

# 立法會 *Legislative Council*

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## **Subcommittee on Police's Handling of Searches of Detainees**

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 14 July 2008**

#### **Police's practices regarding handling of searches of detainees**

#### **Purpose**

This paper summarises past discussions held by the Panel on Security (the Panel) on the Police's practices regarding the handling of searches of detainees.

#### **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 in Wan Chai. It was reported that the Police had conducted searches on the detainees involving the complete removal of clothing worn next to the skin unnecessarily and in an inappropriate manner when the latter were detained in the Police station, after the departure of their lawyers. Arising from the allegations made by persons arrested in the Lee Tung Street case, the Panel had held a number of meetings to discuss the Police's practices regarding the handling of searches of detainees.

#### **Discussions by the Panel on Security**

##### Meeting on 30 October 2007

3. At its meeting on 30 October 2007, the Panel discussed the Police's practices regarding the searches of persons in custody and the rights of detainees in searches.

4. Some members expressed concern about allegations that the Police had abused its power when conducting searches of detainees. Noting that persons in the Lee Tung Street case were arrested for causing obstruction to a public place and obstructing a Police officer in the execution of duty, these members queried the justifications for conducting strip searches on these persons, and whether such

searches had been conducted in compliance with the Police's guidelines. They considered that the reasons for conducting such a search should be explained to the persons being searched and recorded.

5. The Administration responded that the Duty Officer of a Police station was responsible for handling matters in respect of persons detained in Police custody. The Duty Officer was under a duty to search an arrested person prior to detention in Police facilities and the extent to which the search was to be conducted was to be determined by the prevailing circumstances. The Duty Officer must be prepared to justify the extent of the search he had authorised. As a matter of principle, Police officers must inform the persons being searched of the purpose and reasons for such a search before it was conducted. Specific rules governing these had been laid down in the Police General Orders (PGO) and the Force Procedures Manual (FPM). Some members considered that the provisions in PGO and FPM relating to the handling of searches of detainees had not been drafted in such a way that struck an appropriate balance between law enforcement and the protection of human rights. The Police should conduct a full review on the relevant provisions.

6. Members were also concerned about the keeping of records of searches involving the complete removal of clothing worn next to the skin. They requested the Administration to provide information on the number of such searches conducted by the Police in the past three years.

7. The Administration advised that a search of such a nature was recorded in either the Police's Communal Information System (CIS) or the police notebook of the Duty Officer who authorised the search. The technical design of CIS and large number of diverse entries contained in the system rendered it difficult for the Police to discern the relevant entries for compilation of the requested statistics. It was also not practical to conduct a manual search of all the police notebooks used by members of the Police Force in the past three years.

#### Meeting on 4 December 2007

8. The Panel received the views of deputations on the Police's handling of searches of detainees at its meeting on 4 December 2007. Some members pointed out that the Basic Law (BL) prohibited arbitrary or unlawful search of the body of any resident. The Hong Kong Bill of Rights (BOR) also provided that no one should be subject to torture or to cruel, inhuman or degrading treatment or punishment and all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person. These members considered that what the Police had done in the Lee Tung Street case was in contravention of BL and BOR. They enquired whether the Police had issued guidelines setting out the constitutional obligations of Police officers under these articles.

9. The Administration responded that PGO had been drawn up having regard to the provisions in BL, BOR and international human rights treaties. When exercising their power, all Police officers had to comply with the legal requirements which included the constitutional freedom and rights guaranteed for every individual. During their training, all Police officers had been reminded that the power of Police officers to search detainees had to be exercised with due regard to proportionality and necessity. Police officers who did not comply with the Police's guidelines when exercising such power were liable to disciplinary action and criminal sanction.

10. On 14 December 2007, the Panel was informed that the Police would conduct a two-stage review of their existing practices regarding the handling of searches of detainees, having regard to the views and concerns raised by members at the Panel meetings on 30 October and 4 December 2007. In the first stage, the Police would review what immediate improvement measures they could implement in the interim without jeopardising the court proceedings in the Lee Tung Street case. In the second stage, the Police would consider, upon the conclusion of legal proceedings on the court case, whether additional measures were warranted to further improve the handling of searches of detainees.

#### Meeting on 4 March 2008

11. At its meeting on 4 March 2008, the Panel was briefed on the outcome of the first stage review conducted by the Police and the proposed measures to further improve the procedures for searching detainees.

12. Some members expressed concern that the revised PGO and the proposed internal guidelines might allow the Police to abuse its power and the dignity of detainees could still not be protected. They suggested that PGO should contain a specific section on strip search. Such a section should cover the circumstances under which strip searches would be conducted, how such searches were to be carried out and how the human rights, privacy and dignity of detainees could be protected during such searches. In addition, strip search should only be authorised by the most senior officer in a Police station instead of the Duty Officer of the Police station. They also suggested that the specific circumstances under which strip searches would be conducted should be included in the Police's internal guidelines. It should be stipulated in the guidelines that a strip search should be considered only when there were no other alternatives. Any officer who contravened the guidelines should be subject to disciplinary action.

13. Dr Philip WONG suggested that the Police should explore the possibility of acquisition of equipment to assist it in the conduct of searches, with a view to minimising the need for strip searches and providing better protection for the privacy, human rights and dignity of detainees.

14. Having considered the views and suggestions of members, the Administration advised the Panel that the Police would actively explore the following -

- (a) the acquisition of equipment to assist the Police in conducting searches of detainees with a view to minimising the need for the complete removal of clothing during body searches;
- (b) further enhancement of PGO and the proposed internal guidelines to address members' concerns regarding searches involving the complete removal of clothing;
- (c) inclusion of examples in the proposed internal guidelines to provide clear guidance to officers in determining the scope of a search on detainee based on the prevailing circumstances and on a case-by-case basis;
- (d) fine-tuning the wording of the relevant forms and the proposed internal guidelines to reflect the detainees' rights more accurately; and
- (e) refinement of the proposed internal guidelines to stipulate that searches of detainees involving the complete removal of clothing should be considered as a last resort 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 might be subject to disciplinary action.

15. Regarding the ranking of authorising officers, members were informed that the Police considered it appropriate for the Duty Officer of a Police station to authorise a search on a detainee involving the complete removal of clothing. The Duty Officer was normally at the Station Sergeant rank and had many years of police experience.

16. In June 2008, the Administration informed the Panel that the Police was consulting its legal advisors, with a view to finalising its new guidelines and improved procedures for searches of detainees for implementation in July 2008. The new guidelines and procedures would make it explicit and clear that a search involving the removal of underwear should not be conducted as a matter of routine but only in circumstances with strong justification. The new guidelines would also state that a search involving the removal of clothing should be conducted with proper regard to the privacy and dignity of the detained person and in accordance with Hong Kong's human rights obligations. Revisions would be made to PGO to require that accurate records be kept in CIS to record the search conducted on a particular detainee and the scope of the search.

### Meeting on 8 July 2008

17. At the meeting on 8 July 2008, the Panel discussed the Police's new guidelines and related documents.

18. Some members expressed concern that the revisions made to PGO and FPM and the new "Guidelines on the Searching of Detained Persons" had provided the Police with wider powers of search which were open to abuse. They were of the view that searches involving the removal of underwear should only be authorised by the most senior officer in a Police station. Some members suggested that an independent monitoring mechanism should be put in place to monitor the Police's searches of detainees involving removal of underwear. They considered that with the advancement of technology, the Administration should explore the feasibility of deploying devices that would enable the Police to detect any article kept by a person to be detained without complete removal of clothing.

19. The Administration responded that the new arrangements had provided appropriate safeguards to prevent arbitrary searches. Apart from the measures mentioned in paragraph 16 above, the officer conducting the search would be required to explain to the detainee the reasons for and the scope of the search before the search was conducted, and the Duty Officer would ensure that the purposefully designed Custody Search Form would be served on the detainee, with the contents explained to the detainee. The form set out clearly the reasons for and the scope of the search in question, the searching procedures, and the rights and entitlements of the person to be searched. The detainee would be asked to sign on the form in acknowledgement after such explanation and prior to the search. The Administration informed the Panel that the Police had procured some 120 hand-held metal detectors to facilitate the conduct of searches of persons to be detained.

### **Relevant papers**

20. Members may wish to refer to the following minutes of meetings and papers for further details of the discussions -

#### Minutes

- (a) minutes of meeting of the Panel on Security on 30 October 2007 [LC Paper No. CB(2)452/07-08];
- (b) minutes of meeting of the Panel on Security on 4 December 2007 [LC Paper No. CB(2)1031/07-08];
- (c) minutes of meeting of the Panel on Security on 4 March 2008 [LC Paper No. CB(2)2087/07-08];

Papers

- (d) Administration's paper entitled "Police's Practices Regarding Handling of Searches of Detainees" for the meeting of the Panel on Security on 30 October 2007 [LC Paper No. CB(2)167/07-08(03)];
- (e) Administration's paper entitled "Police's Practices Regarding Handling of Searches of Detainees and Related Matters" for the meeting of the Panel on Security on 4 December 2007 [LC Paper No. CB(2)451/07-08(03)];
- (f) Letter dated 18 February 2008 from the Administration on "Searching of detainees by the Police" [LC Paper No. CB(2)1124/07-08(01)];
- (g) Administration's paper entitled "Report on Stage One of the Review on the Police's Practices regarding the Searches of Detainees" for the meeting of the Panel on Security on 4 March 2008 [LC Paper No. CB(2)1209/07-08(03)];
- (h) Letter dated 9 April 2008 from the Administration on "Police's review of the existing practices regarding handling of searches of detainees" [LC Paper No. CB(2)1546/07-08(01)];
- (i) Letter dated 12 June 2008 from the Administration on "Review of the Handling of Searches of Detainees" [LC Paper No. CB(2)2241/07-08(01)]; and
- (j) Letter dated 27 June 2008 from the Administration on "Police's review of the existing practices regarding handling of searches of detainees" [LC Paper No. CB(2)2439/07-08(01)].

21. The above minutes and papers are also available on the website of the Legislative Council (<http://www.legco.gov.hk>).

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