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Mrs Sharon Tong
Clerk to Panel on Security
Legislative Council
3/F, Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Mrs Tong,

Panel on Security

**Police's review of the existing practices
regarding handling of searches of detainees**

Further to the discussion on the captioned subject at the meeting of the LegCo Panel on Security held on 4 March 2008, we set out below the Administration's response to the various issues raised by Members.

The Communal Information System (and the Personnel Information Communal System)

2. At the LegCo Panel on Security meeting held on 4 March 2008, some Members enquired about the Communal Information System (CIS) and how it differs from the Personnel Information Communal System (PICS).

3. The CIS is the Police's operational support system to record, maintain and manage operational 'case' data, while the PICS is the human resources management system which handles the records and administer the personnel matters of about 36 000 regular, auxiliary and civilian officers in

the Police Force. The CIS and the PICS are two different systems, serving different but essential functions of the Police. As Members are aware, the Administration has submitted a proposal on the redevelopment of the PICS for discussion at the meeting of the LegCo Panel on Security to be held on 10 April 2008. The purpose of the redevelopment proposal is twofold : to enable timely replacement of the existing PICS system which is approaching the end of its serviceable life, and to enhance the system by developing it into a new strategic human resources planning and decision-support system within the Force. The new PICS would allow the Police to better meet its staff management and operational needs.

4. On the CIS, its initial set-up cost as approved by the LegCo Finance Committee in January 1993 was \$132.86 million, with an additional non-recurrent commitment of \$13.06 million approved in July 1996. After the system was launched in December 1996, the Force has enhanced the system on a number of occasions in view of changes in the operational environment and requirements (e.g., addition of the Supervisory Functions module in 2001, enhancement in relation to the addition of the Personalised Vehicle Registration Marks Scheme in 2006). A total of \$35.9 million was allocated for such enhancement projects over the years.

5. Although records concerning the detention, movement and release of arrested persons are kept on the CIS, the Force's internal guidelines do not currently specifically require police officers to record the reason for and the scope of a search conducted on a detainee. Nor does the current technical design of the CIS allow entries on searches of detainees to be recorded in a manner that would facilitate subsequent retrieval in the absence of case particulars (e.g. case reference number and name of detainee).

6. In the light of the deficiencies mentioned above, the Police have undertaken, as part of their feasibility study on the redevelopment of the CIS, explore the feasibility and pursue necessary upgrading to enhance the functions of the CIS for recording searches conducted on persons detained in police custody, and for retrieving essential information and records on such searches as and when necessary. In the interim, the Police are also actively exploring the feasibility to modify the current technical design of the CIS so that some standard statistics on searches of detainees involving the complete removal of clothing could be recorded by the system and retrieved therefrom if required.

Other suggestions and requests raised at the Panel meeting held on 4 March 2008

7. As regards the other comments made by Members during the Panel discussion on 4 March 2008 on the Force's review report on the search of detainees, we are pleased to inform Members that the Police will actively explore the following –

- the acquisition of equipment to assist Police officers in conducting searches of detainees with a view to minimizing the need for the complete removal of clothing during body searches;
- further enhancement of Police General Orders (PGO) and proposed internal guidelines on searches of detainees to address Members' concerns regarding searches involving the complete removal of clothing;
- inclusion of examples in the proposed internal guidelines to provide clearer guidance to officers in determining the scope of a search on a detainee based on the prevailing circumstances and on a case-by-case basis;
- fine-tuning the wording of the relevant police form (i.e. Pol. 153) and the proposed guidelines to reflect the detainees' rights more accurately; and
- refinement of the proposed procedural guidelines to stipulate that searches of detainees involving the complete removal of clothing should be considered as a last resort measure to discharge the Police's statutory functions and fulfil their duty of care to all persons detained in their custody, and that any officer contravening the guidelines may be subject to disciplinary action.

8. The Administration's response to other suggestions raised by Members during the Panel discussion are set out in **Annex**.

Way Forward

9. The Police are finetuning the proposed amendments to a number of documents (i.e. PGO 49-04 and Pol. 153), as well as the new guidelines on the conduct of searches on detainees, with a view to implementing the new arrangements in June 2008. Upon the conclusion of the legal proceedings in respect of the Lee Tung Street court case, the Force will consider whether additional measures are warranted to further improve on the handling of searches of detainees in their second stage review.

10. I should be grateful if you would help bring the above to the attention of Members.

Yours sincerely,

(Apollonia Liu)
for Secretary for Security

**The Administration's Response to Suggestions and Requests Raised by
Members of the Legislative Council Panel on Security
at the meeting of 4 March 2008 on Searches of Detainees**

- (a) The recording of reasons for removal of a detainee from the temporary holding area or cell block

The Police have confirmed that the requirement to record the reasons for temporary removal of a detainee from a temporary holding area or cell block is already in place. Any such movement is recorded in the CIS under the detained person movement record.

- (b) Statistics of detainees causing self-harm

Statistics on detainees causing self-harm as requested by the Chairman of the Panel are set out below –

| Apparatus/Cause | | Year | | |
|-----------------------------------------------------------------|------------------------|-----------|----------------|----------------|
| | | 2005 | 2006 | 2007 |
| Banging head or part of body against walls/doors/seating | | 8 | 24 | 26 |
| Cut Injuries | Finger nails | 2 | | 2 |
| | Zipper | | 2 | |
| | Plastic cup lid | | 1 | 1 |
| | Folding knife | | 1 [#] | |
| | Metal button | | | 1 |
| | Plastic spoon | | | 2 |
| | Mobile phone cover | | | 1 |
| | Spectacles | | | 1 |
| | Iron wire | | | 1 |
| | Cigarette lighter part | | | 1 [#] |
| Swallowing Incidents | Plastic ball | 1 | | |
| | Bra wire | 1 | | |
| | Finger ring | 1 | | |
| | Watch | 1 | | |
| | Shoe part | | 1 | |
| | Buttons | 1 | | |
| | Earrings | | 1 [#] | |
| Total | | 15 | 30 | 36 |

Self-harm was caused before the detainee was placed in the Temporary Holding Area or cell block and before pre-detention search was conducted.

78 out of 81 cases involved detainees causing self-harm after being detained in the Temporary Holding Area or cell block, and pre-detention search had been conducted on the detainees concerned. The other three cases of detainees inflicting self-harm occurred before the detainees were placed in the temporary holding area or cell block, and pre-detention search had not yet been conducted when the detainees harmed themselves.

- (c) Previous complaint against the Police in relation to search involving the complete removal of clothing referred by Members at the meeting on 4 March 2008

We have checked with the Complaints Against Police Office on the quoted complaint case. After investigation, it was found that there was 'unnecessary use of authority' on the part of the police officer conducting the search and the complaint was substantiated. Disciplinary action was instituted against the officer concerned, who had failed to comply with the PGO. The investigation did not reveal any deficiency in the applicable Force procedures.

- (d) The ranking of officers to authorize searches involving the complete removal of clothing

The Police still consider it appropriate for the Duty Officer of a police station to authorize a search on a detainee involving the complete removal of clothing. This is because the Duty Officer of a police station is the officer authorized by the Commissioner of Police to be in charge of any person taken into the custody of the Police. The Duty Officer of a police station is normally at the station sergeant rank and has many years of police experience.

- (e) Alignment of the wording of the revised Pol. 153 and the proposed internal guidelines

The Police have reservations about using the same forms of wording for the two documents which are for two different audiences – Pol. 153 is a form to be served on a detained person while the guidelines are for the Police's internal use. However, the Police have agreed to fine-tune the wording of the guidelines to reflect the detainees' rights more accurately.

(f) Presence of a detainee's lawyer (of same or opposite sex) during a search

The Duty Officer will consider requests for the presence of a detainee's lawyer during a search on a case-by-case basis and having regard to the prevailing circumstances. A relevant factor to be considered is that no unreasonable delay or hindrance will be caused to the process of investigation or the administration of justice if the request is acceded to.

(g) Adoption of the "reasonable suspicion" test in deciding whether to conduct a search

The "reasonable suspicion" test is not a factor when determining whether a detainee should be searched prior to detention. Indeed, in order to meet the duty of care and the statutory obligations of the Force, the Commissioner of Police has determined that a search will be conducted on all persons to be detained in police custody. The scope of the search on each occasion is to be determined having regard to the prevailing circumstances and on a case-to-case basis. Legal advice confirms that such search is neither unlawful nor arbitrary interference with the detainee's privacy or personal integrity.