

For discussion

**Sub-Committee on
the Independent Police Complaints Council Ordinance
(Commencement) (No. 2) Notice 2009**

**Preparation for the Establishment of the
Statutory Independent Police Complaints Council on 1 June 2009**

Purpose

The Administration plans to set up the statutory Independent Police Complaints Council (IPCC) on 1 June 2009. This paper provides information on the statutory IPCC's financial and staffing arrangements as well as the preparation for the establishment of the statutory IPCC.

Background

2. The IPCC Ordinance was enacted in July 2008 to codify the existing police complaints system and to establish the IPCC as a statutory body. The Ordinance specifies the functions, powers and operation of the statutory IPCC, as well as the obligation of the Police to comply with the requirements made by the statutory IPCC under the Ordinance. The statutory framework enhances the transparency of the police complaints system and reinforces the monitoring role of the IPCC.

3. In accordance with section 2 of the IPCC Ordinance, the Administration published the IPCC Ordinance (Commencement) Notice in the Gazette on 9 January 2009 to appoint 1 April 2009 as the commencement date of the Ordinance. The Legislative Council subsequently set up a subcommittee to consider the commencement notice.

4. In response to the Subcommittee's suggestion that the commencement of the Ordinance be deferred so as to allow Members time to obtain more information about the financial resources to be made available to the statutory IPCC, the Administration repealed the original commencement notice published on 9 January 2009 and published the Independent Police Complaints Council Ordinance (Commencement) (No. 2) Notice 2009 in the Gazette on 13 March 2009 to appoint 1 June 2009 as the new commencement date of the IPCC Ordinance, and accordingly the date for the establishment of the statutory IPCC.

Financial and Staffing Arrangements for the Statutory IPCC

5. To facilitate the discharge of its functions of monitoring the Police's handling and investigation of reportable complaints, the Administration is committed to ensuring that the statutory IPCC will continue to be provided with appropriate support and resources. The draft estimate of \$28.3 million for the IPCC in 2009-10 represents an increase of \$11.8 million (+71.5%) compared with the original estimate for 2008-09, or an increase of \$10.5 million (+59%) compared with the revised estimate for 2008-09. The additional provision is to enable the statutory IPCC to increase its establishment, employ its own staff upon the phasing out of the seconded civil servants, and meet operating expenses which have been funded by other Heads of Expenditure or provided free of charge by government departments before the IPCC becomes a statutory body, procure equipment and carry out maintenance works.

6. As a statutory body, the IPCC will have a high degree of flexibility and independence in managing its own finances subject to relevant provisions of the IPCC Ordinance. In reflection of this, the financial provision for the statutory IPCC will be set out under a separate head of expenditure (Head 121) in the Government's Estimates in the form of a one-line vote with the Secretary-General of the Council as the Controlling Officer.

7. The Administration will advise the statutory IPCC annually of the time and manner in which the relevant resource allocation exercises and estimates of expenditure are to be conducted/prepared. This will facilitate the statutory IPCC to consider the level of financial provision needed for the subsequent financial year and to prepare resource bids when necessary. Any requests made by the Council for additional resources will be subject to the established resource bidding procedures in the normal manner and will be considered at a high-level forum, with the personal participation of both the Chief Secretary for Administration and the Financial Secretary.

8. As for staffing arrangements, the IPCC secretariat is currently staffed by civil servants and a small number of contract officers. The IPCC Ordinance empowers the statutory IPCC to appoint its own staff. To allow a smooth transition, it is the Council's intention to phase out the experienced civil servants currently working in its secretariat in stages with a view to fully replacing all civil servants in the secretariat by 31 May 2012. Civil servants who continue to work in the IPCC

secretariat upon the commencement of the IPCC Ordinance will do so on a secondment basis. The Administration will continue to liaise with the IPCC on the phasing out programme and provide necessary support.

Preparation for the establishment of the statutory IPCC

9. The IPCC Ordinance provides for, among others, the Council's functions in monitoring the handling and investigation of reportable complaints by the Police and related operational procedures. In this connection, the Ordinance stipulates –

- the manner and procedures for examining the lists of complaints as well as the investigation reports and interim investigation reports on reportable complaints submitted by the Police;
- matters related to the conduct of interviews by the IPCC in relation to investigation reports submitted by the Police; and
- observations conducted by IPCC members and observers on interviews and collection of evidence carried out by the Police in relation to reportable complaints and related procedural matters.

10. Schedule 1 of the Ordinance further provides for matters related to the internal administration of the Council, such as the proceedings of the Council (including arrangements for declaration of interest by IPCC members), execution of documents of the Council, establishment of committees under the Council and their operation, the scope of delegation of the Council's functions as well as the financial management of the Council. The secretariat of the statutory IPCC will cease to be a government department.

Preparation made by the IPCC

11. According to the IPCC Secretariat, most of the preparatory arrangements for the establishment of the statutory IPCC as itemised in **Annex A** have already been completed. The remaining items will be finalised shortly and in any event before the IPCC Ordinance is brought into operation.

Preparation made by the Complaints Against Police Office

12. CAPO has already updated its internal procedures and guidelines regarding the handling and investigation of reportable complaints as well as the handling of notifiable complaints to bring them in line with the requirements under the IPCC Ordinance and to dovetail with the updated procedures of the IPCC, and is consulting IPCC thereon. The updated procedures and guidelines will be finalised shortly. The salient features of the key changes made are set out at **Annex B**.

Security Bureau
March 2009

**Progress of the preparation made by the
Independent Police Complaints Council
for the Commencement of the
Independent Police Complaints Council Ordinance**

- (1) Matters related to the statutory IPCC's functions in monitoring the handling and investigation of reportable complaints by the Police**
- (a) IPCC has finalized the rules on the proceedings of meetings of the statutory IPCC (see Appendix 1 (only available in English)) and the rules on the proceedings of meetings of the statutory IPCC's committees (see Appendix 2 (only available in English)) having regard to the provisions in the IPCC Ordinance. IPCC has also reviewed and determined its committee structure (see Appendix 3 (only available in English)).
 - (b) IPCC has reviewed and determined the procedures for considering the lists of complaints and investigation reports on reportable complaints submitted by the Police (see Appendix 4 (only available in English)).
 - (c) IPCC has finalized the revised procedures and guidelines on the conduct of interviews by the statutory IPCC pursuant to sections 20 to 21 of the IPCC Ordinance (see Appendix 5 (only available in English)).
 - (d) IPCC has finalized the revised procedures and guidelines on the conduct of observations by statutory IPCC members and observers pursuant to Part 4 of the IPCC Ordinance (see Appendix 6 (only available in English)).
- (II) Matters related to the internal administration of the statutory IPCC**
- (a) IPCC has finalized its internal manuals on the management of finances and accounts, human resources, records, procurement and stores, office security and information technology security.
 - (b) On becoming a statutory body, the IPCC will cease to be a user of the Government Finance Management Information

System. IPCC has established a suitable alternative accounting system. IPCC has also determined the operation of the Council's bank accounts and drawn up proposals on the investment of its funds pursuant to section 26 of Schedule 1 of the IPCC Ordinance.

- (c) IPCC has drawn up the terms of employment and employment agreements for prospective employees of the statutory IPCC.
- (d) On the establishment of the statutory IPCC, there is a need to transfer the inventory of the IPCC Secretariat (for example, office furniture and equipment, electronic appliances and machines, reference books, etc.) from the Government to the statutory IPCC. This is primarily an accounting arrangement. Work on this is nearing completion and transfer will be arranged before the establishment of the statutory IPCC.
- (e) IPCC has reviewed all its existing service contracts and services currently provided by Government departments to the Council. For those services which will cease to be provided by Government after IPCC becomes a statutory body, the IPCC has identified alternative service providers.
- (f) At present, the office premises of the IPCC Secretariat are rented by the Government Property Agency. It is necessary to transfer the assignment of the lease to the statutory IPCC upon its establishment. The existing lease already caters for the possibility of such transfer. IPCC has drawn up a draft assignment for this purpose and will finalize the transfer arrangements with the Government Property Agency and the landlord before the establishment of the statutory IPCC.
- (g) The IPCC has determined and produced a common seal for the statutory IPCC. It has also revamped its office signage, website and booklet/leaflet and produced stationery to reflect its new Chinese name.
- (h) The IPCC has finalized the guidelines in respect of requests from members of the public for access to information.
- (i) IPCC is working on the publicity materials for use after the establishment of the statutory IPCC.

Independent Police Complaints Council
Rules on Proceedings of Meetings

(made pursuant to section 16 of Schedule 1 of
the Independent Police Complaints Council Ordinance)

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Ground Rules for the Open Part of Meetings

Guidelines for Members of the Independent Police Complaints Council in Handling Classified Information

Part I - General

1. Definition

In this Rules on Proceedings of meetings, unless otherwise specified,

- (1) “Chairman” means the Chairman of the Independent Police Complaints Council referred to in s.5(1)(a) of the Independent Police Complaints Council Ordinance and includes a person appointed under s.5 of Schedule 1 of the Ordinance to act as the Chairman of the Council;
- (2) “Commissioner” means the Commissioner of Police;
- (3) “complainant” means a person who makes a complaint or a request for review or, where the complaint or request for review is made on behalf of another person, the person on whose behalf the complaint or request for review is made;
- (4) “Council” and “IPCC” means the Independent Police Complaints Council, the body corporate established under s.4 of the Ordinance;
- (5) “Legal Adviser” means the Legal Adviser to the Council appointed under s.6(1) of the Ordinance;
- (6) “Member” means a member of the Council referred to in s.5(1) of the Ordinance, and includes a person appointed under s.5 of Schedule 1 of the Ordinance to act as a member;
- (7) “member of the police force” includes a public officer attached to the police force;
- (8) “notifiable complaint” means a complaint categorized as a notifiable complaint in accordance with s.14 of the Ordinance;
- (9) “observer” means a person appointed as an observer under s.33 of the Ordinance;
- (10) “police force” means the Hong Kong Police Force or the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap. 233);
- (11) “protected information” means matters relating to any complaint that come to a specified person’s actual knowledge in the performance of his functions under the Ordinance;
- (12) “reportable complaint” means –
 - (a) a complaint categorized as a reportable complaint in accordance with s.11 of the Ordinance; or

- (b) a request for review treated as a reportable complaint in accordance with s.13 of the Ordinance;
- (13) “request for review” means a request for reviewing the classification of a reportable complaint referred to in s.13 of the Ordinance;
- (14) “Secretary-General” means the Secretary-General to the Council appointed under s.6(1) of the Ordinance;
- (15) “specified person” means –
 - (a) the Council;
 - (b) a Member of the Council;
 - (c) the Secretary-General, the Legal Adviser or any other employee of the Council;
 - (d) a person engaged by the Council for his technical or professional services;
 - (e) an observer; or
 - (f) a person who at any time had any of the identities described in items (b), (c), (d) and (e);
- (16) “the Ordinance” means the Independent Police Complaints Ordinance (Cap 604); and
- (17) “Vice-Chairman” means a Vice-Chairman of the Council referred to in s.5(1)(b) of the Ordinance, and includes a person appointed under s.5 of Schedule 1 of the Ordinance to act as a Vice-Chairman.

2. Authority to Determine Procedure

- (1) Subject to provisions of the Ordinance, the Council may determine its own procedure and amend this Rules on Proceedings of Meetings.
- (2) The Council may approve any variation, revocation and suspension of, and addition to this Rules provided that they are not in conflict with the provisions of the Ordinance.
(s.16 of Schedule 1 of the Ordinance)

3. Language

Both English and Chinese (Cantonese) may be used at meetings of the Council. The language to be used is to be determined by the Member presiding at the meeting.

4. Responsibility for Council Procedure

- (1) The Member presiding at the meeting should be responsible for ensuring observance of this Rules on Proceedings. If there is any doubt over the interpretation or application of this Rules, the Member presiding at the meeting should make a ruling and his ruling upon any point of procedure should be final. If there is any matter not provided for in this Rules, it should be such as may be decided by the Member presiding at the meeting.
- (2) If any person present at the meeting misconducts himself by persistently disregarding the ruling of the Member presiding at the meeting, or by behaving improperly or offensively, or by wilfully obstructing the business of the meeting, the Member presiding at the meeting may either order that person to leave the meeting, or adjourn or suspend the meeting for such period as he, in his discretion, considers appropriate.
- (3) The Member presiding at the meeting may direct such steps to be taken as are required to enforce the order of the meeting.

5. Legal Advice

The Legal Adviser of the Council is to advise the Council on all legal issues arising out of or in the course of performing the business or activities of the Council.

Part II - Council Meetings

6. Meeting Time and Place

- (1) The Council is to meet as often as is necessary for the purpose of performing its functions.
- (2) The Chairman may appoint the time and place for the Council to meet.
- (3) In the absence of the Chairman, the following Vice-Chairman, in order of priority, may appoint the time and place for the Council to meet:
 - (a) the one who has the longest continuous period of service as Vice-Chairman; or
 - (b) in the event more than one Vice-Chairman have the same continuous period of service as Vice-Chairmen, the one who has the longest continuous period of service on the Council.
- (4) The Chairman or in his absence the Vice-Chairman of sub-paragraph (3) may change the time and place of the meeting.

(s.8 of Schedule 1 of the Ordinance)

7. Agenda of Meetings

- (1) The Secretary-General is to prepare the agenda of the meeting in consultation with the Chairman.
- (2) If a Member wishes to propose an agenda item for discussion, he should, as far as practicable, notify the Secretary-General in writing no less than ten days before the day of the meeting. The Secretary-General should then consult the Chairman (or in his absence, the Vice-Chairman in paragraph 6(3)).

8. Notice of Meetings

- (1) Written notice of the date, time, venue and agenda of meeting should, as far as practicable, be issued to Members no less than three days before the day of the meeting.
- (2) The notice, agenda and papers should be deemed to have been issued if they are delivered to the correspondence address (including email address) which Members provide to the Secretariat.

9. Quorum for Council Meetings

- (1) The quorum for a meeting of the Council is six Members of the Council.
- (2) If after fifteen minutes of the starting time appointed for the meeting, or any longer period as determined by the Member presiding at the meeting, has expired and a quorum is not present, the Member presiding at the meeting should adjourn the meeting.

(s.9 of Schedule 1 of the Ordinance)

10. Chairman to preside at Council Meetings

- (1) The Chairman must preside at a meeting of the Council.
- (2) If the Chairman is absent or vacates the chair other than for reasons under paragraph 12, a Vice-Chairman elected by the Members present must preside at the meeting.
- (3) If neither the Chairman nor the three Vice-Chairmen can preside at the meeting, a Member elected from amongst the Members present must preside at the meeting.

(s.10 of Schedule 1 of the Ordinance)

11. Attendance of Meetings

- (1) Any Member who is unable to attend a meeting should, as far as practicable, inform the Secretary-General verbally or in writing in advance.
- (2) The Secretary-General, in consultation with the Chairman (or in his absence, the Vice-Chairman in paragraph 6(3)), may invite any member of the police force, any public officer or any person to attend the Council meeting if circumstances so require. The Member presiding at the meeting may decide when the invited officer or person should join or leave the meeting.

12. Disclosure of Interest

- (1) Disclosure of interest in reportable complaints and notifiable complaints
 - (a) If a Member has an interest (whether directly or indirectly) in a reportable complaint or a notifiable complaint being discussed or to be discussed at a meeting of the Council,

the Member –

- (i) must disclose the nature of his interest at or before the meeting;
 - (ii) must withdraw from the meeting during the discussion of the complaint;
 - (iii) must not vote on a resolution concerning the complaint; and
 - (iv) must not be counted for the purpose of forming a quorum.
- (b) On receipt of a disclosure before the meeting under sub-paragraph (1)(a)(i), the Secretary-General should bring the matter to the attention of the Chairman, or the Member presiding at the meeting as the case may be.
- (c) If the disclosure is made by the Member presiding at the meeting, the Member must vacate the chair during the discussion of the complaint.
- (d) When the Member vacates his chair, the other Members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.
- (e) In this paragraph, a reference to a reportable complaint or a notifiable complaint includes any matter that is related to the complaint.

(s.12 of Schedule 1 of the Ordinance)

(2) Disclosure of interest in matters other than reportable complaints and notifiable complaints

- (a) If a Member has an interest (whether directly or indirectly) in a matter (the Matter) being discussed or to be discussed at a meeting of the Council and the Matter is neither a reportable complaint (including related matter) nor a notifiable complaint (including related matter), then the Member –
- (i) must disclose the nature of his interest at or before the meeting;
 - (ii) must withdraw from the meeting during the discussion of the Matter if so required by a majority of the other Members present at the meeting; and

- (iii) except as otherwise determined by a majority of the other Members present at the meeting -
 - must not vote on a resolution concerning the Matter; and
 - must not be counted for the purpose of forming a quorum.
- (b) On receipt of a disclosure before the meeting under sub-paragraph (2)(a)(i), the Secretary-General should bring the matter to the attention of the Chairman, or the Member presiding at the meeting as the case may be.
- (c) If the disclosure is made by the Member presiding at the meeting, the Member must, if so required by a majority of the other Members present at the meeting, vacate the chair during the discussion of the Matter.
- (d) If the Member is required to vacate his chair, the other Members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

(s.13 of Schedule 1 of the Ordinance)

(3) Disclosure of interest in cases of written resolutions

- (a) In the case of a written resolution on a matter in which a Member has an interest (whether directly or indirectly) –
 - (i) the Member –
 - must state the nature of his interest in the papers being circulated; and
 - must return the papers with his interest so stated to the Secretary-General; and
 - (ii) the Member –
 - must not vote on the written resolution; and
 - must not be counted in calculating a majority for the approval of the written resolution.
- (b) On receipt of the papers referred to in sub-paragraph 3(a)(i), the Secretary-General should file the returned papers with interest stated for record.

(s.14 of Schedule 1 of the Ordinance)

- (4) The following gives some pointers for Members to identify potential conflict of interest:
 - (a) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organization which is connected with, or is the subject of, a matter under consideration by the Council.
 - (b) Relations with relatives or friends which might be so close as to warrant declaration in order to avoid situations where an objective third party might believe a Member's advice to have been influenced by the closeness of the association.
 - (c) A Member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the Council.
 - (d) Any interest likely to lead an objective third party to believe that the Member's advice might have been motivated by personal interest rather than a duty to give impartial advice.
- (5) A disclosure made under sub-paragraphs (1)(a)(i), (2)(a)(i) or (3)(a)(i) must be recorded.
(s.15 of Schedule 1 of the Ordinance)

13. Determination of Matters at Council Meetings

- (1) A matter for determination at a meeting of the Council must be decided by a majority of Members present and voting on that matter.
- (2) If there is an equality of votes, the Member presiding at the meeting has a casting vote in addition to his original vote.
- (3) The manner of voting is to be decided by the Member presiding at the meeting. The result of the voting should be recorded.
(s.11 of Schedule 1 of the Ordinance)

14. Determination of Matters by Circulation of Papers

- (1) Subject to sub-paragraph (4), anything that may be done at a meeting of the Council may be done by circulation of papers to all Members of the Council without a meeting.

- (2) If there is an equality of votes, the Chairman (or in his absence, the Vice-Chairman in paragraph 6(3)) has a casting vote in addition to his original vote.
- (3) Subject to sub-paragraph (4), a written resolution that is approved by a majority of all Members of the Council is as valid and effectual as if it had been passed at a meeting of the Council by the votes of the Members so approving.
- (4) If any Member requests by notice in writing addressed to the Secretary-General that a matter referred to in the papers circulated under sub-paragraph (1) be determined at a meeting of the Council, the matter must be so determined.
- (5) For the avoidance of doubt, a reference to circulation of papers in this Part includes circulation of information by electronic means, and a reference to the papers in this paragraph must be construed accordingly.

(s.11 of Schedule 1 of the Ordinance)

15. Council Meeting Open to the Public

- (1) The Chairman (or in his absence, the Vice-Chairman in paragraph 6(3)) may decide whether any part of the meeting should be open.
- (2) The ground rules for the open part of the meetings are at **Annex A**.

16. Suspension and Adjournment of Meetings

The Member presiding at the meeting, may, with the consent of the majority of Members present, suspend or adjourn the meeting at any time.

17. Minutes of Meetings

- (1) The Secretary-General should keep the minutes of the proceedings of the meeting. The minutes should record, inter alia, the Members attending and all decisions taken.
- (2) The minutes should, as far as practicable, be distributed to Members for comments no less than three days before the day of the next meeting.
- (3) Any audio-recording of meetings, if made, may be erased in one year's time unless directed otherwise by the Chairman.

18. Arrangements During Tropical Cyclones and Rainstorms

- (1) Meetings should continue to be held when Tropical Cyclone Warning Signal No. 1 or No. 3 is hoisted, or Amber or Red Rainstorm Warning is issued.
- (2) A Council meeting should be cancelled if, within two hours before the scheduled time of the meeting, it is known that a No. 8 or higher Tropical Cyclone Warning Signal or a Black Rainstorm Warning will be issued soon or is in force. The Secretary-General should arrange another meeting date in consultation with the Chairman.
- (3) If, during a Council meeting, No. 8 or higher Tropical Cyclone Warning is hoisted, or Black Rainstorm Warning is issued, or it is known that a No. 8 or higher Tropical Cyclone Warning Signal or a Black Rainstorm Warning will be issued soon, the Member presiding at the meeting should decide whether to adjourn or continue with the meeting.
- (4) The Member presiding at the meeting should decide whether to adjourn or continue with the meeting if other unforeseen circumstances arise.

Part III - Confidentiality

19. Duty to Keep Confidence

- (1) Except in the circumstances provided for in sub-paragraph (2), a specified person must not disclose any protected information.
- (2) Sub-paragraph (1) does not prevent a specified person from disclosing any protected information if the disclosure is necessary –
 - (a) for the performance of his functions under the Ordinance;
 - (b) for the purpose of reporting evidence of any crime or suspected crime to such authority as he considers appropriate;
 - (c) for the purpose of complying with –
 - (i) an order of a court; or
 - (ii) a requirement in or made under an enactment or any other law,in relation to any criminal, civil or disciplinary proceedings; or
 - (d) for the purpose of complying with a data access request made under s.18 of the Personal Data (Privacy) Ordinance (Cap. 486).
- (3) For the avoidance of doubt, in making a disclosure under sub-paragraph (2)(a), the Council may disclose to the public –
 - (a) the facts of any disagreement between the Council and the Commissioner on the findings or classification of a reportable complaint; or
 - (b) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with a reportable complaint.
- (4) Subject to sub-paragraph (5), sub-paragraph (2)(a) does not authorize the disclosure of the identity of –
 - (a) any complainant;
 - (b) any member of the police force whose conduct is the subject of a complaint; or

- (c) any person who assists or has assisted the Commissioner in the handling or investigation of a complaint.
- (5) A disclosure of any identity referred to in sub-paragraph (4)(a), (b) or (c) may be made pursuant to sub-paragraph (2)(a) if the disclosure is made to –
- (a) a specified person as defined in paragraph 1(15) (other than item (f) of that definition);
 - (b) the complainant;
 - (c) a person who has written authorization from the complainant –
 - (i) to make a complaint or request for review on behalf of the complainant (as provided in s.15 of the Ordinance); or
 - (ii) to handle in the complainant's stead the complaint or request for review made by the complainant;
 - (d) the Commissioner;
 - (e) a person who assists or has assisted the Commissioner in the handling or investigation of a complaint;
 - (f) a person whom the Council invites to an interview pursuant to s.20 of the Ordinance or any person who is present at an interview in accordance with that section; or
 - (g) the Chief Executive.
(s.40 of the Ordinance)
- (6) Members should refer to the Guidelines in Handling Classified Information at **Annex B**.
- (7) Subject to sub-paragraph (8), no Member should make disclosure of the contents of any document or information to which he has had access in his capacity as a Member, or of any matter discussed at meetings, unless that document or information has already been formerly released by the relevant authority or the Member has previously obtained the permission of the Chairman for such disclosure.
- (8) No Member who holds a copy of a classified document made available by the Council should disclose its content while the document remains classified.

- (9) The spokesman for the Council is the Chairman of the Council or any person specified by the Council. If other Members of the Council choose to speak to the press, media or the public, they should speak in their personal capacity rather than on behalf of the Council.

Part IV - Release of Information Concerning Members

20. Release of Information

The IPCC Secretariat would release the following information concerning Council Members to the public, on request, without seeking further consent from Members: -

- (a) attendance records of Council meetings;
- (b) number of observations conducted;
- (c) years of service on the Council;
- (d) occupation/profession by broad categories (e.g. doctors, lawyers, company directors, etc.); and
- (e) membership of other advisory and statutory bodies.

Ground Rules for the Open Part of Meetings

Access

- (1) As seats for public attendees are limited, they will be allocated on a first-come-first-served basis.
- (2) Any person who would like to reserve a seat to observe the meeting should notify the IPCC Secretariat by telephone, fax or e-mail in advance and leave his name and contact telephone number(s) for booking confirmation.
- (3) Any employee of the Council may take such action as is necessary to verify any visitors' identity for admission purpose at the point of entry.
- (4) Any materials or items that may cause disturbance or has potential danger to the proceedings of the meeting in the opinion of an employee of the Council will not be allowed.
- (5) An employee of the Council or a security guard engaged by the Council may refuse admission to the meeting venue of any person displaying any sign or message on any item of clothing, or of any person who, in the opinion of an employee of the Council, may display any sign, message or banner, or may display any sign or message on any item of clothing or may otherwise behave in a disorderly manner.
- (6) Members of the public who are allowed access to the meeting venue should each be issued with an admission pass by the IPCC Secretariat. The pass should be prominently displayed at all times within the precincts of the IPCC premises.
- (7) Any persons or organisations who/which have breached any of the ground rules may be denied access to the venue of future meetings.

Conduct

- (8) No person should smoke or eat in the precincts of the meeting venue unless with prior approval of the IPCC Secretariat.
- (9) Persons entering or within the precincts of the meeting venue should behave in an orderly manner and comply with any direction given by an employee of the Council for the purpose of keeping order. Those who fail to heed the direction given may, subject to instructions issued by the Member presiding at

the meeting, be ordered to leave the meeting venue. Any persons so ordered should immediately leave the premises of the Council.

- (10) No person should, in the meeting venue, display any sign or message or banner.
- (11) No person should, in the meeting venue, display any sign or message on any item of clothing.
- (12) Persons entering or within the precincts of the meeting venue should turn off their mobile phone and/or pager.
- (13) As soon as the proceedings of the meeting have been concluded, members of the public are required to leave the office of the Council according to the direction of an employee of the Council.

Restriction of Taking of Photographs

- (14) During an open meeting, flash photography is not permitted.

Recording of the Proceedings of the Meetings

- (15) Video-recording or audio-recording in the meeting venue will not normally be disallowed on condition that the proceedings of the meetings are not unduly disturbed. The Member presiding at the meeting reserves the rights to designate the locations for the setting up of any recording equipment in the precincts of the meeting venue and/or to stop any video/audio recording taking place, as appropriate.

Guidelines for Members of the Independent Police Complaints Council in Handling Classified Information

Purpose

Under the Independent Police Complaints Council (IPCC) Ordinance, the main function of IPCC is to observe, monitor and review the handling and investigation of reportable complaints by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force. While the Council is not involved in the original collection of personal data from complainants and complainees or investigation of reportable complaints, it will be in possession of the personal data of complainants and complainees or other sensitive information in relation to the reportable complaints when CAPO submits the investigation reports and other related documents for its scrutiny and endorsement. Individual Members should therefore pay special attention to the use and security of such personal data or sensitive information kept under their care. It is reasonably expected that IPCC should handle such data broadly in accordance with the standards applicable to CAPO. This note provides some guidelines for reference by Members in handling classified information.

Points-to-note

Delivery of Classified Documents

1. For security reason, classified documents are to be delivered to Members by the General Assistants of the IPCC Secretariat.
2. A register of classified documents delivered to and returned from Members is kept for record purpose. Members are requested to acknowledge receipt of classified documents delivered to them. To facilitate the secure disposal of classified documents kept under Members' care, Members may return the perused documents to the Secretariat for disposal on the next occasion when new documents are delivered to them. The IPCC Secretariat will acknowledge receipt of such documents so returned. Members are reminded not to make or maintain any private copies of such documents.

Secure Handling of Classified Information

3. Members are reminded that it is of paramount importance that unauthorized disclosure of classified information, such as reportable complaint cases and the deliberations of IPCC on such cases, must be guarded against at all times. Such disclosure may contravene Data Protection Principle 3 (use of personal data) and Principle 4 (security of personal data) of the Personal Data (Privacy) Ordinance, Cap. 486.
4. In the unlikely event that classified information has to be disclosed to outside parties, prior agreement of the Chairman, IPCC has to be sought.
5. Care must also be taken when CAPO information is under discussion. Such information should never be discussed in public places, e.g. lifts, corridors, hotels, bars, etc. or in any place where there is a possibility that the conversation may be overheard by unauthorized persons, unless the discussion is conducted in the Open Part of IPCC Meetings.
6. To avoid any unauthorized access to classified information, documents kept under the care of Members should be placed in a secure environment. It is advisable to always lock them up when not in use.
7. As the duly completed reply slips in respect of the investigation reports would normally be transmitted by Members to the Secretariat by fax, Members are advised not to include any personal information of the CAPO subjects and details of the CAPO case in the reply slips. If a Member wishes to make some comments which may touch on details of the case or personal data, he should indicate in the reply slip faxed to the Secretariat by the deadline of return (usually falls on Thursday) that another reply slip containing such comments is available for collection by the General Assistant of the Secretariat on the next occasion when new documents are delivered to him (i.e. the Friday that runs immediately after the deadline of return on Thursday). The same should apply to the transmission of other exchanges where classified information are involved.
8. Do not transmit classified information by electronic mail or by fax.

Disposal of Electronic Mails

9. For the transmission of Council-related information that are not sensitive in nature through electronic mails, Members are advised to delete the electronic mails and any attachment once the purpose for which the mails are transmitted has been satisfied. The Secretariat will include in its electronic mails to Members a standard message at Annex reminding Members not to keep the mails longer than is necessary. Members may wish to include a similar message in their electronic mails to the Secretariat or to other Members.
10. The Secretary-General, IPCC should be immediately notified of any compromise of classified information.

Enquiry

11. These guidelines will be re-circulated to Members for attention and observation every six months. For enquiries on the above and other security requirements, Members are welcome to contact the Deputy Secretary-General, IPCC.

**Independent Police Complaints Council Secretariat
December 2008**

SAMPLE

Secretary-General, IPCC

01/04/2009 17:56

To: Chairman, Vice-chairmen & Members of IPCC

cc:

bcc:

Subject: IPCC Matters

Dear Chairman, Vice-chairmen and Members,

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Secretary-General, IPCC

IMPORTANT: This email (including every file transmitted with it) is solely for the use of the intended recipient(s). The recipient(s) should delete this email once the purpose for which it is transmitted has been satisfied. If you are not the intended recipient, you must not peruse, use, disseminate, distribute or copy this email. Please notify the sender and delete this email immediately if you have received this in error.

Committee of the Independent Police Complaints Council
Rules on Proceedings of Meetings

(made pursuant to section 24 of Schedule 1 of the Independent Police
Complaints Council Ordinance)

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Procedure for the Election of Chairman of a Committee of the Independent Police Complaints Council

Guidelines for Members of the Independent Police Complaints Council in Handling Classified Information

Part I - General

1. Definition

In this Rules on Proceedings of Committee Meetings, unless otherwise specified,

- (1) “chairman of a committee” and “chairman of the committee” means the chairman of a committee, a panel or a sub-group established by the Council under s.17 of Schedule 1 of the Ordinance;
- (2) “Commissioner” means the Commissioner of Police;
- (3) “committee” includes any committee, panel or sub-group established by the Council under s.17 of Schedule 1 of the Ordinance;
- (4) “complainant” means a person who makes a complaint or a request for review or, where the complaint or request for review is made on behalf of another person, the person on whose behalf the complaint or request for review is made;
- (5) “Council” and “IPCC” means the Independent Police Complaints Council, the body corporate established under s.4 of the Ordinance;
- (6) “Legal Adviser” means the Legal Adviser to the Council appointed under s.6(1) of the Ordinance;
- (7) “Member” means a member of the Council referred to in s.5(1) of the Ordinance, and includes a person appointed under s.5 of Schedule 1 of the Ordinance to act as a member;
- (8) “member of the police force” includes a public officer attached to the police force;
- (9) “notifiable complaint” means a complaint categorized as a notifiable complaint in accordance with s.14 of the Ordinance;
- (10) “observer” means a person appointed as an observer under s.33 of the Ordinance;
- (11) “police force” means the Hong Kong Police Force or the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap. 233);
- (12) “protected information” means matters relating to any complaint that come to a specified person’s actual knowledge in the performance of his functions under the Ordinance;
- (13) “reportable complaint” means –

- (a) a complaint categorized as a reportable complaint in accordance with s.11 of the Ordinance; or
 - (b) a request for review treated as a reportable complaint in accordance with s.13 of the Ordinance;
- (14) “request for review” means a request for reviewing the classification of a reportable complaint referred to in s.13 of the Ordinance;
- (15) “Secretary-General” means the Secretary-General to the Council appointed under s.6(1) of the Ordinance;
- (16) “specified person” means –
- (a) the Council;
 - (b) a Member of the Council;
 - (c) the Secretary-General, the Legal Adviser or any other employee of the Council;
 - (d) a person engaged by the Council for his technical or professional services;
 - (e) an observer; or
 - (f) a person who at any time had any of the identities described in items (b), (c), (d) and (e); and
- (17) “the Ordinance” means the Independent Police Complaints Ordinance (Cap 604).

2. Authority to Determine Procedure

The Council may approve any variation, revocation and suspension of, and addition to this Rules provided that they are not in conflict with the provisions of the Ordinance.

(s.24 of Schedule 1 of the Ordinance)

3. Language

Both English and Chinese (Cantonese) may be used at meetings of the committee. The language to be used is to be determined by the Member presiding at the meeting.

4. Responsibility for Committee Procedure

- (1) The Member presiding at the meeting should be responsible for ensuring observance of this Rules on Proceedings. If there is any doubt over the interpretation or application of this Rules,

the Member presiding at the meeting should make a ruling and his ruling upon any point of procedure should be final. If there is any matter not provided for in this Rules, it should be such as may be decided by the Member presiding at the meeting.

- (2) If any person present at the meeting misconducts himself by persistently disregarding the ruling of the Member presiding at the meeting, or by behaving improperly or offensively, or by wilfully obstructing the business of the meeting, the Member presiding at the meeting may either order that person to leave the meeting, or adjourn or suspend the meeting for such period as he, in his discretion, considers appropriate.
- (3) The Member presiding at the meeting may direct such steps to be taken as are required to enforce the order of the meeting.

Part II - Committee Meetings

5. Committee under the Council

The Council may from amongst its Members establish committees, panels or sub-groups to assist the Council in the performance of any of its functions under the Ordinance.

(s.17 of Schedule 1 of the Ordinance)

6. Chairman of Committee

- (1) The chairman of a committee should be elected from amongst its Members in accordance with **Annex A**.
- (2) The term of the chairman of a committee should normally be about two years till election/ re-election of a chairman at the first meeting of the committee two calendar years later, or till expiry of his appointment as a member of the Council, whichever is earlier.
- (3) The chairman of a committee may be re-elected.
- (4) The chairman of a committee must preside at a meeting of the committee.
- (5) If the chairman of a committee is absent or vacates the chair other than for reason under paragraph 12, a Member of the committee elected from amongst the Members of the committee present must preside at the meeting.

(s.18 of Schedule 1 of the Ordinance)

7. Meeting Time and Place

- (1) A committee is to meet as often as is necessary for the purpose of performing its functions.
- (2) The chairman of a committee may appoint the time and place for the committee to meet.
- (3) In the absence of the chairman of a committee, the following Member of the committee, in order of priority, may appoint the time and place for the committee to meet:
 - (a) a Member of the committee who has the longest continuous period of time serving in the Council; or
 - (b) in the event that more than one Member of the committee have the same continuous period of time serving in the Council, the Member with the earliest date of birth.

- (4) The chairman or the Member of sub-paragraph (3) may change the time and place of the meeting.

8. Agenda of Meetings

- (1) The meeting secretary is to prepare the agenda of the meeting in consultation with the chairman of the committee.
- (2) If a Member of the committee wishes to propose an agenda item for discussion, he should, as far as practicable, notify the meeting secretary in writing no less than three days before the day of the meeting. The meeting secretary should then consult the chairman of the committee (or in his absence, the Member of paragraph 7(3)).

9. Notice of Meetings

- (1) Written notice of the date, time, venue and agenda of meeting should as far as practicable be issued to Members no less than three days before the day of the meeting.
- (2) The notice, agenda and papers should be deemed to have been issued if they are delivered to the correspondence address (including email address) which Members of the committee provides to the Secretariat.

10. Quorum for Committee Meetings

- (1) The quorum for a meeting of a committee is three members or not less than half of the membership of the committee, whichever is less.
- (2) If after fifteen minutes of the starting time appointed for the meeting, or any longer period as determined by the Member presiding at the meeting, has expired and a quorum is not present, the Member presiding at the meeting should adjourn the meeting.

11. Attendance of Meetings

- (1) Any Member of a committee who is unable to attend a meeting should, as far as practicable, inform the meeting secretary verbally or in writing in advance.
- (2) The meeting secretary, in consultation with the chairman of the committee (or in his absence, the Member in paragraph 7(3)), may invite any member of the police force, any public officer

or any person to attend the committee meeting if circumstances so require. The Member presiding at the meeting may decide when the invited officer or person should join or leave the meeting.

12. Disclosure of Interest

(1) Disclosure of interest in reportable complaints and notifiable complaints

- (a) If a Member of the committee has an interest (whether directly or indirectly) in a reportable complaint or a notifiable complaint being discussed or to be discussed at a meeting of the committee, the Member –
 - (i) must disclose the nature of his interest at or before the meeting;
 - (ii) must withdraw from the meeting during the discussion of the complaint;
 - (iii) must not vote on a resolution concerning the complaint; and
 - (iv) must not be counted for the purpose of forming a quorum.
- (b) On receipt of a disclosure before the meeting under sub-paragraph (1)(a)(i), the meeting secretary should bring the matter to the attention of the chairman of the committee, or the Member presiding at the meeting as the case may be.
- (c) If the disclosure is made by the Member presiding at the meeting, the Member must vacate the chair during the discussion of the complaint.
- (d) When the Member vacates his chair, the other Members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.
- (e) In this paragraph, a reference to a reportable complaint or a notifiable complaint includes any matter that is related to the complaint.

(s.20 of Schedule 1 of the Ordinance)

(2) Disclosure of interest in matters other than reportable complaints and notifiable complaints

- (a) If a Member of the committee has an interest (whether directly or indirectly) in a matter (the Matter) being discussed or to be discussed at a meeting of the committee and the Matter is neither a reportable complaint (including related matter) nor a notifiable complaint (including related matter), then the Member –
- (i) must disclose the nature of his interest at or before the meeting;
 - (ii) must withdraw from the meeting during the discussion of the Matter if so required by a majority of the other Members present at the meeting; and
 - (iii) except as otherwise determined by a majority of the other Members present at the meeting -
 - must not vote on a resolution concerning the Matter; and
 - must not be counted for the purpose of forming a quorum.
- (b) On receipt of a disclosure before the meeting under sub-paragraph (2)(a)(i), the meeting secretary should bring the matter to the attention of the chairman of the committee, or the Member presiding at the meeting as the case may be.
- (c) If the disclosure is made by the Member presiding at the meeting, the Member must, if so required by a majority of the other Members present at the meeting, vacate the chair during the discussion of the Matter.
- (d) If the Member is required to vacate his chair, the other Members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

(s.21 of Schedule 1 of the Ordinance)

(3) Disclosure of interest in cases of written resolutions

- (a) In the case of a written resolution on a matter in which a Member of the committee has an interest (whether directly or indirectly) –
- (i) the Member –
 - must state the nature of his interest in the papers being circulated; and

- must return the papers with his interest so stated to the Secretary-General; and
- (ii) the Member –
- must not vote on the written resolution; and
 - must not be counted in calculating a majority for the approval of the written resolution.
- (b) On receipt of the papers referred to in sub-paragraph (3)(a)(i), the Secretary-General should file the returned papers with interest stated for record.
(s.22 of Schedule 1 of the Ordinance)
- (4) The following gives some pointers for Members of the committee to identify potential conflict of interest:
- (a) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organization which is connected with, or is the subject of, a matter under consideration by the committee.
 - (b) Relations with relatives or friends which might be so close as to warrant declaration in order to avoid situations where an objective third party might believe a Member of a committee's advice to have been influenced by the closeness of the association.
 - (c) A Member of a committee who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the committee.
 - (d) Any interest likely to lead an objective third party to believe that the Member of a committee's advice might have been motivated by personal interest rather than a duty to give impartial advice.
- (5) A disclosure made under sub-paragraphs (1)(a)(i), (2)(a)(i) or (3)(a)(i) must be recorded.
(s.23 of Schedule 1 of the Ordinance)

13. Determination of Matters at Committee Meetings

- (1) A matter for determination at a meeting of the committee must be decided by a majority of the Members of the committee present and voting on that matter.
- (2) If there is an equality of votes, the Member presiding at the meeting has a casting vote in addition to his original vote.
- (3) The manner of voting is to be decided by the Member presiding at the meeting. The result of the voting should be recorded.
(s.19 of Schedule 1 of the Ordinance)

14. Determination of Matters by Circulation of Papers

- (1) Subject to sub-paragraph (4), anything that may be done at a meeting of a committee may be done by circulation of papers to all Members of the committee without a meeting.
- (2) If there is an equality of votes, the chairman of a committee (or in his absence, the Member in paragraph 7(3)) has a casting vote in addition to his original vote.
- (3) Subject to sub-paragraph (4), a written resolution that is approved by a majority of all Members of a committee is as valid and effectual as if it had been passed at a meeting of the committee by the votes of the Members so approving.
- (4) If any Member of a committee requests by notice in writing addressed to the Secretary-General or the meeting secretary that a matter referred to in the papers circulated under sub-paragraph (1) be determined at a meeting of the committee, the matter must be so determined.
- (5) If a Member of the committee considers it necessary for a matter to be discussed by the full Council, it should be discussed at the Council meeting.
- (6) For the avoidance of doubt, a reference to circulation of papers in this Part includes circulation of information by electronic means, and a reference to the papers in this paragraph must be construed accordingly.
(s.19 of Schedule 1 of the Ordinance)

15. Suspension and Adjournment of Meetings

The Member presiding at the meeting, may, with the consent of the majority of Members present, suspend or adjourn the meeting at any time.

16. Minutes of Meetings

- (1) The meeting secretary should keep the minutes of the proceedings of the meeting. The minutes should record, inter alia, the Members of the committee attending and all decisions taken.
- (2) The minutes should, as far as practicable, be distributed to Members of the committee for comments no less than three days before the day of the next meeting.
- (3) Any audio-recording of meetings, if made, may be erased in one year's time unless directed otherwise by the chairman of the committee.

17. Arrangements During Tropical Cyclones and Rainstorms

- (1) Meetings should continue to be held when Tropical Cyclone Warning Signal No. 1 or No. 3 is hoisted, or Amber or Red Rainstorm Warning is issued.
- (2) A committee meeting should be cancelled if, within two hours before the scheduled time of the meeting, it is known that a No. 8 or higher Tropical Cyclone Warning Signal or a Black Rainstorm Warning will be issued or is in force. The meeting secretary should arrange another meeting date in consultation with the chairman of the committee.
- (3) If, during a committee meeting, No. 8 or higher Tropical Cyclone Warning is hoisted, or Black Rainstorm Warning is issued, or it is known that a No. 8 or higher Tropical Cyclone Warning Signal or a Black Rainstorm Warning will be issued soon, the Member presiding at the meeting should decide whether to adjourn or continue with the meeting.
- (4) The Member presiding at the meeting should decide whether to adjourn or continue with the meeting if other unforeseen circumstances arise.

Part III - Confidentiality

18. Duty to Keep Confidence

- (1) Except in the circumstances provided for in sub-paragraph (2), a specified person must not disclose any protected information.
- (2) Sub-paragraph (1) does not prevent a specified person from disclosing any protected information if the disclosure is necessary –
 - (a) for the performance of his functions under the Ordinance;
 - (b) for the purpose of reporting evidence of any crime or suspected crime to such authority as he considers appropriate;
 - (c) for the purpose of complying with –
 - (i) an order of a court; or
 - (ii) a requirement in or made under an enactment or any other law,
in relation to any criminal, civil or disciplinary proceedings; or
 - (d) for the purpose of complying with a data access request made under s.18 of the Personal Data (Privacy) Ordinance (Cap. 486).
- (3) For the avoidance of doubt, in making a disclosure under sub-paragraph (2)(a), the Council may disclose to the public –
 - (a) the facts of any disagreement between the Council and the Commissioner on the findings or classification of a reportable complaint; or
 - (b) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with a reportable complaint.
- (4) Subject to sub-paragraph (5), sub-paragraph (2)(a) does not authorize the disclosure of the identity of –
 - (a) any complainant;
 - (b) any member of the police force whose conduct is the subject of a complaint; or

- (c) any person who assists or has assisted the Commissioner in the handling or investigation of a complaint.
- (5) A disclosure of any identity referred to in sub-paragraph (4)(a), (b) or (c) may be made pursuant to sub-paragraph (2)(a) if the disclosure is made to –
- (a) a specified person as defined in paragraph 1(16) (other than item (f) of that definition);
 - (b) the complainant;
 - (c) a person who has written authorization from the complainant –
 - (i) to make a complaint or request for review on behalf of the complainant (as provided in s.15 of the Ordinance); or
 - (ii) to handle in the complainant's stead the complaint or request for review made by the complainant;
 - (d) the Commissioner;
 - (e) a person who assists or has assisted the Commissioner in the handling or investigation of a complaint;
 - (f) a person whom the Council invites to an interview pursuant to s.20 of the Ordinance or any person who is present at an interview in accordance with that paragraph; or
 - (g) the Chief Executive.
(s.40 of the Ordinance)
- (6) Members of the committee should refer to the Guidelines in Handling Classified Information at **Annex B**.
- (7) Subject to sub-paragraph (8), no Member of a committee should make disclosure of the contents of any document or information to which he has had access in his capacity as a Member of the committee, or of any matter discussed at the committee meetings, unless that document or information has already been formerly released by the relevant authority or the Member of the committee has previously obtained the permission of the chairman of the committee for such disclosure.

- (8) No Member of the committee who holds a copy of a classified document made available by the committee should disclose its content while the document remains classified.
- (9) The spokesman for the Committee is the chairman of the committee or any person specified by the committee. If other Members of the committee choose to speak to the press, media or the public, they should speak in their personal capacity rather than on behalf of the committee.

Part IV - Release of Information Concerning Members

19. Release of Information

The IPCC Secretariat would release the following information concerning Members of a committee to the public, on request, without seeking further consent from Members: -

- (a) attendance records of committee meetings;
- (b) number of observations conducted;
- (c) years of service on a committee;
- (d) occupation/profession by broad categories (e.g. doctors, lawyers, company directors, etc.); and
- (e) membership of other advisory and statutory bodies.

Procedure for the Election of Chairman of a Committee of the Independent Police Complaints Council

The chairman of a committee¹ should be elected by and from among its Members. The term of the chairman of a committee should normally be about two years till election/re-election of a chairman at the first meeting of the committee two calendar years later, or till expiry of his appointment as a Member of the Council, whichever is earlier. The chairman of a committee may be re-elected.

2. The procedure for election of the chairman of a committee is as follows:

- (a) The Member of the committee present who has the longest continuous period of service in the Council should preside at the election. If he is being nominated for the office, the Member of the committee present who has the second longest continuous period of service in the Council should preside.
- (b) The presiding Member should invite nominations for the chairmanship. A valid nomination is one made by a Member of the committee and seconded by another Member of the committee, and accepted by the Member being nominated.
- (c) If there is only one nomination, the presiding Member should declare the nominee elected as chairman.
- (d) If there are two or more nominations, the presiding Member should arrange a vote. The manner of voting is to be decided by the presiding Member. The presiding Member should declare elected as chairman the nominee who receives the highest number of valid votes among all the nominees. If two or more nominees receive the same highest number of valid votes, the presiding Member should then draw lots, and should forthwith declare that nominee drawn as chairman.

¹ “committee” includes any committee, panel or sub-group established by the IPCC under s.17 of Schedule 1 of the Ordinance unless specified otherwise.

Guidelines for Members of the Independent Police Complaints Council in Handling Classified Information

Purpose

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Points-to-note

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2. A register of classified documents delivered to and returned from Members is kept for record purpose. Members are requested to acknowledge receipt of classified documents delivered to them. To facilitate the secure disposal of classified documents kept under Members' care, Members may return the perused documents to the Secretariat for disposal on the next occasion when new documents are delivered to them. The IPCC Secretariat will acknowledge receipt of such documents so returned. Members are reminded not to make or maintain any private copies of such documents.

Secure Handling of Classified Information

3. Members are reminded that it is of paramount importance that unauthorized disclosure of classified information, such as reportable complaint cases and the deliberations of IPCC on such cases, must be guarded against at all times. Such disclosure may contravene Data Protection Principle 3 (use of personal data) and Principle 4 (security of personal data) of the Personal Data (Privacy) Ordinance, Cap. 486.
4. In the unlikely event that classified information has to be disclosed to outside parties, prior agreement of the Chairman, IPCC has to be sought.
5. Care must also be taken when CAPO information is under discussion. Such information should never be discussed in public places, e.g. lifts, corridors, hotels, bars, etc. or in any place where there is a possibility that the conversation may be overheard by unauthorized persons, unless the discussion is conducted in the Open Part of IPCC Meetings.
6. To avoid any unauthorized access to classified information, documents kept under the care of Members should be placed in a secure environment. It is advisable to always lock them up when not in use.
7. As the duly completed reply slips in respect of the investigation reports would normally be transmitted by Members to the Secretariat by fax, Members are advised not to include any personal information of the CAPO subjects and details of the CAPO case in the reply slips. If a Member wishes to make some comments which may touch on details of the case or personal data, he should indicate in the reply slip faxed to the Secretariat by the deadline of return (usually falls on Thursday) that another reply slip containing such comments is available for collection by the General Assistant of the Secretariat on the next occasion when new documents are delivered to him (i.e. the Friday that runs immediately after the deadline of return on Thursday). The same should apply to the transmission of other exchanges where classified information are involved.
8. Do not transmit classified information by electronic mail or by fax.

Disposal of Electronic Mails

9. For the transmission of Council-related information that are not sensitive in nature through electronic mails, Members are advised to delete the electronic mails and any attachment once the purpose for which the mails are transmitted has been satisfied. The Secretariat will include in its electronic mails to Members a standard message at **Annex** reminding Members not to keep the mails longer than is necessary. Members may wish to include a similar message in their electronic mails to the Secretariat or to other Members.
10. The Secretary-General, IPCC should be immediately notified of any compromise of classified information.

Enquiry

11. These guidelines will be re-circulated to Members for attention and observation every six months. For enquiries on the above and other security requirements, Members are welcome to contact the Deputy Secretary-General, IPCC.

**Independent Police Complaints Council Secretariat
December 2008**

SAMPLE

Secretary-General, IPCC

01/04/2009 17:56

To: Chairman, Vice-chairmen & Members of IPCC

cc:

bcc:

Subject: IPCC Matters

Dear Chairman, Vice-chairmen and Members,

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X

Secretary-General, IPCC

IMPORTANT: This email (including every file transmitted with it) is solely for the use of the intended recipient(s). The recipient(s) should delete this email once the purpose for which it is transmitted has been satisfied. If you are not the intended recipient, you must not peruse, use, disseminate, distribute or copy this email. Please notify the sender and delete this email immediately if you have received this in error.

Terms of Reference of IPCC Committees

A) *Management Committee*

Terms of Reference

- (a) To oversee major areas of work of the Secretariat;
- (b) To consider and approve:
 - any changes to the Annual Budget;
 - appointment, interdiction from duty, and termination of employment of employees at or below Senior Vetting Officer/Senior Manager ranks;
 - key administrative matters that affect the service of IPCC; and
 - proposed new contracts with estimated value at or above \$50,000 or covering a new area of activity, with the exception of those contracts or activities which come under the purview of the Publicity and Survey Committee; and
- (c) To put forward any administrative and management issues for the Council's deliberation as the Committee deems appropriate.

B) *Publicity and Survey Committee*

Terms of Reference

- (a) To consider measures that could enhance the image and public understanding of IPCC;
- (b) To consider and approve publicity-related activities which have been budgetted for, including:
 - content and design of publicity materials, such as annual reports, website, video, publications and other promotional materials;
 - launching of publicity activities; and
 - selection and commissioning of contractors to assist in such projects;
- (c) To consider and approve launching of surveys which have been

budgetted for, and selection and commissioning of contractors to assist in such projects;

- (d) To monitor progress and quality of the projects in (b) and (c);
- (e) To consider and advise on annual publicity plan for the Council's consideration; and
- (f) To put forward any publicity-related issues for the Council's deliberation as the Committee deems appropriate.

C) Serious Complaints Committee

Terms of Reference

- (a) To determine the criteria of serious cases that should come under the monitoring of the Committee;
- (b) To examine and determine special procedures for monitoring serious complaints;
- (c) To examine the need to seek outside professional advice/service to facilitate the scrutiny of complaint cases;
- (d) To examine the findings of serious complaint cases after investigation has been completed and put forward its recommendations to the Chairman; and
- (e) To put forward any issues in relation to the monitoring of serious complaint cases for the Council's deliberation as the Committee deems appropriate.

D) The Three Sub-groups

Terms of Reference

- (a) To examine, on behalf of the Council, the findings/results of investigation reports (other than on "Withdrawn" and "Informally Resolved" cases);
- (b) To draw to the Chairman/Council's attention any irregularities, trends identified, or matters of interest; and
- (c) To conduct interviews as necessary.

Procedures for Examination of Investigation Reports on Reportable Complaints

All investigation reports on reportable complaints from CAPO will initially be scrutinised in detail by the IPCC Secretariat. If there are any doubts relating to any aspects of the investigation report, IPCC Secretariat will seek clarification from CAPO. If there are any legal issues involved, IPCC's Legal Adviser will be consulted. Depending on the complexity of the case, there may be more than one round of queries with CAPO. Only after the Secretariat (including IPCC's Legal Adviser) is fully satisfied that the case has been properly investigated and that the findings are in order will the Secretariat arrange for circulation of the investigation report to IPCC Members.

2. To help spread out the workload and to ensure that each investigation report receives the necessary attention from Members, IPCC Members have formed three sub-groups amongst themselves. Each sub-group comprises a Vice-Chairman and four to five members.

3. With the exception of "Withdrawn" cases and cases which are "Informally Resolved", in respect of which the Secretary (or Secretary-General after IPCC Ordinance comes into operation) has been delegated authority to endorse, all other cases will be divided into three batches for circulation to Members in the three sub-groups.

4. Members in the three sub-groups will indicate in writing if they agree to the findings/ results in the investigation reports. Only when the written agreement of a majority of members in the sub-group has been received will the report be circulated to the Chairman.

5. Investigation reports will then be examined by the Chairman who has been delegated authority to endorse the findings/ results of investigation reports on behalf of the Council.

6. If, during the process of circulation, any one member does not agree to the finding/ results in the investigation report or raises a request to discuss a particular case at the full Council, the case will be brought to the full Council for discussion.

Conduct of interviews by the Independent Police Complaints Council**When to conduct interviews?**

1) Under section 20 of the Independent Police Complaints Council Ordinance (IPCCO), the Council may, at any time after an investigation report or an interim investigation report has been submitted to it under sections 17 or 18 of IPCCO, interview any person who is or may be able to provide information or other assistance to the Council in relation to that report (hereafter referred to as “relevant person”). In other words, IPCC could conduct interviews:

(a) after receipt of completed investigation reports; or

(b) after receipt of interim investigation reports.

2) In the case of paragraph 1(a) above, IPCC has full discretion to decide who should be interviewed. In the case of paragraph 1(b) above, IPCC would have to consult the Commissioner of Police (CP) and unless CP is reasonably of the opinion that an interview would be likely to prejudice the investigation of any crime or any complaint made to him, he must give his consent to the interview².

3) The need to conduct interviews could be initiated by the Chairman or any one member. The Secretariat would also identify cases which may call for a need to conduct interviews and bring these to the attention of members.

4) If individual complainant or complainees requests to be interviewed by IPCC, the Secretariat will evaluate the merits of such request and forward its recommendation to the relevant sub-group for a decision.

Who to conduct interviews?

5) A panel should consist of no less than two members. A note-taker from the relevant case team of the Secretariat would invite members of the sub-group which examines the concerned interim report/ final investigation report/ review (supplementary) report to join the panel. The invitation would be copied to the Chairman and other members who could also join the panel if they wish.

² s.20(3) of IPCCO

6) The note-taker will be responsible for arranging the interview and taking notes.

Who to be interviewed?

7) Relevant persons may include complainants, complainees, witnesses of the complainants, witnesses of the complainees, independent witnesses and expert witnesses (e.g. doctors, pathologists, government chemists) who may have given witness statements to CAPO during the process of complaint investigation, or persons not previously involved in the complaint investigation but whom IPCC considers necessary to interview and who are or may be able to provide information or other assistance to the Council.

8) Relevant persons' attendance at interviews is entirely voluntary. IPCC cannot compel the attendance of relevant persons. Nothing should be construed from the mere fact that a relevant person either agrees or does not agree to attend such an interview.

Who may be present?

9) The panel may decide who may be present at an interview³.

10) In case the relevant person is below the age of 16 years (as at the date of interview), or is known to the panel to be a mentally incapacitated person⁴, he must be interviewed in the presence of:

- (a) his parent or guardian;
- (b) an adult who has an interest in the welfare of that person and is, in the opinion of the panel, an appropriate person to be present at the interview; or
- (c) such other person as the panel may decide in any particular case⁵.

³ s.20(5) of IPCCO

⁴ "Mentally incapacitated person" refers to a mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance, Cap. 136) whose mental disorder or mental handicap, as the case may be, is of such a nature or degree that the person is incapable of living an independent life or guarding against serious exploitation, or will be so incapable when of age to do so.

⁵ s.20(7) of IPCCO

11) A relevant person has the right to be accompanied by his solicitor or counsel at an interview⁶. He is free to communicate with his solicitor or counsel but the solicitor or counsel does not have a right of audience before the panel unless he is the person who is interviewed⁷.

Code of conduct

12) All interviews must be conducted in private⁸.

13) An independent witness or expert witness who has an interest (whether directly or indirectly) in respect of the case should disclose the nature of his interest to the panel. The basic principle for declaration of interest is that comments and advice from independent witness/ expert witness should be disinterested and impartial. It is not possible to list out all scenarios when an independent witness or expert witness is expected to declare interest but generally speaking, if the relevant person has personal, business, social or political ties with a principal party involved in the complaint case (complainant or complainee) and the relation is so close that can influence, or may reasonably be perceived to be able to influence the relevant person in tendering impartial comments/ advice at the interview should declare his interest.

14) Disclosure of protected information⁹ to relevant persons at interviews must be necessary for the performance of the Council's functions under IPCCO¹⁰. While section 40(5)(f) of IPCCO provides that the panel can disclose the identities of complainants, complainees and any persons who have assisted CP in the handling or investigation of a complaint to relevant persons at interviews, relevant persons should be reminded to keep all personal data acquired in the course of interviews in compliance with the requirements of the Personal Data (Privacy) Ordinance (PD(P)O) (Cap. 486), in particular the data should not be used in breach of Data Protection Principle 3¹¹. Relevant extract of PD(P)O is at **Appendix I**.

⁶ s.20(8) of IPCCO

⁷ s.20(6) of IPCCO

⁸ s.20(4) of IPCCO

⁹ "Protected information" refers to information relating to any complaint that comes to the Council (including Members and employees of the Council)'s actual knowledge in the performance of functions under IPCCO (s.39 of IPCCO).

¹⁰ s.40(2) (a) of IPCCO

¹¹ Data Protection Principle 3 provides that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than (a) the purpose for which the data were to be used at the time of the collection of the data; or (b) a purpose directly related to the purpose referred to in (a).

15) There is no limit on the number of interview sessions, although the panel should aim to complete the interview at one sitting. The panel has full discretion to decide whether and when an interview should be adjourned.

Procedural Guidelines

Pre-interview

16) If a member of the sub-group which examines an interim report/ final investigation report/ review (supplementary) report in relation to a reportable complaint suggests interviewing certain person(s) whom he considers necessary for the purpose of examining the report, he should indicate so in the reply slip and set out the reasons. The Secretariat will then evaluate the merits of such suggestion and recommend to the sub-group whether or not an interview should be conducted as suggested.

17) In case of interim report, the Secretariat, after seeking agreement-in-principle for the conduct of interview from the sub-group, will write to the Complaints Against Police Office (CAPO) to seek CP's consent in relation to the proposed interview¹².

18) With agreement of the sub-group and, where applicable, CP, the Secretariat will approach members of the sub-group to invite them to form a panel to interview the person(s) concerned. The invitation will be copied to the Chairman and other members who could also join the panel if they wish.

19) If a decision is made to conduct an interview, the note-taker will issue an invitation letter to the relevant person together with a pamphlet on IPCC and a copy of the information leaflet on conduct of interviews by IPCC. The relevant person will be required to sign an undertaking form indicating whether or not he agrees to audio-record/ video-record of the interview, and in the case of independent witness or expert witness, whether or not he has any interest in the case. If the relevant person objects to audio-recording/ video-recording, the interview will be conducted with note-taking only. It will be made clear to the relevant person that, if considered necessary for the performance of its functions under IPCCO, IPCC will disclose the information he provided during the interview, including any audio/videotape(s) of the interview, to other parties involved in the police complaints system, including CAPO.

¹² s.20(3) of IPCCO

- 20) The relevant person should return the duly signed undertaking form to the Secretariat if he accepts the invitation. If the relevant person accepts the invitation for interview but refuses to sign the form, a decision has to be made by the panel as to whether or not the interview should proceed as arranged.
- 21) The note-taker will liaise with the panel and the relevant person on the date and time of interview.
- 22) The note-taker will issue confirmation notice to the panel and invitation letter to the relevant person one week before the date of interview.
- 23) The note-taker will confirm with the relevant person his attendance three days before and on the day of the interview.
- 24) The note-taker will prepare briefs on the case and proposed questions on the points to be clarified with the relevant person during the interview for the panel's consideration. This information will be sent to the panel one week before the interview.
- 25) The panel will hold a pre-interview briefing/ discussion session and decide on the strategy and the questions to be asked during the interview.
- 26) The note-taker will verify and record the identities of the relevant person and his accompanying parent/ guardian/ solicitor/ counsel. The solicitor/ counsel should be asked to produce identity document e.g. membership card of the Bar Association or Law Society to prove his identity.
- 27) The note-taker will brief the relevant person and the accompanying parent/ guardian/ solicitor/ counsel the purpose and rules of the interview. They should be informed firmly that the parent/ guardian/ solicitor/ counsel cannot intervene or take part in the interview though they are allowed to stay with the relevant person.

The interview

- 28) All interviews will be held at the IPCC Secretariat Conference Room/ Interview Room.
- 29) The interview will be conducted individually, i.e. only one relevant person will be interviewed at any one session.

30) The interview will be conducted in either official language i.e. Chinese or English.

31) Subject to consent of the relevant person, the interview will be audio-recorded/ video-recorded.

Post-interview

32) The note-taker will make appointment with panel members and the relevant person for the next interview, if necessary.

33) The note-taker will issue a letter of thanks to the relevant person if the interview is conducted at the request of the Council.

Record of interview

34) Since the purpose of the interviews is solely for clarifying doubts, no statement will be taken nor will the relevant person be asked to verify the correctness of the record of interview. The note-taker will prepare a record of interview and deliberations for the panel's confirmation within three days after the interview. The record of interview less the part of deliberation (which is an evaluation by the panel) can be provided to the relevant person upon request.

35) In case a relevant person gives a completely different account of events from his CAPO statement, it would be up to the Council, on the recommendation of the panel, to decide whether the relevant person's account given at the interview should be rejected or referred back to CAPO for further investigation.

36) If the Council considers appropriate, the relevant audio/ videotape(s) of the interview may be disclosed to other parties involved in the police complaints investigation system, including CAPO, for the investigation of complaint.

37) Deliberations of the case will be based on both the outcome of the interview as well as other evidence available to the Council. The note-taker will convey the Council's views/ endorsement to CAPO.

38) When the Council has decided to refer the case back to CAPO for further investigation, the note-taker will take the necessary follow-up action.

39) Upon receipt of CAPO's reply, the Secretariat will re-examine the case in the light of CAPO's reply/ further investigation and arrange to circulate the amended investigation report to the full Council with the Secretariat's recommendation. The Council will then decide on the next course of action.

40) The record of interview and deliberations is to be kept in the relevant case file for such period as may be necessary for the performance of the Council's functions under IPCCO¹³. The record may be used in the following circumstances but not otherwise:

- (a) for the performance of its functions under IPCCO;
- (b) for the purpose of reporting evidence of any crime or any suspected crime to such authority as it considers appropriate;
- (c) for the purpose of complying with -
 - (i) an order of a court; or
 - (ii) a requirement in or made under an enactment or any other law,
in relation to any criminal, civil or disciplinary proceedings; or
- (d) for the purpose of complying with a data access request made under section 18 of PD(P)O¹⁴.

Declaration of interest and duty of confidence by Members

41) All Council members involved in the interview must abide by the confidentiality and disclosure of interests provisions in the Rules of Council Procedure.

Independent Police Complaints Council Secretariat February 2009

¹³ s.21(1) of IPCCO

¹⁴ s.21(2) of IPCCO

Guidance Note for IPCC Observers

INTRODUCTION

The Observers Scheme was introduced in April 1996 with the purpose of enhancing the Independent Police Complaints Council (IPCC)'s monitoring function in the police complaints system. This has subsequently been written into the statute and is now provided for in sections 25, 33-38, and Schedule 2 of the Independent Police Complaints Council Ordinance (IPCCO).

2. Under section 34 of IPCCO, the function of an Observer is to assist the IPCC to observe, in accordance with the provisions in Part 4, the manner in which the Commissioner of Police (CP) handles or investigates reportable complaints. Through observations, Observers advise IPCC whether or not relevant parts of the investigation process are conducted fairly and impartially, and whether any irregularities are detected. Observers thus play an important role in ensuring that investigations into reportable complaints against members of the police force are conducted properly, impartially, and thoroughly. Under section 25 of IPCCO, IPCC Members may likewise observe the Police's handling and investigation of reportable complaints.

TYPES OF OBSERVATIONS

3. IPCC Members and Observers can observe:
- (a) an interview conducted by the Police in respect of a reportable complaint; and
 - (b) any collection of evidence conducted by the Police in the investigation of a reportable complaint¹⁵.
4. A reportable complaint refers to a complaint categorized as a reportable complaint in accordance with section 11 of IPCCO, or a request for review made to CP under section 13 of IPCCO.
5. Some reportable complaints which are of a relatively minor nature (e.g. impoliteness, use of offensive language and neglect of duty)

¹⁵ s.37(1) of IPCCO

may be resolved by way of Informal Resolution (IR). The IR procedures provide for a system of conciliation in order to resolve minor complaints, which would otherwise require a full investigation, promptly. If a complainant agrees to resolve his complaint through IR, an interview with the complainant(s) and the complainee(s) will be arranged to obtain their respective versions of the event which led to the complaint. The complainant will be contacted by an inspectorate officer. Following this, a conciliating officer at the rank of Chief Inspector or above will conduct an IR interview. An IR interview can be conducted by way of interview in person or telephone interview.

6. Apart from IR interviews, non-IR interviews will be conducted for reportable complaints which require full investigation. Non-IR interviews are normally conducted in person. The contents of the interview are recorded in the form of a written statement or by video recording by an investigating officer of the complaint case concerned. A non-IR interview with a complainee should be conducted by an officer at least one rank senior to the complainee.

7. Collection of evidence refers to any act carried out by the Police in the course of investigation with a view to obtaining evidence. The most common type of collection of evidence is scene visit with the objective of locating possible witnesses, finding possible evidence (e.g. tapes of closed circuit television, blood stain, etc.), assisting the investigating officer to re-construct the events which led to the complaint, assisting in corroborating the statements of any party to a complaint and checking the physical layout of the scene. Collection of evidence also includes identification parades conducted in the course of complaint investigation.

8. IPCC Members and Observers are at liberty to observe any of the activities mentioned in paragraph 3 above which form an integral part of the complaint investigation process. IPCC Members and Observers may observe such activities with or without prior appointment. In other words, IPCC Members and Observers can conduct surprise observations without alerting the Police in advance.

POINTS TO NOTE

Declaration of Interest

9. As IPCC Members and Observers play a crucial role in monitoring the conduct of complaint investigations by the Police, it is

important that IPCC Members and Observers themselves act, and are seen to act, in an impartial manner. Section 37(3) of IPCCO therefore provides that if an IPCC Member or Observer has an interest (whether directly or indirectly) in a reportable complaint in respect of which an interview or collection of evidence is conducted by CP, the IPCC Member or Observer must not attend the interview or observe the collection of evidence. Section 37(4) of IPCCO further provides that if, during the interview or collection of evidence, it comes to the knowledge of the IPCC Member or Observer that he has an interest (whether directly or indirectly) in the reportable complaint, he must:

- (a) in the case of an interview, disclose the nature of his interest to the police officer who is designated by CP to conduct the interview, and the person who is being interviewed;
- (b) in the case of collection of evidence, disclose the nature of his interest to the police officer who is designated by CP to conduct the collection of evidence, and (if applicable) the person from whom evidence is being collected;
- (c) withdraw from the interview or observation of the collection of evidence (as the case may be); and
- (d) report the nature of his interest to the IPCC.

10. “Interest” that need to be declared includes the following:

- (a) persons involved in the complaint case are immediate family members¹⁶ of the IPCC Member or Observer (see also paragraph 12 below)
- (b) if persons involved in the complaint case, though not immediate family members, are related to the IPCC Member or Observer by blood or by marriage, e.g. cousins, nephews, nieces, in-laws;
- (c) if the IPCC Member or Observer has business dealings with the persons involved in the complaint case;

¹⁶ Immediate family members are those related by blood or law, and also include step-children, step-parents and step-brothers and step-sisters.

- (d) if persons involved in the complaint case are friends, colleagues, or relatives of the IPCC Member or Observer.

11. It is not possible to list out all situations where IPCC Members and Observers need to declare their interest. Each case differs and need to be decided on its own merits. IPCC Members and Observers should judge for themselves whether the interest is such as to give an ordinary member of the public the impression that the IPCC Member or Observer might be biased in any way.

12. With effect from 1 August 2008, immediate family members (see footnote 2) of members of the Police Force will not be appointed as IPCC observers. Consistent with this requirement, all IPCC Members and Observers appointed or reappointed on or after 1 August 2008 are required to notify the Secretary for Security (S for S) immediately should any of their immediate family member(s) become a member of the police force during the period of their appointment.

13. Also, under section 33 of IPCCO, a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department, or was a member of the police force (including the Hong Kong Police Force and the Hong Kong Auxiliary Police Force) is not eligible for appointment as an Observer. Observers are required to immediately notify S for S should he become such an officer.

Neutrality

14. To ensure that all investigations into complaints against the Police are conducted in a fair and impartial manner, IPCC Member or Observers should not interfere with the conduct of interviews/scene visits, e.g. by posing questions to the interviewer/interviewee, initiating discussion, expressing personal views or displaying any other mode of behaviour deemed inappropriate in the circumstances.

Confidentiality

15. To comply with the requirements of the Personal Data (Privacy) Ordinance (PD(P)O), IPCC Members and Observers are required to keep all information acquired in the course of observations confidential. Information so obtained should not be released to any other party except IPCC.

FOCUS OF OBSERVATION

For observations on interviews

16. Ideally, an interviewee should be allowed to talk about the incident in his own words first, then followed by subsequent questions by the interviewer to clarify his version. As far as practicable, the statement should be recorded in the words of the interviewee. Having said that, an interviewer may ask the complainant interviewee to summarise his allegations or grievance so that the complaint investigator can be apprised of the complainant's precise complaints against the police. The interviewee should be given the opportunity to read (or alternatively to be read to him by the interviewer) the statement and be provided the opportunity to make alteration, deletion or addition to the statement. If the interviewee refuses to sign on the statement, the interviewer should ascertain the reasons and record them in the statement. The interviewee should be provided with a copy of his statement.

17. For IR interviews, the conciliating officer should unambiguously inform the complainant that there will be no review procedures once the complaint is resolved by IR. There needs no assumption of guilt/liability on the part of the Police and no disciplinary action will be taken against the officer(s) concerned. If a complainant does not agree to resolve his complaint by IR, the conciliating officer should stop the IR and inform the complainant that his complaint will be fully investigated.

18. When conducting observations on interviews, IPCC Members and Observers are requested to pay special attention to the following points:

- Fairness: whether the interviewer allows the interviewee to state his account of the incident freely and without any pressure or inducement to change his version of the account;
- Impartiality: whether the questions posed to the interviewee are neutral, unbiased, unprejudiced and without preconceived views;
- Thoroughness: whether the interviewer has invited the interviewee to state all details of the incident; whether all ambiguities/discrepancies are clarified;
- Use of skills/techniques: whether the flow of questions posed

by the interviewer is logical and facilitates the interviewee to provide answers succinctly and coherently; whether the interviewer is able to help the interviewee to recall, present and/or clarify the facts when the latter has difficulties in doing so; whether the interviewer is able to enlist the cooperation of the interviewee;

- Politeness: whether the interviewer has rendered proper courtesy in posing questions to the interviewee;
- Cooperation of interviewee: whether the interviewee is willing to answer reasonable questions from the interviewer;
- Privacy: whether the interviewee has been afforded a reasonable degree of privacy in the interview (An interview should be conducted in an interview room free from interference of other uninterested parties. Nevertheless, whether an interview is to be conducted behind closed door is a matter of personal preference of the interviewee.);
- Language: whether the interview is conducted in the mother tongue of the interviewee (An interview should be conducted in the mother tongue of the interviewee unless he prefers to use another language. If he chooses to use another language, then his decision and reasons should be recorded. An interpreter's service should be obtained to record any statement in the language and dialect used by the interviewee.);
- Ranking (only applicable to interviews with complainees): whether the interview is conducted by an officer at least one rank senior to the complainee. Information of which can also be accessed via Police Internet: www.police.gov.hk/hkp-home/english/org/index.htm; and
- Presence of accompanying adult (only applicable to interviews with minors and mentally handicapped/disordered persons): whether the interviewee is accompanied by an appropriate adult.

[(1) Children and young persons under the age of 16 years should be interviewed only in the presence of a parent or guardian. In their absence, an appropriate adult may accompany him. An appropriate adult is a person over 18 years old, of the

same sex and who may have an interest in the welfare of the child or young person but who is neither a police officer nor a civilian employed by the Police.

(2) A mentally handicapped person or a person appearing to be suffering from mental disorder should be interviewed only in the presence of one of the following appropriate adults: (i) a relative, guardian or other person responsible for his care or custody; (ii) someone who has experience of dealing with mentally handicapped or mentally disordered persons but who is not a police officer nor employed by the Police; or (iii) failing either of the above, some other responsible adult who is not a police officer nor employed by the Police.

(3) A hearing-impaired person should be interviewed in the presence of a sign language interpreter.]

For observations on collection of evidence

19. When conducting observations on scene visits, IPCC Members and Observers are requested to pay special attention to the following points:

- Fairness: whether the complaint investigators have non-discriminatorily collated all possible evidence during the scene visits;
- Impartiality: whether the investigating officer is neutral, unbiased, unprejudiced and without preconceived views;
- Thoroughness: whether the investigating officer is able to locate all possible witnesses/collect all possible evidence/check all relevant physical layouts of the scene;
- Use of skills/techniques: whether the investigating officer is able to use his professional skills to locate possible witnesses/find possible evidence so as to re-construct the events which led to the complaint or that may assist in corroborating or refuting the statements of any party to the complaint; and
- Politeness: whether the investigating officer has rendered proper courtesy in the process.

OPERATIONAL PROCEDURES

20. The key operational procedures are set out below:

Before Observation

- (a) In so far as practicable, the Police must notify IPCC before any interview or collection of evidence is conducted¹⁷. Such notification should set out:
- the nature of the allegations contained in the reportable complaint;
 - the date, time and place of the interview or collection of evidence and the form in which it will be conducted; and
 - the particulars of the interviewee and the interviewer¹⁸.
- (b) IPCC Secretariat will retrieve the brief on the case (Pol. 138) compiled by the Police, if available.
- (c) IPCC Secretariat will fax out the notification and the Pol. 138 (if available) to relevant IPCC Members and Observers (i.e. IPCC Members and Observers on the duty roster as well as IPCC Members and Observers who have indicated their intention to conduct observations year-round) as soon as practicable.
- (d) If IPCC Members and Observers intend to attend, they should first ascertain whether or not they have an interest (whether directly or indirectly) in the case. If they have an interest, they should not conduct the observation, as stipulated in section 37(3) of IPCCO.
- (e) If parking facilities are required or if there are any other special requests, IPCC Members and Observers who wish to attend a scheduled interview may notify the IPCC Secretariat (Miss Denise WONG at 2862 8202) who will in turn notify the responsible complaint investigator/conciliating officer. The complaint investigator/conciliating officer will then liaise with the IPCC Member and Observer on the parking facility/special request direct.

¹⁷ s.36(1) of IPCCO

¹⁸ s.36(2) of IPCCO

- (f) If, for any reason, the date, time or venue of the interview/scene visit is changed, the complaint investigator/conciliating officer is required to notify the IPCC Secretariat who will then inform IPCC Members and Observers concerned immediately.
- (g) IPCC Members and Observers who have notified the IPCC Secretariat that he will conduct an observation, but are subsequently unable to attend should notify the IPCC Secretariat as soon as possible.

On the Day of Observation

- (h) Upon arrival at the relevant police formation/scene, IPCC Members and Observers should approach the complaint investigator/conciliating officer and produce the IPCC Members' and Observer's identity card for verification.
- (i) For observation on interviews, the IPCC Members or Observers will then be ushered to the interview venue.
- (j) The complaint investigator/conciliating officer will brief the IPCC Member or Observer on details of the case. The IPCC Member or Observer has right of access to all papers and exhibits contained in the CAPO file and may ask the complaint investigator/conciliating officer to clarify any points pertinent to the case prior to the interview/scene visit.
- (k) The IPCC Member or Observer will then proceed to observe the relevant process, taking note of the points in paragraphs 18 and 19 above.
- (l) If, during the interview or collection of evidence, it comes to the knowledge of the IPCC Member or Observer that he has an interest (whether directly or indirectly) in the case, he must disclose the nature of his interest, withdraw from the observation, and report the nature of his interest to IPCC by completing and returning the "IPCC Observer's Report on Observation" to the Secretariat, as provided for under section 37(4) of IPCCO and recapitulated in paragraph 9 above.
- (m) In case two or more IPCC Members and/or Observers turn up for the same observation, they may observe at the same time.

- (n) The complaint investigator/conciliating officer will explain the IPCC Observers Scheme as provided under the IPCCO to the interviewee in the presence of the IPCC Member or Observer. IPCC Members or Observers have the right to be present at an interview. An interviewee could not refuse the presence of an IPCC Member or Observer.
- (o) The presence of the IPCC Member or Observer is to be included in the statement and the IR report. If the IPCC Member or Observer withdraws from the observation before the statement-taking is completed, the complaint investigator will record the time of the withdrawal in the statement. In the case of IR interviews conducted in person, the IPCC Member or Observer and the interviewee will be invited to sign on an “Informal Resolution Interview Form”.

After Observation

- (p) After making an observation, the IPCC Member or Observer is required to complete an “IPCC Observer’s Report on Observation” and return it to the IPCC as soon as possible.
- (q) IPCC will examine the report and pass it to CAPO for follow-up action.
- (r) The IPCC Member or Observer will be apprised of the comments of or follow-up actions taken/to be taken by the Police, if any, in response to his report.
- (s) As a token of appreciation and to cover the travelling expenses incurred by Observers in conducting observations (other than IPCC Members who receive a monthly honorarium), a non-taxable travelling allowance at \$190 per attendance will be paid on a reimbursement basis. Payment of the travelling allowance, in the form of crossed cheques, will normally be effected within three weeks of IPCC Secretariat’s receipt of the Observer’s Report on Observation. Observers may also opt to receive the travelling allowance by direct payment to their bank accounts.

Arrangements during tropical cyclones or rainstorms

21. All interviews/scene visits will be cancelled if it is known that a No. 8 or higher Tropical Cyclone Warning Signal or a Black Rainstorm Warning will be issued soon as well as during the period when No. 8 or

higher Tropical Cyclone Warning Signal or Black Rainstorm Warning is in force.

Independent Police Complaints Council Secretariat

Key changes made to CAPO's internal procedures and guidelines regarding the handling and investigation of reportable complaints as well as the handling of notifiable complaints

CAPO has updated its internal procedures and guidelines regarding the handling and investigation of reportable complaints as well as the handling of notifiable complaints to bring them in line with the requirements under the IPCC Ordinance and to dovetail with the updated procedures of the IPCC, and is awaiting IPCC's comments thereon. The key changes made are set out below –

- (a) Terminology changes to align with the IPCC Ordinance, i.e. replacing “須具報投訴” by “須匯報投訴”, “non-reportable complaints” by “notifiable complaints” and “投訴警方獨立監察委員會” by “獨立監察警方處理投訴委員會”.
- (b) To insert cross-references to the relevant provisions of the IPCC Ordinance.
- (c) In reflection of section 9 of the IPCC Ordinance (regarding the Commissioner of Police (CP)'s duty to submit lists of reportable complaints and notifiable complaints), to specify that CAPO shall furnish IPCC with a weekly list of reportable complaints and a monthly list of notifiable complaints.
- (d) To align with the categorisation of complaints as specified in sections 3, 11, 12 and 14 of the IPCC Ordinance, including:
 - a belated complaint must be categorized as a reportable complaint if it is serious in nature. If it is not of a serious nature, it will be categorized as a notifiable complaint; and
 - a complaint made by a representative under section 15 of the IPCC Ordinance will be categorized as a reportable complaint.

- (e) In reflection of sections 3, 13, 15 and 23 of the IPCC Ordinance concerning requests for reviews, to specify that a request for review will be treated as a reportable complaint and to stipulate the procedures for handling such requests as required under the Ordinance.
- (f) In reflection of sections 3, 13 and 17 of the IPCC Ordinance concerning CP's duty to submit investigation reports on reportable complaints classified as informally resolved, to specify that the preliminary steps taken prior to the informal resolution interview in respect of a reportable complaint are part and parcel of the investigation process, and that reports on cases dealt with by informal resolution are termed as "investigation reports for informal resolution".
- (g) In reflection of sections 3, 17 and 18 of the IPCC Ordinance, to specify the classifications of complaint and the standard content of investigation reports and interim investigation reports.
- (h) In reflection of section 20 of the IPCC Ordinance (which provides that IPCC may conduct interviews for considering an interim investigation report and that CP must give consent to the interview unless he is reasonably of the opinion that the interview would be likely to prejudice the investigation of any crime or any complaint made to him), to specify that procedurally CP's consent is to be sought through CAPO.
- (i) In reflection of section 24(4) of the IPCC Ordinance, to specify the determination of the time at which the complainant is to be notified of the classification of a reportable complaint and the reasons for the result.
- (j) In reflection of section 28 of the IPCC Ordinance, to specify that CP must consult IPCC on orders and manuals relating to the handling or investigation of reportable complaints under specified circumstances.
- (k) In reflection of sections 25, 36 and 37 of the IPCC Ordinance, to

specify that CP must give prior notification of interviews and evidence collection sessions conducted in respect of reportable complaints and post-notification under specified circumstances.