

立法會
Legislative Council

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by the Administration)

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Panel on Security

**Subcommittee on
Police's Handling of Sex Workers and Searches of Detainees**

**Minutes of meeting
held on Wednesday, 4 February 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Yuk-man
- Members attending** : Hon LEUNG Kwok-hung
Hon Cyd HO Sau-lan
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon WONG Kwok-kin, BBS
- Public Officers attending** : Item I
Mrs Apollonia LIU
Principal Assistant Secretary for Security

Ms Emily MO
Assistant Secretary for Security

Mr Austin KERRIGAN
Assistant Commissioner of Police (Support)

Mr NG Sai-kuen
Chief Superintendent of Police (Crime HQ) (Crime Wing)

Mr Matthew Darron LINDSAY
Superintendent of Police (General) (Support Branch)

Mr Eddy TONG
Chief Inspector, Crime HQ(1) (HQ Group) (Crime Wing)

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

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

Miss Josephine SO
Senior Council Secretary (2) 1

Miss Helen DIN
Legislative Assistant (2) 1

I. Meeting with the Administration

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

2 The Subcommittee requested the Administration to -

- (a) explain why handheld metal detectors could not preclude the need for conducting searches which involved complete removal of clothing;
- (b) advise the results of its review on the effectiveness of the use of handheld metal detectors in assisting Police officers in the conduct of searches;
- (c) provide information on the number of Level III searches involving full removal of underwear conducted on detainees since 1 January 2009 and the nature of offences involved;
- (d) consider members' suggestion to appoint a higher ranking officer, such as the most senior ranking officer in a Police station, as the authorizing officer for searches involving complete removal of clothing;

- (e) provide information on and findings of the internal review conducted by the Police regarding the Lee Tung Street case;
- (f) advise whether search records in the Communal Information System (CIS) contained the same information as that contained in the Custody Search Forms and if not, the reasons for that;
- (g) provide a sample of the new search record in CIS and advise whether CIS would be enhanced so that the information stored in a search record in CIS would correspond with that in the revised Custody Search Form;
- (h) consider providing in the Custody Search Form a checklist of items which detainees might be allowed to retain while in Police custody and recording the reasons for removing any item(s) from the detainees;
- (i) advise whether the Guidelines on the Searching of Detained Persons had stated clearly the conditions/circumstances for considering repeated rounds of custody search;
- (j) advise whether the Police had any guidelines on the handling of the situation where a detainee took off his/her clothes of his/her own accord;
- (k) provide detailed information on the feasibility study conducted by the Police regarding the use of advanced technology and devices to assist Police officers in the conduct of searches, together with the findings and recommendations;
- (l) provide the Police's investigation report in respect of the complaint case concerning Ms LI Yuen-yee, together with the findings of the Coroner's Inquest held into the death of Ms LI;
- (m) provide information on the Police's criteria for overnight detention of arrested persons; and
- (n) consider suggesting the Independent Police Complaints Council to conduct, on a random basis, reviews on the compliance with the Police's guidelines in cases of search involving full removal of underwear.

II. Date of next meeting

3 The Chairman said that the next meeting would be scheduled pending

the availability of the requested information and the Administration's response to issues raised by members.

4 The meeting ended at 10:50 am.

Council Business Division 2
Legislative Council Secretariat
5 March 2009

**Proceedings of meeting of the
Subcommittee on Police's Handling of Sex Workers and Searches of Detainees
on Wednesday, 4 February 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action Required
000000 - 000352	Chairman	Opening remarks	
000353 - 000515	Hon LEUNG Kwok-hung Chairman Admin	Clarifying that the family members of Ms LI Yuen-ye had received the Complaints Against Police Office (CAPO)'s notification of the investigation findings in respect of their complaint related to the death of Ms LI. The notification was issued in December 2008	
000516 - 001414	Chairman Admin	<p>Briefing on the Administration's paper (LC Paper No. CB(2)742/08-09(01)) -</p> <p>(a) with effect from 1 January 2009, the Police started to subdivide and maintain separate statistics for three subcategories of Level III searches conducted on detainees, namely looking into underwear, partial removal of underwear and full removal of underwear. These subcategories of Level III searches were reflected in the revised Custody Search Form (Pol. 1123) (Annex A to the Administration's paper);</p> <p>(b) enhanced measures from 1 January 2009 to improve record-keeping of custody searches conducted on detainees, taking into account recommendations made by the Subcommittee on Police's Handling of Searches of Detainees in July 2008; and</p> <p>(c) sample search records in the Communal Information System (CIS) (Annex B to the Administration's paper) based on cases occurring from July to September 2008; enhancement of CIS with a view to achieving textual consistency and accuracy in</p>	

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		data capture and input	
001415 - 003009	Hon Emily LAU Admin Chairman	<p>Expressed concerns over the following issues -</p> <ul style="list-style-type: none"> (a) need to establish an independent mechanism for monitoring searches involving complete removal of clothing to prevent possible abuse of power by Police officers; (b) possibility of using equipment/ device, other than handheld metal detectors, to assist Police officers in the conduct of searches of detainees; reasons why handheld metal detectors could not preclude the need for a thorough custody search; (c) number of and reasons for conducting Level III searches on detainees which involved full removal of underwear since 1 January 2009; and (d) whether the revised Custody Search Form was easy-to-understand and translated into other languages <p>Administration's responses -</p> <ul style="list-style-type: none"> (a) multiple safeguards had been built into the Police's new arrangements for the handling of searches of detainees implemented from 1 July 2008 to prevent any possible abuse during a search. Among others, the rights of a detainee in respect of custody search were stated clearly in the revised Custody Search Form. Before a search was carried out, the detainee should be informed of his right to raise any concerns/ objections regarding the search to the Duty Officer (DO), who would in turn document the concerns in CIS and reconsider 	<p>Admin to explain why handheld metal detectors could not preclude the need for conducting searches which involved complete removal of clothing</p>

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		<p>the scope of search. The DO's decision, together with his reasoning and any other actions taken, would be conveyed to the detainee and recorded in CIS. Any detainee aggrieved by the search could lodge a complaint with CAPO;</p> <p>(b) the Police conducted searches on detainees to discharge its statutory functions and to fulfill the Force's duty of care to persons detained in custody. The scope of each search was case specific. It was rather difficult to lay down specific parameters or circumstances under which searches of a particular scope should be conducted on detainees. The DO concerned had to justify the level and extent of the search he authorized;</p> <p>(c) the Police was assessing the effectiveness of the trial use of handheld metal detectors to assist Police officers in the conduct of searches of detainees. The Administration would revert to the Subcommittee on the evaluation results at the time when it concluded the Stage Two Review of Procedures for Searches of Detainees and reported to the Subcommittee on the outcome of the review;</p> <p>(d) CIS was unable to provide a further breakdown of the 1 674 Level III searches conducted from July to September 2008 into "looking into underwear", "partial removal of underwear" and "full removal of underwear" due to the limitations of the system. The Police had enhanced CIS to facilitate future retrieval of information on searches involving complete removal of clothing. With the incorporation of new</p>	<p>Admin to advise the results of its review on the effectiveness of the use of handheld metal detectors in assisting Police officers in the conduct of searches</p> <p>Admin to provide information on the number of Level III searches involving full removal of underwear conducted on detainees since 1 January 2009 and the nature of offences involved</p>

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		<p>functions in CIS, the Police would be able to retrieve statistics on Level I, Level II and Level III custody searches more readily from CIS, together with the nature of offences involved. The enhancement of CIS in different Police districts and divisions started progressively in early January 2009 and had taken some time to complete. As a result, the data retrieval and vetting processes in respect of the figures for the month January 2009 still had to be done manually; and</p> <p>(e) the revised Custody Search Form was available in eleven languages</p> <p>Considered that the Police should establish reasonable suspicion before conducting a search on any detainee</p>	
003010 - 004946	Hon LEUNG Kwok-hung Chairman Admin	<p>Welcomed the requirement on issuing/authorizing officers to record in the Custody Search Form more detailed justifications/reasons for conducting a search involving complete removal of clothing</p> <p>Considered that CAPO should continue to conduct investigations into complaints about Police's abuse of power in the Lee Tung Street case</p> <p>Suggested that the authorizing officer for searches involving complete removal of clothing should not be a DO but a higher ranking Police officer/the most senior ranking officer in a Police station, taking into account the heavy workload of a DO</p> <p>The Commissioner of Police would not condone any Police officers conducting searches on detainees involving complete removal of clothing routinely, but should only be conducted in circumstances with strong justifications</p>	<p>Admin to consider members' suggestion to appoint a higher ranking officer, such as the most senior ranking officer in a Police station, as the authorizing officer for searches involving complete removal of clothing</p>

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		<p>The Bar Association's views on the new arrangements for searches of detainees</p> <p>Whether formal complaint was received from detainees in the Lee Tung Street case; whether formal investigations were conducted in respect of their allegations about Police's abuse of power in the course of conducting custody searches</p> <p>Internal review conducted by the Police after the Lee Tung Street incident in view of the grave public concern about the Police's power and the human rights of detainees. Findings of the review confirmed that the Police officers had complied with the relevant provisions in the Police General Orders (PGO) which were in place at that time</p> <p>DO was the most appropriate officer to authorize a search of a detainee and to determine the scope of search. A DO was normally of Station Sergeant rank and had substantial knowledge of police work as well as ample field experience. He was the officer-in-charge of any person taken into the custody of the Police and was accountable for his decision on the scope of search on a detainee</p>	<p>Admin to provide information on and findings of the internal review conducted by the Police regarding the Lee Tung Street case</p>
004947 - 011343	Hon Audrey EU Admin Chairman	<p>Whether custody search would be conducted on detainees for reasons other than those set out in paragraph 5 of the revised Custody Search Form (Annex A to the Administration's Paper)</p> <p>Considered that search records in CIS should contain the same information as that contained in the Custody Search Forms; elaboration on the reasons for conducting a search, which would be entered into CIS, should also be recorded in the Custody Search Form and provided to the detainee; Custody Search Form</p>	<p>Admin to advise whether search records in CIS contained the same information as that contained in the Custody Search Forms and if not, the reasons for that</p>

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		<p>should be completed in duplicate, one copy of which be given to the detainee</p> <p>Suggested that CIS should be further enhanced to make the entry fields, including "Reason(s) for Search", "Factor(s) Considered" and "Scope of Search", correspond with the respective text entry fields and check boxes in the revised Custody Search Form</p> <p>Reasons for improving the Custody Search Form</p> <p>Enhancement of CIS to incorporate improvements into the Custody Search Form and for the purpose of achieving more efficient production of management information on custody searches conducted by the Police</p>	<p>Admin to provide a sample of the new search record in CIS and advise whether CIS would be enhanced so that the information stored in a search record in CIS would correspond with that in the revised Custody Search Form</p>
<p>011344 - 013104</p>	<p>Hon Cyd HO Chairman Admin Hon Albert HO Hon Emily LAU Hon LEUNG Kwok-hung</p>	<p>Requested that the report on the internal review conducted by the Police regarding the Lee Tung Street incident should be made available to the public</p> <p>Suggesting further improvements to the Custody Search Form. The Police should provide in the Custody Search Form a checklist of items which detainees might be allowed to retain while in Police custody, and record the reasons for removing any item(s) from the detainees</p> <p>Possibility of DO abusing his power; specific areas where DO needed to provide elaboration; detainees' right to lodge complaints</p> <p>Need for the Police to search the detainee again prior to his return to a temporary holding area or detention cell; whether the Guidelines on the Searching of Detained Persons had stated clearly the conditions/ circumstances for considering repeated rounds of custody search</p>	<p>Admin to consider providing in the Custody Search Form a checklist of items which detainees might be allowed to retain while in Police custody and recording the reasons for removing any item(s) from the detainees</p> <p>Admin to advise whether the Guidelines on the Searching of Detained Persons had stated clearly the conditions/ circumstances for</p>

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		<p>Whether the Police had any guidelines on the handling of the situation where a detainee took off his/her clothes of his/her own accord</p>	<p>considering repeated rounds of custody search</p> <p>Admin to advise whether the Police had any guidelines on the handling of the situation where a detainee took off his/her clothes of his/her own accord</p>
013105 - 013440	Chairman Admin	Clarification on the meaning of "the detained person/AP agreed" as shown in Annex B; possible legal implications of such a statement	
013441 - 014830	Hon LAU Kong-wah Admin Chairman	<p>Possibility of using advanced technology or deploying equipment/device to assist Police officers in the conduct of searches of detainees; study conducted by the Police in this respect</p> <p>Suggesting that higher ranking Police officers, rather than DOs, should be responsible for authorizing any search involving complete removal of clothing so as to enhance public confidence in the mechanism and accountability; the Police should make reference to the practice of the Immigration Department with a view to achieving consistency among law enforcement agencies</p> <p>Considered that a right balance had to be struck between competing considerations, i.e. the protection of human rights, the Police's discharge of its statutory functions and fulfilment of the Force's duty of care to all persons detained in custody</p>	<p>Admin to provide detailed information on the feasibility study conducted by the Police regarding the use of advanced technology and devices to assist Police officers in the conduct of searches, together with the findings and recommendations</p>
014831 - 020001	Hon WONG Yuk-man Chairman Admin	Expressed deep concern about Police officers' alleged abuse of power in the course of conducting searches of detainees	

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		<p>Submission from Zi Teng on the case of Ms LI Yuen-ye (LC Paper No. CB(2)788/08-09(01)); findings of the Police's investigation in respect of the complaint case concerning Ms LI; findings of the Coroner's Inquest held into the death of Ms LI</p> <p>Reiterating that the revised PGO 49-04 stated clearly that searches of detained persons were never to be used as a punitive measure, and a search involving complete removal of clothing should not be conducted routinely, but only in circumstances with strong justifications. The new arrangements provided appropriate safeguards in respect of the requirements to respect the rights of the detained persons and to prevent arbitrary searches</p>	<p>Admin to provide the Police's investigation report in respect of the complaint case concerning Ms LI Yuen-ye, together with the findings of the Coroner's Inquest held into the death of Ms LI</p>
<p>020002 - 021913</p>	<p>Chairman Admin Hon Cyd HO</p>	<p>The Code of Practice under the Police and Criminal Evidence Act 1984</p> <p>The Police's criteria for overnight detention of arrested persons</p> <p>Expressing views that -</p> <p>(a) the authorizing officer for searches involving complete removal of clothing should not be a DO but a higher ranking Police officer;</p> <p>(b) a right balance had to be struck between the protection of privacy, human rights and dignity of detainees and the Police's discharge of its statutory functions and fulfilment of the Force's duty of care to all persons detained in custody; and</p> <p>(c) the Police should establish reasonable suspicion before conducting a search on any detainee</p> <p>Suggesting further improvements to the revised Custody Search Form to</p>	<p>Admin to provide information on the Police's criteria for overnight detention of arrested persons</p>

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		<p>reflect the DO's decision on the scope of the search was based on logical conclusion of factors considered</p> <p>Urging the Administration to put in place an independent mechanism for monitoring searches involving complete removal of clothing; suggested the involvement of members or observers of the Independent Police Complaints Council in the monitoring and control mechanism</p>	<p>Admin to consider suggesting the Independent Police Complaints Council to conduct, on a random basis, reviews on the compliance with the Police's guidelines in cases of search involving full removal of underwear</p>
021914 - 021945	Chairman	Date of next meeting	