

**For Information
on 30 October 2007**

Legislative Council Panel on Security

Police's Practices Regarding Handling of Searches of Detainees

PURPOSE

This paper sets out the practices of the Hong Kong Police Force (HKPF) on the searching of persons in custody and other issues raised by Members at the Panel Meeting held on 11 October 2007 as set out in paragraph 3 below.

BACKGROUND

2. On 5 October 2007, the Police arrested a group of 15 protesters who attempted to stop the demolition work at Lee Tung Street, for causing obstruction to a public place and also (for 13 of them) obstructing a police officer in the due execution of duty, contrary to section 4(28) of the Summary Offences Ordinance and section 36(b) of the Offences Against the Person Ordinance respectively. The arrestees were released on bail the following day and appeared before the Eastern Magistracy on 9 October 2007. The court granted bail pending pre-trial on 23 November 2007.

3. After appearing before the court on 9 October 2007, it was reported that 11 protesters (7 males and 4 females) held a media conference in which they alleged that the Police had conducted searches involving the removal of clothing worn next to the skin on them unnecessarily and in an inappropriate manner when they were detained in the police station, after the departure of their lawyers. Members of the Panel subsequently requested the Administration to provide information, with reference to the case, on :

- (a) the practices of the HKPF on the conduct of body search of detainees;
- (b) the practices of the HKPF in respect of body search on detainees of different sex; and
- (c) the rights of detainees in searches and whether detainees are being informed about their rights.

In response to the three questions above, the following sets out the general practices of the Police. We have not referred to matters pertaining to the case, because in view of the ongoing court proceedings, such matters are now *sub judice*, and it would be inappropriate to provide any information that may directly or indirectly prejudice the impending judicial proceedings.

HANDLING OF DETAINEES IN RESPECT OF SEARCH AND RELATED MATTERS

Conduct of body search of detainees

4. The Duty Officer of a police station (usually at Station Sergeant rank) is responsible for handling matters in respect of persons detained in police custody. He is under a duty to search an arrested person prior to his detention in police facilities (if the individual is to be detained) to ensure that that individual does not escape or assist others to escape, injure himself or others, destroy or dispose of evidence, or commit further crime. The extent to which the search is to be conducted is to be determined by the prevailing circumstances. In particular, the Duty Officer needs to satisfy himself that the detainee does not have :

- (a) on his person any weapon with which he might do himself or others an injury or any implement with which he might effect an escape;
- (b) in his possession evidence which is material to the offence with which he is charged; or
- (c) in his possession any article with which he could commit a further crime e.g. malicious damage to property or consumption or distribution of dangerous drugs.

In fulfilling his obligations to ensure that the person to be detained is properly searched, the Duty Officer must be prepared to justify the extent of the search he has authorized.

5. The Police recognize the importance of upholding the dignity of the detainees when conducting body searches. Appreciating that a search involving any removal of clothing worn next to the skin may be perceived as an unnecessary intrusion into a person's privacy, the Force has laid down specific rules governing these searches. In particular, this type of search

will only be carried out in the privacy of a police station, a police launch or a location providing equal privacy to the suspect, and will be conducted only upon the direction of an officer of or above the rank of Sergeant who must properly record the incident. Under no circumstances will an officer search a detainee of the opposite gender. As Force policy, whenever a female is to be detained in Police custody, a woman police officer must be present throughout the processing arrangements.

Rights of detainees in searches

6. The HKPF is conscious of the duty of care that they have towards persons detained in police custody, and in addition to ensuring that the detainees are detained in a safe environment. Equal importance is placed on ensuring that the detainees' rights as individuals are observed, in terms of privacy, and the provision of necessities fundamental to meeting human rights. As far as the conduct of searches on detainees is concerned, as a matter of principle, police officers must provide a detainee with the purpose of a search before it is conducted.

**Security Bureau
Hong Kong Police Force
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