

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

**Response to issues raised at the Bills Committee meetings held on
22 January 2008 (3) and 29 January 2008 (2)**

Purpose

This note sets out the Administration's response to a number of issues raised by the Bills Committee at its meetings held on 22 January and 29 January 2008.

Belated complaints

To advise whether "A complaint may not be categorized as a reportable complaint" in clause 11 means that belated complaints might be categorized as reportable complaints

2. Clause 11 specifies the threshold requirement that a complaint must meet before the Police may proceed to consider whether, in accordance with clause 10 (on categorization of reportable complaints), the complaint is a reportable complaint. The requirement under clause 11 is that the complaint must be made to the Police within the specified period, as provided in clause 11(a), or though made to the Police beyond the specified period, the complaint is of a serious nature. Members have expressed concern about whether "A complaint may not be categorized as a reportable complaint ..." may lead to misunderstanding that complaints fulfilling the prescribed criteria may not be categorized as reportable complaints. Taking into consideration Members' comments, we propose to amend clause 11 to provide expressly to the effect that a belated complaint must be categorized as a reportable complaint if it is serious in nature (and meets other prescribed criteria).

Determination of whether a complaint is of serious nature

To consider empowering the IPCC to determine whether a complaint was of a serious nature in clause 11(b); to consider deleting “in the opinion of the Commissioner” in clause 10(b)

3. Taking account of Members' comments, we propose to delete “in the opinion of the Commissioner” in clauses 10(b) and 11(b) and “the Commissioner is of the opinion” in clause 12(1) to better reflect the legislative intent that the IPCC may provide its opinion on whether a complaint is vexatious or frivolous or made in good faith, and whether a belated complaint is of a serious nature.

Enquiries or comments made by Legislative Council Members

To advise whether and how Legislative Council (LegCo) Members could make enquiries or comments about cases included in the general statistics on the complaints handled in the year but not in the cases of interest in the annual report of the IPCC

4. LegCo Members may make enquiries or comments about complaints cases against the Police with the Complaints Against Police Office (CAPO). In this respect, CAPO will need sufficient information such as the names of the complainants/complainees or CAPO references to identify the complaint cases concerned. A few scenarios are envisaged, as follows -

- (a) If the LegCo Member is authorized in writing by a complainant to make a complaint with CAPO on behalf of the complainant, the complaint will be handled as a reportable complaint. CAPO will inform the LegCo Member (as the complainant's representative) of the progress of investigation of the complaint every two months. The investigation report will be submitted to the IPCC for monitoring. Upon the IPCC's endorsement of the investigation report, CAPO will provide a full reply to the LegCo Member on the findings of investigation, the classification of the complaint and the reasons for the classification.

- (b) If the complaint concerned is a reportable complaint being investigated and the investigation report has not yet been submitted to the IPCC for monitoring, and the LegCo Member making enquiries or comments about the complaint is authorized in writing by the complainant to seek information on the handling of the complaint from CAPO on his behalf, CAPO would provide the LegCo Member with information on the progress of investigation. As and when the investigation report of the complaint has been endorsed by the IPCC, CAPO would provide the LegCo Member with information on the findings of investigation, the classification of the complaint and the reasons for the classification.
- (c) If the situation is the same as that described in paragraph (b) above but the LegCo Member is making enquiries or comments on the complaint out of his own interest and is not authorized by the complainant to seek information on the handling of the complaint from CAPO, CAPO may provide information in response to the LegCo Member's enquiries or comments as far as appropriate. Personal data protected under the Personal Data (Privacy) Ordinance (Cap. 486) will not be disclosed.
- (d) If the complaint is a non-reportable complaint and the LegCo Member making enquiries or comments about the complaint is authorized in writing by the complainant to seek information on the handling of the complaint from CAPO on his behalf, CAPO would provide the LegCo Member with information which would have been provided to the complainant.
- (e) If the situation is the same as that described in paragraph (d) above but the LegCo Member is making enquiries or comments on the complaint out of his own interest and is not authorized by the complainant to seek information on the handling of the complaint from CAPO, CAPO may provide information in response to the LegCo Member's enquiries or comments as far as appropriate. Personal data protected under the Personal Data (Privacy) Ordinance (Cap. 486) will not be disclosed.

5. Subject to Members' comments on the above proposed amendments to the clauses concerned of the Bill, we will submit the necessary proposed Committee Stage Amendments for Members' consideration in due course.

Security Bureau
April 2008