

立法會
Legislative Council

LC Paper No. CB(2)2790/07-08

(These minutes have been seen by the
Administration)

Ref : CB2/PS/2/07

Panel on Security

Subcommittee on Police's Handling of Searches of Detainees

Minutes of meeting
held on Monday, 14 July 2008, at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Margaret NG
Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Member absent** : Hon WONG Yung-kan, SBS, JP
- Public Officers attending** : Mrs Apollonia LIU
Principal Assistant Secretary for Security
- Mr Kennon TAM
Assistant Secretary for Security
- Mr YU Mun-wah
Acting Assistant Commissioner of Police (Support)
- Mr Charles Geoffrey ALISON
Senior Superintendent of Police (Support Branch)
(Support Wing)

Mr TSANG Fan-kwok
Senior Inspector of Police (General) 4 (Support Branch)

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Miss Josephine SO
Senior Council Secretary (2) 5

Miss Helen DIN
Legislative Assistant (2) 1

I. Election of Chairman

Hon James TO was elected Chairman of the Subcommittee.

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

II. Meeting with the Administration
(LC Paper No. CB(2)2598/07-08(02))

3. The Administration was requested -
- (a) to provide information on the workload of a Duty Officer;
 - (b) to consider the suggestion of revising the Police General Orders (PGO), the Force Procedures Manual (FPM) and Guidelines on the Searching of Detained Persons (the Guidelines) to set out clearly the criteria for conducting searches involving complete removal of clothing and to give a clearer indication that searches involving complete removal of clothing should only be conducted in very restrictive circumstances;
 - (c) to consider including in the revised PGO and FPM references to the relevant provisions of the Basic Law and international conventions regarding the protection of human rights in respect of detainees;

- (d) to consider requiring the issuing/authorizing officer to record in the Custody Search Form more detailed justifications/reasons for conducting a search involving complete removal of clothing;
- (e) to fine-tune the wording of paragraph 4 of the Custody Search Form, so as to clarify that the detainees were invited, not requested, to sign on the form;
- (f) to consider the suggestion that the authorizing officer for searches involving complete removal of clothing should not be a Duty Officer but a more senior ranking police officer/the most senior ranking officer in a police station;
- (g) to modify the wording of paragraph 11(b) of the revised FPM 49-04 to allow a male detainee to retain his underwear, as is the case for a female detainee; and
- (h) to consider introducing additional procedures or measures when conducting searches on detainees who require special care or attention, such as transsexuals.

III. Date of next meetings

4. The Subcommittee agreed that the next two meetings be scheduled as follows -

- (a) 16 July 2008, Wednesday, from 9:00 am to 12:30 pm; and
- (b) 17 July 2008, Thursday, from 10:45 am to 12:45 pm.

5. The Subcommittee also agreed to receive the views of deputations at the meeting on 16 July 2008.

6. The meeting ended at 12:45 pm.

**Proceedings of meeting of the
Subcommittee on Police's Handling of Searches of Detainees
on Monday, 14 July 2008, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action Required
000151 - 000350	Hon Margaret NG Hon James TO Hon Audrey EU Hon LEUNG Kwok-hung	Election of Chairman	
000351 - 000523	Chairman	Welcoming remarks	
000524 - 001430	Chairman Hon Margaret NG Hon Ronny TONG Hon LEUNG Kwok-hung	Date of next two meetings and arrangement for the meetings	
001431 - 002428	Chairman Admin	Briefing by the Administration on its paper [LC Paper No. CB(2)2598/07-08(02)] which set out the Administration's response to issues raised at the meeting of the Panel on Security on 8 July 2008 on the Police's handling of searches of detainees	
002429 - 003248	Chairman Admin	<p>Query about the propriety of the general requirement to conduct searches on all persons to be detained in Police custody</p> <p>Administration's explanation on the need for Police officers to properly discharge their statutory functions, to fulfill the Force's duty of care to persons detained in custody and to ensure the safety of others who might come into contact with the detainees, and the requirement that the Duty Officer (DO) in a Police station would determine the scope of search on each occasion having regard to the prevailing circumstances and on a case-by-case basis</p>	

Time Marker	Speaker(s)	Subject(s)	Action Required
003249 - 005428	Hon LEUNG Kwok-hung Chairman Admin	<p>Appropriateness of conferring on DO the responsibility to authorize a search on a detainee and determine the scope of the search, taking into account the ranking and the heavy workload of a DO</p> <p>Concern about the possible influence of officer-in-charge of a case on DO's decision in respect of the search on a detainee</p> <p>Suggestion that a more senior officer (e.g. the most senior officer in the Police station) should be responsible for authorizing any search involving complete removal of clothing</p> <p>Suggestion that the process of search should be video recorded, if so requested by the person being searched, to better protect a detainee from Police's possible abuse of power in the process of search</p> <p>Safeguards built into the new arrangements to prevent arbitrary searches and possible abuse of power during a search. The DO's decision, together with the justifications/reasons for conducting a search, would be conveyed to the detained person and recorded in the Force's Communal Information System (CIS)</p> <p>A DO should be independent in his decision-making in the handling of custodial searches on detainees, and his decision should not be influenced by any other Police officers</p>	<p>Admin to provide information on the workload of a DO (paragraph 3(a) of the minutes refers)</p>

Time Marker	Speaker(s)	Subject(s)	Action Required
005429 - 011018	Hon Ronny TONG Admin Chairman	<p>Concern about the protection of privacy, human rights and dignity of detainees provided under the new arrangements, and whether the arrangements were drawn up in compliance with the relevant provisions of the Basic Law, the Bill of Rights and international conventions regarding the protection of human rights in respect of detainees</p> <p>Suggesting to revise the PGO, FPM and the Guidelines to set out clearly the criteria for conducting searches involving complete removal of clothing and to give a clearer indication that searches involving complete removal of clothing should only be conducted in very restrictive circumstances</p> <p>Proposal of allowing a third party, such as a lawyer, family member of the detainee or officers of other investigation units, to witness searches of detainees involving complete removal of clothing to prevent abuse of power by Police officers</p> <p>Paragraph 10 of the revised PGO 49-04</p> <p>Searches of detained persons involving the removal of underwear were more common in cases involving drug offences</p> <p>Metal detectors procured by the Police for assisting Police officers in conducting searches on detainees</p>	<p>Admin to consider members' views and suggestion (paragraph 3(b) of the minutes refers)</p>
011019 - 011946	Hon LEUNG Kwok-hung Chairman Admin	Concern about the human rights issues	

Time Marker	Speaker(s)	Subject(s)	Action Required
		<p>Paragraph 2 of the revised FPM 49-04, and the relevant parts of the Guidelines spelling out the need to respect the privacy, dignity and human rights of detainees</p> <p>Period for which Custody Search Form(s) would be kept by the Police</p>	
011947 - 012320	Chairman Admin	<p>Suggesting to include in PGO and FPM references to the relevant provisions of the Basic Law and international conventions regarding the protection of human rights in respect of detainees</p> <p>Consequences for breach of PGO, FPM and the Guidelines and rights of detainees if they felt they had been arbitrarily searched by Police officers</p>	Admin to consider members' view and suggestion (paragraph 3(c) of the minutes refers)
012321 - 012853	Hon Audrey EU Chairman Admin	<p>The Issuing officer of the Custody Search Form (Pol. 1123)</p> <p>Requesting that the issuing/authorizing officer should be required to record in the Custody Search Form more detailed justifications/reasons for conducting a search involving complete removal of clothing</p>	Admin to consider members' request (paragraph 3(d) of the minutes refers)
012854 - 014705	Chairman Admin Hon LEUNG Kwok-hung	<p>Suggesting to fine-tune the wording of paragraph 4 of the Custody Search Form, so as to clarify that the detainees were invited, not requested, to sign on the form</p> <p>Ranking of officers to authorize a search involving removal of underwear. Suggested that the authorizing officer for searches involving complete removal of clothing should not be a Duty Officer but a more senior Police</p>	<p>Admin to consider members' suggestion (paragraph 3(e) of the minutes refers)</p> <p>Admin to consider members' suggestion (paragraph 3(f) of the minutes refers)</p>

Time Marker	Speaker(s)	Subject(s)	Action Required
		officer/the most senior officer in a Police station	
014706 - 015431	Chairman Admin	Paragraph 3 of the revised FPM 49-04 - clarification on whether a person was searched immediately upon arrest Expressing the view that the scope of search should be no more than what was rational and proportionate with respect to which reasonable suspicion existed	
015432 - 020045	Chairman Admin Hon LEUNG Kwok-hung	Whether the special arrangements applied to uniformed servicemen could be applied to detainees who had special requests concerning dress code, such as the wearing of head-dress or robe, as required by their faith, religion or custom Clarification on paragraph 11(b) of the revised FPM 49-04. Suggested to modify the wording of paragraph 11(b) to allow a male detainee to retain his underwear, as is the case for a female detainee Additional procedures or measures should be adopted when conducting searches on detainees who require special care or attention, such as transsexuals	Admin to consider members' suggestion (paragraph 3(g) of the minutes refers) Admin to consider members' suggestion (paragraph 3(h) of the minutes refers)
020046 - 020123	Chairman	Date of next meeting	