

**For discussion
on 4 December 2007**

Legislative Council Panel on Security

**Police's Practices Regarding Handling of Searches of
Detainees and Related Matters – Supplementary Information**

PURPOSE

This paper provides supplementary information in response to the requests made by Members during the discussion on the paper entitled "Police's Practices Regarding Handling of Searches of Detainees" (LC Paper No. CB(2) 167/07-08(03)) at the meeting of the LegCo Panel on Security held on 30 October 2007.

BACKGROUND

2. Members requested the Administration to provide the following information :

- (a) the advice of the Department of Justice (DoJ) on whether and how the disclosure of information relating to the Police's handling of detainees will prejudice the trial of the case of 5 October 2007;
- (b) statistics on searches involving removal of clothing worn next to the skin conducted by the Police together with the nature of the offences concerned in the past three years;
- (c) the number of persons arrested on 5 October 2007, and out of which, the number of persons not granted bail and the nature of offences involved; and
- (d) the source/origin of the three requirements referred to in paragraph 4 of the Administration's paper entitled "Police's Practices Regarding Handling of Searches of Detainees" (LC Paper No. CB(2) 167/07-08(03)) for the Panel meeting on 30 October 2007.

ADMINISTRATION'S RESPONSE

(a) DoJ's advice

3. On Members' request, DoJ has provided its advice on whether and if so how the disclosure of information relating to the Police's post-arrest handling of the detainees of the incident concerned will prejudice the trial of any criminal proceedings arising from the incident. In gist, DoJ advised that in applying the *sub judice* rule to the case in question, the test is not whether "*the disclosure of information relating to the Police's handling of the detainees will prejudice the trial*", but whether there is a *possibility* that such disclosure will prejudice the trial. In the course of the trial it must be anticipated that evidence will be adduced in regard to not only the alleged offences themselves, but also the manner in which the various defendants were handled by the Police from the time of their arrest until they were released on bail. That evidence may include evidence relating to the manner in which the defendants were searched, perhaps as part of the defendants' defence. It may, for example, be used to support a stay application or to attack the credibility of prosecution witnesses. Accordingly, it is advised that the details of the searching process are subject to the *sub judice* rule, and should not, to be on the safe side, be discussed outside of trial. DoJ's advice is at Annex A.

(b) Statistics on searches involving the removal of clothing worn next to the skin

4. The Duty Officer of a police station is under a duty to search an arrested person prior to his detention in police facilities. The extent to which the search is to be conducted is determined by the prevailing circumstances. (Please refer to paragraph 4 in LC Paper No. CB(2) 167/07-08(03).) The number of persons who were detained in police custody (and hence were searched) in the past three years is as follows :

Year	Number of detainees
2005	40 102
2006	40 315
2007 (January to October)	31 399

5. Among the figures, however, the Police have practical difficulty in distinguishing the cases or number of searches involving the removal of

clothing worn next to the skin. In accordance with the Police General Orders, a search of this nature is recorded in either the Police's Communal Information System (CIS) or the police notebook of the Sergeant who authorized the search. The technical design of the CIS and the large number of diverse entries contained in the system (some 3.5 million entries for the past three years) render it difficult for the Police to discern the relevant entries to compile the required statistics. It is also not practical to conduct a manual search of all the police notebooks used by members of the Force for the past three years (estimated to be in excess of 30 000 notebooks). In any event, as a general practice, police notebooks are destroyed two years after their completion. Notwithstanding the above, the Police are looking into the feasibility of, for example, refining the technical design of the CIS to facilitate the provision of statistics of this nature in future, if required.

(c) Statistics on the number of persons arrested on 5 October 2007

6. According to the Police's record, the Force arrested 355 persons on 5 October 2007 (from 0000 hours to 2400 hours). 200 of them were not granted bail and the offences suspected to have been committed by them are set out at **Annex B**.

(d) Source of the information in paragraph 4 of Paper LC Paper No. CB(2) 167/07-08(03)

7. Paragraph 4(a) to (c) of the paper "Police's Practices Regarding Handling of Searches of Detainees" (LC Paper No. CB(2) 167/07-08(03)) states that in searching a detainee, 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).

This information is extracted from the Police General Orders. Extracts of the relevant provisions of the Police General Orders and the Force Procedures Manual on the Police's practices relating to the handling of searches of detainees are at **Annex C** for Members' reference.

Security Bureau
Hong Kong Police Force
November 2007

The Sub Judice Rule and the Lee Tung Street Case

The Sub Judice rule

The rule applies where court proceedings are ongoing, and through all stages of appeal until the matter is completed. It may also apply where court proceedings are imminent. It is not limited to parties in cases or their lawyers. It applies to the public, statements by public officials and statements made in the Legislature.

2. The basis for the rule is that it is the role of the courts to deal with legal issues that are before them. The courts' role should not be usurped by others making public statements about how these issues should be dealt with.

3. It is very much in the public interest that the trial process should be fair. It is the role of the prosecutor in the case, acting independently, and representing not the Government, but the Hong Kong Special Administrative Region, to assist the court in ensuring that the defendant receives a fair trial. In this regard, it is part of the prosecutor's duty to ensure, so far as it is possible, that nothing occurs outside of the court, whilst the case is pending, that is likely to impact upon or prejudice the trial process.

Applying the *sub judice* rule to the Lee Tung Street Case

4. The test is not whether '*the disclosure of information relating to the Police's handling of the detainees will prejudice the trial,*' but whether there is a *possibility* that such disclosure will prejudice the trial.

5. Under the criminal justice system, as it operates in Hong Kong, the prosecution is under a duty to disclose all relevant material, in respect of the case, to the defence. On the other hand, the defence is not obliged to disclose any of its material to the prosecution, and, in particular, the defendant is not obliged to disclose to the prosecution the nature of the defence he or she will be advancing in the course of the trial, and therefore, there must be a degree of speculation in regard to the likely defence the defendants will present at the trial.

6. In this case, a total of 13 persons will be prosecuted for one or both offences of *obstruction* [i.e. obstruction of a public place, contrary to section 4(28) of the Summary Offences Ordinance, Cap. 228, or

obstructing a police officer in the execution of his duty, contrary to section 36(b) of the Offences against the Person Ordinance, Cap. 212]. In the course of the trial it must be anticipated that evidence will be adduced in regard to not only the alleged offences themselves, but also the manner in which the various defendants were handled by the Police from the time of their arrest until they were released on bail. That evidence may include evidence relating to the manner in which the defendants were searched, perhaps as part of the defendants' defence. It may, for example, be used to support a stay application or to attack the credibility of prosecution witnesses, some of whom were also involved in the searching process. Accordingly, it is advised that the details of the searching process are subject to the *sub judice* rule, and should not, to be on the safe side, be discussed outside of trial.

Department of Justice
November 2007

Types of offences suspected to have been committed by the persons arrested by the Police on 5 October 2007 who were not granted bail

1. Assault on police officer
2. Common assault
3. Breach of condition of stay - vice related
4. Illegal immigrants arrested
5. Wanted person located
6. Stop target
7. Overstayer
8. Possession of offensive weapon
9. Fighting in a public place
10. Disorder in public place
11. Indecent assault on a female
12. Unlawful sexual intercourse with a girl under 16 years
13. Soliciting for an immoral purpose
14. Assault occasioning actual bodily harm
15. Ill-treatment or neglect by those in charge of child or young person
16. Theft
17. Obtaining property by deception
18. Making off without payment
19. Obstructing a public place
20. Object dropped from building
21. Wounding with intent
22. Wound or inflict grievous bodily harm
23. Trafficking in a dangerous drugs
24. Possession of dangerous drugs
25. Tampering with a vehicle
26. Managing a vice establishment

27. Theft by finding
28. Criminal intimidation (acts of intimidation prohibited)
29. Criminal intimidation (assaults to cause acts to be done or omitted)
30. Theft from shops and stalls
31. Criminal damage (destroying or damaging property)
32. Possession of dangerous drugs (more than 10 tablets/capsules)
33. Remaining in Hong Kong without authority of Director Of Immigration
after landed unlawfully in Hong Kong
34. Possession of Part I Poison
35. Vietnamese illegal immigrants arrested
36. Possession of obscene articles for the purpose of publication
37. Outraging public decency

**Relevant extracts of the
Police General Orders and Force Procedures Manual
relating to the search of detained persons**

POLICE GENERAL ORDERS

44-05 Search of Persons

A male officer shall not conduct a frisk or a wall search of a female. In the absence of a woman officer, a female shall be escorted to a police station or police launch for search by a female officer.

2. During stop and search, the suspect shall not be detained for any period of time longer than is necessary for the officer to effect the search and perform PONICS III or ROPS check as appropriate.

3. A search of any suspect, which involves the removal of clothing worn next to the skin, the removal of which may cause embarrassment, shall only be carried out in the privacy of a police station, a police launch or a location providing equal privacy to the suspect. This type of search shall be conducted only upon the direction of an officer of or above the rank of Sergeant who shall record the incident in the CIS or his police notebook.

49-04 Searching of Detained Persons

A DO, or an officer detailed by him, will search a detained person prior to his being secured in a Temporary Holding Area (THA) or cell block, the extent of which shall be determined by the prevailing circumstances, to satisfy himself that the detained person 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.

2. A search involving any removal of clothing worn next to the skin, the removal of which may cause embarrassment, shall be conducted in accordance with PGO 44-05.

3. Whenever a detained person is removed from a THA or cell for any purpose, the same procedure as above shall be followed prior to returning such person to the THA or cell.

4. Under no circumstances will an officer search a detained person of the opposite gender.
5. If an officer has reason to suspect that a person being searched has concealed any article within his person, he shall report the matter to his DVC.
6. The DVC shall decide whether or not a medical examination is necessary and if he considers it necessary, shall contact the Forensic Pathologist.
7. If a medical examination is undertaken, it shall be made by the Forensic Pathologist or in accordance with arrangements made by him.
8. A “body cavity” or “Intimate” search may only be performed under Section 52(1A) of the Dangerous Drugs Ordinance, Cap. 134.

FORCE PROCEDURES MANUAL

44-05 Search of Persons

Apart from searching suspects upon arrest, the police have wide powers to stop, search and detain persons:-

(a) Section 54(1) of Police Force Ordinance, Cap. 232

Section 54(1) relates to a person who acts in a suspicious manner in a public place. In such cases, an officer may:-

- (i) stop the person;
- (ii) demand and inspect proof of identity;
- (iii) conduct limited enquiries (i.e. PONICS III, ROP and questioning) at the scene of the stop; and
- (iv) if the officer considers it necessary for his own safety, search the person for anything which poses a danger to the officer.

2. It is important that officers understand the limits of searches under section 54(1). The search is limited to a frisk type search, such as for weapons. No detailed search of, for example, a wallet or personal papers is permitted.

(b) Section 54(2) of Police Force Ordinance, Cap. 232

Section 54(2) provides wider powers of search, and a full search may be conducted. However, before a search is conducted under this subsection, the officer must have reasonable suspicion that:-

- (i) an offence has been committed by the person; or

(ii) the person was about to, or was intending to, commit an offence.

3. It must be noted that this search is limited to a search for those items which are likely to be of value to the investigation of an offence involving the person.

(c) Section 50(6) of Police Force Ordinance, Cap. 232

This section reads as follows:-

“(6) Where any person is apprehended by a police officer it shall be lawful for such officer to search for and take possession of any newspaper, book or other document or any portion or extract therefrom and any other article or chattel which may be found on his person or in or about the place at which he has been apprehended and which the said officer may reasonably suspect to be of value (whether by itself or together with anything else) to the investigation for any offence that the person has committed or is reasonably suspected of having committed; provided that nothing in this subsection shall be construed in diminution of the powers of search conferred by any particular warrant.”

4. This section empowers police to search an arrested person and the immediate environs of his arrest. The power to seize items is, however, restricted to those items which the officer reasonably suspects to be of value in the investigation of an offence committed by that person. There is, therefore, no power to seize items which merely throw light on the character or activities of an associate unless the item is of value to the investigation of an offence committed by the arrested person, or is evidence of another offence, for example, drugs or firearms.

5. When a search is deemed necessary, officers conducting the search should always bear in mind:-

(a) the safety of the officer/s involved; and

(b) the need to conduct the search in a proper and discreet manner.

6. Officers conducting searches of persons who are suspected of being violent should consider using the wall search, and be always mindful of the possibility of attack.

7. Officers searching suspects should be aware of the possibility of the transmission of contagious diseases by contact with infected needles, syringes and razor blades etc. An officer should therefore consider having the pockets of a suspect inverted, preferably by the suspect himself, to eliminate the possibility of the officer being cut. He may consider wearing protective gloves when conducting the search. Care, however, must be taken in order to protect the personal safety of the officer from a concealed weapon and to ensure that evidence is not lost. The decision to invert a suspect's pocket and/or to wear protective gloves is at the discretion of the officer concerned. During a search, officers who have discovered cuts to their skin, no matter how minor, should not handle bloodstained objects.

8. A search, and particularly a wall search is often objectionable to many people, who regard it as an affront to their dignity. Although there is no legal requirement to inform the person why he is being searched, this may be desirable in order to seek the public's co-operation in the prevention and detection of crime. An officer, having searched someone and found nothing, should politely regret the inconvenience and point out that the exercise is protecting him as well as other members of the public.

9. If the officer considers it necessary for his own safety he should conduct a frisk search immediately. However, at the discretion of the officer, he may accompany the person to the nearest police station or police launch for a full search to be conducted there. Care should be taken to avoid the disposal of incriminating evidence en route.

10. Whilst a male officer shall not conduct either a frisk or wall search of a female, this does not preclude him from searching her property such as a handbag if he either considers it necessary for his own safety or if he suspects it contains items which are likely to be of value to the investigation of an offence involving the female.

11. Police officers conducting searches in public places should make use of PONICS III and ROP, and Formation Commanders are to ensure that all officers are familiar with the procedures for conducting these checks.

12. Police officers conducting stop and searches should inform the persons affected, in layman terms, the reasons for doing so.

49-04 Searching of Detained Persons

2. The DO is to search a detained person or authorize his being searched, prior to securing him in a cell to ensure that the detained person does not –

- (a) escape;
- (b) assist others to escape;
- (c) injure himself or others;
- (d) destroy or dispose of evidence; and
- (e) commit further crime.

3. Any search involving the removal of clothing next to the skin, which may result in embarrassment, is to be conducted in accordance with PGO 44-05 and the DO must be prepared to justify this level of search.