1)(c) as currently drafted enables the IPCC to make recommendations in respect of faulty or deficient police practices or procedures. Depending on the circumstances of individual cases, we envisage that if the IPCC is minded to make recommendations on the training needs of police officers or service improvement, it should have identified a faulty or deficient police practice which may lead to reportable complaints that may be prevented with changes to training or service improvement. Clause 7(1)(c) should therefore sufficiently enable the IPCC to make recommendations on the Police's training needs or service improvement for better complying</p>

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	<p>respect of a member of the police force by CP in connection with any reportable complaint</p>	<p>taken in connection with any RC which may not be covered by clause 7(1)(a) or (c) (for example, the training needs of officers, service improvement suggestions, the terms of a reply to a complainant, but excluding disciplinary action on which the IPCC will give its opinion).</p> <p>Consequentially, clause 24, which allows the IPCC to require CP's explanation for his action taken or to be taken in respect of a member of the police force should also be amended to cover CP's other action in connection with any reportable complaint.</p>	<p>with police procedures and carrying out duties more professionally. If the IPCC has any views on the training needs of individual police officers, it may advise the Police of its opinions in this regard under clause 7(1)(b).</p> <p>Issuance of a reply to a complainant concerns the handling of a complaint. The IPCC may make recommendations on the "terms of a reply to a complainant" under clause 7(1)(a).</p> <p>Clause 24 empowers the IPCC to require the Police to provide an explanation in relation to any action taken or to be taken in respect of a member of the police force by the Police in connection with any reportable complaint. Clause 25(b) empowers the IPCC to require CP to submit a report on any action taken or to be taken in respect of the IPCC's recommendations made under clause 7(1)(a) or (c). We consider that clauses 7(1)(a), (b) and (c), 24 and 25(b) in combination should be sufficient to meet the IPCC's concerns.</p>

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5.	<p>Clause 16 – CP to submit investigation reports on reportable complaints to the IPCC</p> <p>Clause 17 – CP to submit interim investigation reports on reportable complaints to the IPCC</p>	<p>Clauses 16 and 17 set out the submission of investigation and interim investigation reports. They are silent on the submission of amended and supplementary reports, which is a current practice. The IPCC considers that a provision requiring CP to submit amended investigation reports (amended in response to the IPCC's recommendations) and supplementary investigation reports (to cover review results and/or new allegations) should be added.</p>	<p>In accordance with the current practice, the Police will continue to submit “amended investigation reports” to address questions from the IPCC on investigation reports as well as “supplementary reports” if requests for review recommend a change in the result of investigation. Clause 25(b) provides that the IPCC may require the Police to submit to it a report on any action taken or to be taken by the Police in respect of a recommendation of the IPCC made under clause 7(1)(a) or (c). This already covers “amended investigation reports”. Clause 12(1) specifies that a request for review is to be treated as a reportable complaint. It follows that the Police would be required to submit an investigation report on a request for review in accordance with clause 16. This covers “supplementary reports”. As such, although the terms “amended investigation reports” and “supplementary reports” are not specifically provided for in the Bill, the Bill has already preserved the current practice of the Police to submit these reports to the IPCC.</p>

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6.	Clause 37 – the IPCC's duty to keep confidence	<p>In case of any disagreement between the IPCC and CP over the handling and classification of a reportable complaint, the IPCC could only advance its case by making a report to CE under clause 28, or to make public the unresolved issue for public scrutiny. An express provision is thus of paramount importance to ensure that the IPCC may disclose CP's explanations for not accepting the IPCC's advice regarding the findings and classifications of CAPO's investigations, and the reason for any IPCC disagreement with the Police on the disciplinary action to be taken. The general provision under clause 37 which provides that the IPCC is not prevented from disclosing protected information if the disclosure is necessary for the performance of its functions under the Ordinance may not be sufficiently specific for the purpose.</p>	<p>Clause 37 as currently drafted already permits the IPCC to disclose "protected information" (defined as "matters relating to any complaint that come to a specified person's actual knowledge in the performance of the person's functions under this Ordinance") to such persons as the IPCC considers appropriate, as long as the disclosure is <u>necessary for the performance of the IPCC's functions under the Bill</u>. "Protected information" covers matters concerning the manner in which any reportable complaint is handled or investigated by the Police, actions taken/to be taken/not taken by the Police in respect of any reportable complaint, statistics provided by the Police and the Police's explanations for not accepting the IPCC's advice regarding the findings and classifications of CAPO's investigations. The Bill does not prohibit the IPCC from making public the Police's explanations and the reasons for any disagreement of the IPCC with the Police on the disciplinary action to be taken, if the IPCC considers that the disclosure is necessary for discharging its monitoring function.</p>

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7.	Clause 28 – the IPCC may make reports to CE	Clause 28 provides that the IPCC may make reports to CE as it thinks necessary. It is silent on any response from CE. Instead of relying on the normal practice that CE would respond to the statutory body submitting a report to him, it is considered that clause 28 should be amended to provide for a response from CE to the IPCC’s report made to him.	CE, upon receiving any report from the IPCC, will consider the report in detail and examine if any recommendations made in the report should be accepted and if any other follow-up action is required. It is an established practice that CE or his authorized officer will respond to the statutory body submitting the report. We therefore consider that it is not necessary to make an express provision for this in the Bill.
8.	Clauses 2, 12 and 16 – provisions in relation to reportable complaints classified as for “informal resolution” or “withdrawn”	Under clause 2 of the Bill, “informal resolution” is cited as an example of a “classification” of a reportable complaint after investigation. The IPCC considers that under the present framework, “informal resolution” should not be regarded as a category of “classification” as cases resolved by “informal resolution” have not been fully investigated, and are not subject to review. It is therefore misleading to include this under clause 2. As reference to “informal resolution” has also been made in clause 16 (which obliges CP to submit an investigation report as soon as practicable after “completing the investigation of a reportable complaint”), whilst the	“Informal resolution” cases are cases where the Police resolve the complaints with the complainants through conciliation without requiring a full investigation. (“Informal resolution” does not apply if there is a significant conflict between the testimony of the complainant and that of the complaine; the complainant does not agree to its use; circumstances indicate that if the complaint is fully investigated and substantiated, criminal or disciplinary charges will ensue; or the complaint refers to a refusal or reluctance to grant bail.) “Withdrawn” cases are cases where the complainants do not wish to pursue the complaints made.

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		<p>“classification” of a reportable complaint is subject to a request for review under clause 12(1), it would be appropriate to exclude “informal resolution” from clause 2.</p> <p>Apart from “informal resolution”, cases classified as “withdrawn”, currently also included under clause 2, are not subject to review pragmatically, though unlike “informal resolution” cases, some investigation may have been conducted before such findings are reached. If a complainant decides to pursue the complaint, or new evidence that enables the continuation of an investigation comes to light, the investigation would normally be “re-opened”.</p> <p>To avoid confusion, like “informal resolution”, “withdrawn” should be removed from the definition of “classification” under clause 2. Reference to “informal resolution” should also be removed from clause 16.</p>	<p>Under the existing police complaints system, “informal resolution” and ‘withdrawn” cases constitute two separate classifications of reportable complaints on which CAPO submits reports to the IPCC in line with the handling procedure for reportable complaints of other classifications (e.g. “substantiated”, “substantiated other than reported”, “not fully substantiated”, “false”, “no fault” and “curtailed”). They are considered by the IPCC Secretary under delegated authority from the IPCC. The IPCC Secretariat submits a bi-monthly list of the endorsed “informal resolution” cases to the IPCC for monitoring. The IPCC may raise questions and observations on these cases, and the IPCC Secretariat will take follow-up actions accordingly.</p> <p>Clause 16(3) provides that clause 16(2)(a) (that the investigation report will contain “a summary of the investigation”) and (b) (that the investigation report will contain “a finding of facts in relation to the complaint and the evidence in support of the finding”) does not</p>

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			<p>apply to an investigation report on a reportable complaint classified as one that is for “informal resolution”. This reflects the fact that the complaint has been resolved through conciliation with the complainant without requiring a full investigation. The Police are nevertheless required to submit reports on these cases to the IPCC so that the IPCC can monitor the way in which these cases have been handled by CAPO.</p> <p>As “informal resolution” and “withdrawn” cases are reportable complaints subject to the IPCC’s monitoring and review, we consider it appropriate for these two classifications to be covered by the definition of “classification” under clause 2, and to oblige the Police to submit reports on these cases to the IPCC under clause 16.</p> <p>Police complaints are dealt with by “informal resolution” if certain criteria are met. One of the criteria is that the complainant agrees to this approach. As such, “informal resolution” cases are dealt with on a final basis between the complainants and the Police, and a request for review will not be entertained. We will</p>

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			<p>consider amending clause 12 to reflect this existing practice.</p> <p>For “withdrawn” cases, if a complainant wishes to pursue his/her complaint after it has been so classified, it is open to him/her to lodge a fresh complaint. CAPO will conduct investigation accordingly.</p>
9.	<p>Clause 17(3) and (4) – the IPCC may advise CP of its opinion on the explanation given in an interim investigation report on the progress of investigation of a reportable complaint and the reasons for not being able to complete the investigation within a specified period</p>	<p>By virtue of clause 17(4), the IPCC may advise CP of its opinion on the explanation for the progress of the investigation, and the reasons for not being able to complete the investigation within six months as set out in CAPO’s interim investigation reports. In practice, there are matters other than the progress and reasons for the prolonged investigation that the IPCC may wish to give its observations, e.g. the non-reportable complaint categorization of an allegation. The provision should be amended to cover these other matters.</p>	<p>Clause 17 covers submission of interim investigation reports on reportable complaints to the IPCC. For non-reportable complaints, CAPO will include them in the list of non-reportable complaints to be regularly submitted to the IPCC in accordance with clause 8(1)(b). The IPCC’s powers to monitor the categorization of non-reportable complaints are provided for under clause 15. As such, we do not consider it necessary to amend clause 17(4) to cover categorization of non-reportable complaints.</p> <p>We envisage that the IPCC’s opinions on CAPO’s interim investigation reports would arise from or relate to the explanation given</p>

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			<p>therein on the progress of the investigation and the reasons for not being able to complete the investigation within the specified period. We therefore consider that clause 17(4) should be adequate in empowering the IPCC to monitor the progress of the investigation. Together with the general provision under clause 7(2) that the IPCC may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its statutory functions, the IPCC should be adequately empowered to provide opinions on CAPO's interim investigation reports as it considers necessary for discharging its monitoring and review functions.</p>
10.	<p>Clause 22 – the IPCC may require CP to inform complainant of classification of reportable complaints</p>	<p>Clause 22 which requires CP to inform the complainant of the classification of a reportable complaint and the reasons for the classification should be amended to oblige CP to inform the complainant of any other matters relating to the police operation raised by the complainant in a complaint, in addition to the classification and the reasons for the classification, to reflect the current practice.</p>	<p>CAPO will consider all matters raised by the complainant in connection with his/her complaint. Upon completion of the investigation of a reportable complaint and the IPCC's endorsement of the investigation report, CAPO will issue a full reply to the complainant, setting out the complainant's allegation(s), a succinct account of the investigation conducted, the outcome of the investigation, the classification of the complaint and that the case</p>

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			<p>has been reviewed by the IPCC. The reply provides adequate information as to CAPO's examination and consideration of the facts and evidence involved and the review conducted by the IPCC.</p> <p>As a matter of practice, CAPO's reply will also address other enquiries or suggestions made by the complainant in addition to the complaint. As these other enquiries and suggestions do not relate to matters within the purview of the IPCC, we do not consider it appropriate to cover them in the Bill.</p>
11.	<p>Clause 37(4) – disclosure of identity of any complainant, any member of the police force whose conduct is the subject of a complaint, or any person who assists or has assisted CP in the handling or investigation of a complaint</p>	<p>Clause 37(4), which lists the persons to whom the IPCC may disclose the identity of parties involved in a complaint for the performance of its functions under the Bill, should cover also potential witnesses who may decline to attend an interview with the IPCC in the end, CE, other relevant Government departments or statutory/advisory bodies (where referral of a case is necessary if the matter is subject to other jurisdictions), and legal representatives, friends or relatives who accompany a witness to be</p>	<p>The identity of a complainant, complainee or person who assists the Police in the handling or investigation of a complaint constitutes sensitive personal data subject to protection. A balance has to be struck in determining the circumstances under which and the persons to whom such information needs to be disclosed to facilitate the IPCC's discharge of its function of monitoring and reviewing the handling and investigation of public complaints against the Police. Clause 37(4)(e) already permits disclosure of such</p>

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		<p>interviewed by the IPCC (provided that their presence is approved under clause 19).</p>	<p>personal data to a person interviewed by the IPCC pursuant to clause 19. We will further examine the IPCC's comments in considering whether clause 37(4) should be refined.</p> <p>Clause 37(2)(b) as read with clause 37(3) provide that the IPCC may disclose "protected information", including the information under clause 37(3), for the purpose of reporting evidence of any crime to such authorities as the IPCC considers appropriate.</p> <p>Meanwhile, clause 7(1)(a) empowers the IPCC to make recommendations on the Police's handling or investigation of reportable complaints. If the IPCC considers that a case should be referred to other relevant Government departments or statutory/advisory bodies for necessary actions, it may make such recommendations to CAPO. CAPO will take follow-up actions as appropriate. Under clause 25(b), the IPCC may require CAPO to submit to the IPCC a report on the actions taken/to be taken in respect of such recommendations. With the afore-mentioned provisions, we do not</p>

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			consider it necessary to expand clause 37(4) to cover other relevant Government departments or statutory/advisory bodies.
12.	Commencement of the Ordinance	Before the Ordinance is brought into operation, the IPCC considers it important for the transitional arrangements to be clearly settled with the Administration, in particular those relating to the Secretariat to be hived off from the Government.	We agree with the IPCC that the transitional arrangements should be comprehensively deliberated between the IPCC and the Administration. We are in discussion with the IPCC in this regard. We will examine if there is a need to add a commencement clause to the Bill.
13.	IPCC's observations on the proposed statutory IPCC (paragraphs 11 and 12 of its submission)	<p>Despite the addition of administrative responsibilities, the statutory IPCC should remain focused on the core business of monitoring and reviewing police complaint investigations. The full-time Secretariat should continue to help Members to examine all complaint investigation reports in detail.</p> <p>To shoulder the additional responsibilities in administration, the number and spread of expertise of Members may have to increase.</p> <p>The relationship between the future Chairman,</p>	We are in discussion with the IPCC in this regard. We have also provided resources to the IPCC to set up a team to assist the IPCC in considering the issues involved.

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		<p>IPCC and the future Secretary, IPCC will have to be clearly defined.</p> <p>The future ranking of the Secretary, IPCC and the future staffing level of the Secretariat will have to be examined further given that the future Secretariat will have added responsibilities in recruitment, personnel management, accounting and payroll, stores and procurement, etc, in that it ceases to enjoy the administrative support services of a Government department.</p> <p>The above represents only some broad-brush observations. Further discussions with the Administration would be necessary.</p>	
14.	IPCC's comments/observations on the financial provision for the statutory IPCC (paragraphs 13 to 16 of its submission)	In establishing the statutory IPCC with a Secretariat delinked from the Government, the IPCC considers that the annual allocation for the future IPCC would have to be adjusted upwards to take into account those costs which are not presently included for the IPCC Secretariat as a Government department, such as staff on-costs (i.e. costs covering the	<p><u>Financial provision to the statutory IPCC</u></p> <p>Clause 18 in Schedule 1 to the Bill specifies that the resources of the IPCC consist of all money paid by the Government to the IPCC and appropriated for that purpose by the Legislative Council (LegCo). In this regard, we have reassured the IPCC of our commitment to</p>

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		<p>retirement and fringe benefits for civil servants) and hidden costs (i.e. the costs of support services provided by other Government departments, including the rents and management fees for the office premises). The IPCC would also need clarification from the Administration as to whether the salaries, terms and conditions of the employees of the future Secretariat would be subject to the principle of "no better than the civil service".</p> <p>Apart from the need to augment the annual allocation to reflect staff on-costs and hidden costs, the statutory IPCC may also require an additional allocation to cover one-off requirements to meet specific expenses in the delinking exercise, such as the costs for the procurement of an accounting system, a leave record system as well as the purchase of permanent office premises and related fitting-out work, if this is considered necessary by the statutory IPCC.</p> <p>It cannot be ruled out that some improvement in the existing structure of the Secretariat may</p>	<p>ensuring that the statutory IPCC will continue to be provided with appropriate support and resources under the new regime. We will continue to liaise with the IPCC on this subject. As we mentioned to the Bills Committee earlier, we envisage that the IPCC will be provided with no less than the current level of financial resources on becoming a statutory body plus the staff costs and the financial provisions needed for preserving the services currently provided free of charge by government departments concerned. Any requests for additional resources will be subject to the established resource bidding procedures in the normal manner.</p> <p><u>Application of "no better than the civil service" principle</u></p> <p>With a view to strengthening the monitoring and control of remuneration practices in respect of the top three tiers of executives in subvented bodies, the Government promulgated guidelines in March 2003 under which statutory bodies which receive more than 50% of their operating</p>

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		<p>be necessary to improve identified deficiency ahead of the setting up of the statutory IPCC.</p> <p>The IPCC is aware that some statutory bodies have Memoranda of Administrative Arrangements with the Administration, setting out understandings on administrative arrangements. The IPCC looks forward to advice from the Administration as to whether the same would be done for the statutory IPCC.</p>	<p>income from Government, except those fulfilling prescribed exemption criteria, should regularly review the number, ranking and remuneration packages of staff at the top three tiers and submit the review reports to their responsible Directors of Bureaux. The reports should, inter alia, explain and justify any changes over the period covered by the report. In assessing the appropriateness of the number and ranking of senior positions of a subvented body, the relevant Director of Bureau will consider the functions and overall staffing structure of the concerned body, the nature and complexity of duties being performed by the top three-tier executives in question, and the ranking for comparable jobs in the civil service as appropriate. In evaluating the appropriateness of the remuneration packages for senior positions of a subvented body that have comparable civil service ranks, the relevant Director of Bureau will compare the average total cost of remunerations for a tier of staff with that of civil servants at comparable ranks. In the absence of such comparable civil service ranks, reference should be made to market practices. To enhance transparency, the</p>

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			<p>Director of Bureau will work out with those subvented bodies under his/her purview suitable arrangements for public disclosure of their regular review reports. A proper framework governing remuneration practices for senior executives of an organization would in effect filter down to other tiers of staff.</p> <p>We will, in the light of the above guidelines, further discuss with the IPCC the arrangements for the Security Bureau to monitor the remuneration practices for the staff of the statutory IPCC.</p> <p><u>Memorandum of Administrative Arrangement (MAA)</u></p> <p>The purpose of an MAA is to clearly set out the responsibilities of all parties concerned in the delivery and monitoring of Government-funded services as well as the administrative arrangements for the subvented body concerned receiving recurrent funding from the Government. Subject to further discussion with the IPCC, we are inclined to draw up an MAA</p>

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			with the statutory IPCC.
(B)	Other comments raised by the IPCC on the draft IPCC Bill on other occasions but not accepted by the Administration		
1.	Clause 38 – protection of the IPCC and its members, etc.	In the context of the data leakage incident, the IPCC was aware that even though it had acted in good faith, it was still subject to criminal sanctions for any non-compliance with the Enforcement Notice issued under the Personal Data (Privacy) Ordinance (Cap. 486). The IPCC considered it necessary for its members to be protected from criminal liability as well.	<p>In the data leakage incident, the Enforcement Notice was served by the Privacy Commissioner for Personal Data on the IPCC in accordance with the Personal Data (Privacy) Ordinance (Cap. 486). The IPCC therefore had a legal obligation to comply with the Enforcement Notice. Non-compliance would attract criminal sanctions under Cap. 486.</p> <p>Meanwhile, we are fully committed to providing IPCC members with the necessary immunity from civil liability for discharging their functions in good faith. Clause 38 serves this purpose and is proportionate to the nature of the functions of the IPCC. Clause 38(1) provides that any act done or omitted to be done by IPCC members in good faith in the performance of their statutory functions will not render them liable to any civil proceedings. Clause 38(2) provides that for the purposes of the law of defamation, if an IPCC member makes any comment or publishes any</p>

	Provisions in the IPCC Bill	IPCC’s comments	Administration’s response
			<p>matter in relation to a complaint in any communication, report or statement, in writing or otherwise, and for the performance of his functions under the Bill, that comment or publication is absolutely privileged. The provision has taken account of the IPCC’s comments that the protection should cover its correspondence with complainants/witnesses and talks/seminars given by its members. By conferring the defence of absolute privilege, no criminal libel proceedings can be taken against IPCC members for making the comments, publications, etc. falling within the ambit of clause 38(2).</p>
2.	<p>Schedule 1, clause 25(1) – the IPCC may delegate its functions under the Bill to a committee, a member of the IPCC, the Secretary, the Legal Adviser or any other employee of the IPCC</p>	<p>The IPCC has a need to delegate some of its functions to a “technical or professional person whose service is engaged by the Council” under clause 5(3), such as contracting out legal services in handling complicated cases or facing a lawsuit, and hiring a public relations firm to undertake publicity programme etc. The IPCC may entrust a public relations firm to devise and execute a publicity plan (subject to the IPCC’s endorsement), rather than to simply</p>	<p>We fully appreciate that the IPCC may need to engage the service of technical or professional persons after it has become an independent statutory body, as, for example, the IPCC may need to engage a public relations firm to promote public awareness of the IPCC’s role (“to promote public awareness of the role of the Council” is one of the IPCC’s functions under clause 7(1)(e)). We envisage that under such circumstances, the IPCC’s engagement of such</p>

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		<p>tap the firm’s advice, as it is not worthwhile for the IPCC to employ a team of public relations staff on its establishment to launch the projects. A similar provision can be found in the Personal Data (Privacy) Ordinance (Cap. 486).</p>	<p>technical or professional persons would involve a contractual relationship and would not require the IPCC to delegate any of its functions to such persons. In the example of hiring a public relations firm, any publicity plan devised by the firm is subject to the IPCC’s endorsement and executed under such endorsement. The function of promoting public awareness of the role of the IPCC still rests with the IPCC, with the engagement of a professional firm to implement the publicity programmes following the IPCC’s endorsement. As such, we do not consider it necessary or indeed appropriate to provide that the IPCC may delegate its functions to such entities outside the IPCC.</p>
(C)	Comments raised by the IPCC on the draft IPCC Bill on other occasions and accepted by the Administration		
1.	<p>Clause 2 - definition of “classification”</p>	<p>The definition of “classification” should spell out the classifications and to provide a mechanism requiring CP to seek the IPCC’s endorsement when new classifications are to be added.</p>	<p>The definition of “classification” under clause 2 now sets out the main classifications as well as classification of such other description as agreed between the IPCC and CP.</p>

	Provisions in the IPCC Bill	IPCC's comments	Administration's response
2.	Clause 5(1) – the IPCC must appoint a Secretary and a Legal Adviser on terms approved by CE on the advice of the IPCC	With a view to enhancing the impartial image of the IPCC, the salaries and terms of appointment of the IPCC Secretary and Legal Adviser shall be determined by CE after taking into consideration the IPCC's advice.	Clause 5(1) now provides that the IPCC must appoint a Secretary and a Legal Adviser on terms approved by CE on the advice of the IPCC.
3.	Clause 8 – CP to submit lists of reportable complaints and non-reportable complaints to the IPCC	The prevailing practice of CAPO submitting a list of reportable complaints every week and a list of non-reportable complaints every month should be reflected.	Clause 8 now provides that CP must submit lists of reportable complaints and non-reportable complaints to the IPCC at such intervals, and in such manner, as agreed with the IPCC.
4.	Clause 10(c) – a reportable complaint should be made by or on behalf of a complainant directly affected by the police conduct	The consultation paper issued in 2002 on the revised proposals for the IPCC Bill and the relevant provision in the previous draft Bill presented to the IPCC provided that a reportable complaint should be made by “a personally aggrieved person”. The IPCC suggested that it should be clarified whether a “person” covered a body corporate as opposed to an individual person.	We have improved the provision of clause 10(c) by providing that a reportable complaint should be made by or on behalf a complainant directly affected by the police conduct. Clause 2 defines “complainant” as a person who makes a complaint or a request for review or, where the complaint or request for review is made on behalf of another person, the person on whose behalf the complaint or request for review is made. “Person” as defined in the Interpretation and General Clauses Ordinance (Cap. 1) includes a body corporate. We have also added clause 14 allowing a

	Provisions in the IPCC Bill	IPCC's comments	Administration's response
			complaint to be lodged on behalf of a complainant under specified conditions – by a parent or guardian where the complainant is below the age of 16 years; by a representative if the complainant is a mentally incapacitated person or unable to make the complaint personally due to death or illness; or by a representative authorized in writing by the complainant.
5.	Clause 11 – interpretation of belated complaints	A complainant may only be aware of the grounds for complaint after the conclusion of the criminal prosecution or court proceedings concerned.	Clause 11(a)(ii) now provides that a complaint is classified as a reportable complaint if made to the Police, where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within 24 months from the date of the incident giving rise to the complaint, within a period of 12 months from the date of the final determination of such proceedings.
6.	Clause 12(2) – on request for review, CP is not required to conduct a fresh or further investigation of any fact or evidence considered in the	In the absence of fresh evidence, a new perspective put forward by a complainant requesting a review may reveal potential deficiency in the previous analysis and may justify a review and a re-examination of	The intention of clause 12(2) is to provide that the Police are not required to conduct further or fresh investigation of any fact or evidence that <u>has been considered</u> , as the classification of the complaint in question based on such fact or

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	determination of the relevant classification of a reportable complaint unless a new perspective is put forward by the person making the request for review	previous evidence.	<p>evidence should have already been endorsed by the IPCC. If there is fresh evidence or information, the Police will be obliged to look into it.</p> <p>We understand the IPCC's concerns that a new perspective put forward by a complainant requesting a review may reveal potential deficiency in the previous analysis and may justify a review and re-examination of previous evidence. Clause 12(2) now therefore provides that for a request for review, the Police will be required to conduct fresh or further investigation if the complainant puts forward a new point of view which was not considered in the Police's previous investigation and, if established after a fresh or further investigation, may result in a change of the classification of the reportable complaint concerned.</p>
7.	Clause 19(9) – disclosure of a record of an interview conducted by the IPCC for any purpose allowed under clause 37 not to be regarded as use of	Clause 19(8) provides that records of interviews conducted by the IPCC should only be used for the purpose of performing the IPCC's functions under the Bill. The issue is whether the IPCC could be compelled to	Clause 19(9) is added to provide that disclosure of the IPCC's interview records for any purpose that is allowed under clause 37 is not to be regarded as use of the records under clause 19(8).

	Provisions in the IPCC Bill	IPCC's comments	Administration's response
	the record	disclose the records by virtue of clause 37(2)(c).	
8.	Clause 30(c) – the IPCC may borrow money on security or other conditions with the approval of the Financial Secretary	There may be a need for the IPCC to borrow money.	Clause 30(c) is added to enable the IPCC to borrow money on security or other conditions with the approval of the Financial Secretary.
9.	Clause 31 – appointment of observers	Ex-police officers should not be eligible for appointment as observers.	Clause 31(2) now provides that a civil servant (including a police officer) or an ex-police officer is not eligible to be appointed as an observer.
10.	Clause 34 – observers may attend interviews and observe collection of evidence	An observer who discloses that he has an interest in the reportable complaint concerned should withdraw from the interview or collection of evidence.	Clause 34(3) now provides that an observer having an interest in the reportable complaint concerned must withdraw from the interview or observation of the collection of evidence, and report the nature of his interest to the IPCC.
11.	Clause 35 – the IPCC may determine procedures, duty roster, etc. relating to observers	To retain flexibility for future development, clause 35 should be re-drafted as “The Council may determine any matter concerning the operation of the Observers Scheme, which includes, but not limited to, the following: ...”	We share the IPCC's view on the need for flexibility for the development of the Observers Scheme. In this respect, clause 32 has clearly spelt out that the role of an observer is to assist the IPCC to observe the manner in which the

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			Police handle or investigate reportable complaints. Clause 35 has already comprehensively covered the general matters necessary for attaining such a purpose.
12.	Clause 37(4) – disclosure of identity of any complainant, any member of the police force whose conduct is the subject of a complaint, or any person who assists or has assisted CP in the handling or investigation of a complaint	The IPCC may need to disclose the identity of parties concerned to a complainant, CAPO or a witness in the course of performing its functions, e.g. to refer a complaint directly received by it (with the identity of the complainant and complainee) to CAPO, or to disclose necessary information including the identity of parties involved to a witness who may not know the whole story for him to give a witness statement.	Taking into account the IPCC's comments, clause 37(4) is added to enable a “specified person” to make disclosures to the Police, complainants, complainees, etc. as necessary for the performance of his functions under the Bill.
13.	Schedule 1, clause 11(5) – if any IPCC member requests that a matter referred to in the papers circulated under clause 11(3) be determined at a meeting of the IPCC, the matter must be so determined	Even on the request of only one IPCC member, a matter under circulation should be determined at a meeting.	Schedule 1, clause 11(5) now provides that if any IPCC member requests that a matter referred to in the papers circulated under clause 11(3) be determined at a meeting of the IPCC, the matter must be so determined.

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14.	<p>Schedule 1, clause 16(3) – anything that may be done at a meeting of a committee of the IPCC may be done by circulation of papers</p> <p>Schedule 1, clause 25 – delegation of the IPCC's functions</p>	<p>The IPCC should be allowed to continue to process CAPO cases through its three sub-groups by circulation of papers.</p>	<p>Schedule 1, clause 25 now provides that the IPCC may delegate any of its functions (except the power to delegate under clause 25, the duty to submit an annual report, statement of accounts and auditor's report to CE under clause 23(1), and the power to make a report to CE under clause 28) under the Bill to its committees.</p> <p>Schedule 1, clause 16(3) now provides that anything that may be done at a meeting of a committee of the IPCC may be done by circulation of papers to all members of the committee without a meeting.</p>
15.	<p>Schedule 1, clause 22(1) – the IPCC must appoint as its auditor a person who is registered under the Professional Accountants Ordinance (Cap. 50) and holds a practising certificate within the meaning of Cap. 50</p>	<p>The auditor appointed by the IPCC should be a qualified auditor.</p>	<p>Schedule 1, clause 22(1) now provides that the IPCC must appoint as its auditor a person who is registered under the Professional Accountants Ordinance (Cap. 50) and holds a practising certificate within the meaning of Cap. 50.</p>

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16.	Schedule 1, clause 23(2) – the IPCC must cause its annual report, statement of accounts and auditor's report to be tabled at LegCo	The relevant provision in the previous draft Bill presented to the IPCC provided that the tabling should be done by CE. The IPCC suggested that the Administration should give further consideration to whether CE should be personally required to do the tabling.	Schedule 1, clause 23(2) now provides that the IPCC must cause its annual report, statement of accounts and auditor's report to be tabled at LegCo as soon as practicable after receiving CE's approval for tabling.
17.	Schedule 1, clause 26 – the IPCC is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).	The IPCC should have a tax-exempt status.	Schedule 1, clause 26 now provides that the IPCC is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

Security Bureau
January 2008