

立法會
Legislative Council

LC Paper No. CB(2)2792/07-08

(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 Thursday, 17 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. Meeting with the Administration
(LC Paper No. CB(2)2625/07-08(01))

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

2. The Administration was requested -
 - (a) to provide more detailed information concerning training materials for the Police officers on how a search should be conducted; and
 - (b) to provide information on the average police experience of a Divisional Commander and a Duty Officer of a Police station.
3. At the request of members, the Administration agreed -
 - (a) to consider spelling out clearly in the Police General Orders (PGO) and Force Procedures Manual (FPM) that only persons whose presence was necessary for conducting a search would be allowed to be present during a search;
 - (b) to consider spelling out explicitly in PGO and FPM that any request for a detainee to adopt a certain posture during a search should be subject to the necessity and proportionality tests;
 - (c) to consider spelling out explicitly in PGO and FPM the requirement for Police officers to keep accurate record of all searches; and

Action

- (d) to consider spelling out in FPM the handling arrangements set out in paragraph 14 of Annex B to the Administration's letter dated 17 July 2008.
4. The Subcommittee suggested that the Panel on Security should keep in view in the next term the development of the Lee Tung Street case and the Police's handling of the Police officers concerned.
5. The Chairman said that the Subcommittee had concluded its work and a report would be submitted, after endorsement by members, to the Panel on Security recommending that the issues raised by the Subcommittee be followed up by the Panel in the next term.
6. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 2
Legislative Council Secretariat
19 September 2008

**Proceedings of meeting of the
Subcommittee on Police's Handling of Searches of Detainees
on Thursday, 17 July 2008, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action Required
000449 - 000554	Chairman	Opening remarks	
000555 - 002934	Admin	Administration's response to various issues raised at the meetings of the Subcommittee held on 14 and 16 July 2008 (LC Paper No. CB(2)2625/07-08(01))	
002935 - 003857	Hon Ronny TONG Admin Chairman Hon LEUNG Kwok-hung	<p>Expressed dissatisfaction that the Administration had not adequately addressed members' and deputations' concerns over the Police's handling of searches of detainees</p> <p>Requested that the Administration should seriously consider members' suggestion to allow a third party, such as a lawyer, Justice of the Peace, minister, family member of the detainee or the most senior ranking officer in a Police station, to be present during the conduct of pre-detention searches, especially those involving complete removal of clothing, to prevent abuse of power by Police officers</p> <p>The Administration confirmed that -</p> <p>(a) the Duty Officer (DO) might allow the legal representative of a detainee to be present during the search as long as there was no undue hindrance to the detention process;</p> <p>(b) the Police would consider the proposal of allowing the process of the searches to be video-taped if so requested by the detainee; and</p>	

Time Marker	Speaker(s)	Subject(s)	Action Required
		(c) the authorizing officer would be required to record on the Custody Search Form more detailed justifications for conducting a search involving removal of underwear	
003858 - 005159	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>Reason(s) why members' request for a higher-ranking officer (such as the most senior ranking officer in a Police station) to be responsible for authorizing searches involving complete removal of clothing could not be acceded to</p>	Admin to provide information on the average police experience of a Divisional Commander and a Duty Officer of a Police station
005200 - 010204	Hon LEUNG Kwok-hung Chairman Admin	<p>Factors to be taken into consideration in determining whether the process of search should be video-recorded</p> <p>In the case where a Police officer was involved in a complaint case and got promoted during the period of investigation, whether the officer concerned would be demoted if the complaint was subsequently classified as substantiated</p> <p>Concerned about the allegations about Police's abuse of power in the Lee Tung Street case. The Panel on Security should follow up with the Administration on the results of the case in the next term</p>	
010205 - 010948	Chairman Admin	<p>Suggestion to fine-tune the wording of paragraph 8 of the revised Police General Orders (PGO) 49-04</p> <p>Paragraphs 4 and 6 of Annex B to the Administration's paper (LC Paper No. CB(2)2625/07-08(01)) -</p>	

Time Marker	Speaker(s)	Subject(s)	Action Required
		<p>reiterated concern as to whether a person being searched should be required to adopt certain postures or perform certain acts during the search. Suggested that revisions be made to PGO, the Force Procedures Manual (FPM) and the Guidelines on the Searching of Detained Persons (the Guidelines) to ensure that the DO would make every practicable effort to minimize embarrassment to the detained person in the search process and ensure that the acts required were justified</p>	
010949 - 011850	Chairman Admin SALA1	<p>The legal grounds on which the decision to conduct searches on all detainees was based and whether the "reasonable suspicion" test had to be applied in deciding whether to conduct a search</p> <p>The judgment in <i>Lindley v Rutter</i></p> <p>Legal opinion that measures adopted in a search had to be reasonable and proportionate to the circumstances</p>	
011851 - 012033	Hon Ronny TONG Chairman	Way forward - submission of report to the Panel on Security upon the conclusion of the deliberations of the Subcommittee	
012034 - 012505	Chairman Admin Hon LEUNG Kwok-hung	Paragraph 3 of Annex B to the Administration's paper (LC Paper No. CB(2)2625/07-08(01)) - disclosure of training materials adopted by the Police on how a pre-detention search should be conducted	<p>Admin to provide more detailed information concerning training materials for the Police officers on how a search should be conducted</p>

Time Marker	Speaker(s)	Subject(s)	Action Required
012506 - 013554	Chairman Admin	<p>Paragraph 7 of Annex B to the Administration's paper (LC Paper No. CB(2)2625/07-08(01))</p> <p>Paragraph 6 of the Guidelines</p> <p>Paragraph 7 of PGO 49-04</p> <p>Correlation between paragraph 14 of Annex B to the Administration's paper (LC Paper No. CB(2)2625/07-08(01)) and paragraph 9 of FPM 49-04</p>	
013555 - 014035	Chairman Hon LEUNG Kwok-hung Admin	<p>Concluding remarks -</p> <p>(a) the Subcommittee considered that the new arrangements for the search of detainees had not struck a proper balance between ensuring the safety of detainees and preventing possible abuse of power;</p> <p>(b) the Subcommittee urged the Administration to further explore what could be done to protect the rights of detainees and safeguard them from possible abuse of power, especially unreasonable searches involving complete removal of clothing; and</p> <p>(c) a report would be made to the Panel on Security recommending that the issues raised by the Subcommittee be followed up by the Panel in the next term</p>	