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24 January 2009

Mr Raymond Lam
Clerk to Subcommittee on Police's Handling of
Sex Workers and Searches of Detainees
Legislative Council
3rd Floor Citibank Tower
3 Garden Road
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Hong Kong

Dear Mr Lam,

Follow Up to the Subcommittee Meeting held on 9 December 2008

Thank you for your letter of 29 December 2008. We set out below the Administration's response to issues raised by the Subcommittee members at the meeting held on 9 December 2008.

I. Search of detainees

(a) Level III searches conducted on individuals who were detained for suspected involvement in unlawful acts while participating in public order events

2. The Sub-committee requested statistics on Level III searches conducted from July to September 2008 on individuals who were detained for suspected involvement in offences under the Public Order Ordinance (Cap. 245) or obstructing police officers engaged in public duty¹ in public order events.

¹ Under section 36(b) of the Offence Against the Person Ordinance (Cap. 212), it is an offence to assault, resist or wilfully obstruct any police officer in the due execution of his duty. Under section 63 of the Police Force Ordinance (Cap. 232), it is an offence to assault or resist any police officer acting in the execution of his duty.

3. According to the records of all Level III searches conducted on detainees from July to September 2008, none of the detainees searched was arrested for suspected involvement in an offence under Cap. 245 or obstructing police officers engaged in public duty in public order events.

(b) Sub-categorisation of Level III searches on detainees

4. Starting from 1 January 2009, the Police maintain separate statistics for the following sub-categories of Level III searches conducted on detainees, namely looking into underwear, partial removal of underwear and full removal of underwear. These sub-categories of Level III searches are reflected in the revised Custody Search Form (Pol. 1123), which is served on the detainee before each search, as well as the enhanced Communal Information System (CIS). A copy of the revised Custody Search Form, which has also incorporated other improvements as recommended by the Subcommittee on Police's Handling of Searches of Detainees in July 2008, is at Annex A for Members' reference.

(c) Number of searches involving complete removal of clothing conducted after introduction of the use of equipment/device to assist police officers in the conduct of searches of detainees

5. The Police introduced handheld metal detectors for use in all custody searches on a trial basis with effect from 1 October 2008. However, before 1 January 2009, the Police did not keep separate statistics on custody searches involving complete removal of clothing (i.e. the sub-category of full removal of underwear under Level III searches). While the Police are now assessing the effectiveness of the use of handheld metal detectors, we would like to point out that such detectors have limitations, e.g. it will not obviate the need for a thorough custody search where it is suspected that items of a non-metallic nature are concealed.

(d) Sanitized CIS record of random selection of 100 Level III searches conducted from July to September 2008 to illustrate the recorded justifications for conducting Level III searches

6. Balancing the wish of Members to have an idea of the records made by police officers regarding Level III searches conducted on detainees and the operational need for the Police to protect internal CIS records of searches conducted on detainees, the Police have prepared five sample search records (Annex B) based on cases occurring from July to September 2008.

7. The new procedures for conducting searches on detainees were introduced only from 1 July 2008. In the light of actual experience, the Police Force has implemented enhanced measures from 1 January 2009 to improve record-keeping on custody searches conducted by frontline police officers. As opposed to the previous free text format, the enhanced CIS has structured fields, including "Reason(s) for Search" and "Factor(s) Considered", for a Duty Officer to record his decision on the scope of a search on a detainee, and specific areas where the Duty Officer needs to provide elaboration. Duty Officers and other relevant officers were briefed on the enhancement of the CIS before the rollout in January 2009. With these enhancement measures, we expect that the standard of record-keeping for searches on detainees will be further improved.

II. Police's handling of sex workers

(e) Police's guidelines on undercover anti-vice operations

8. A summary of the Police's guidelines on anti-vice operations, which was last reviewed in October 2007, is at Annex C for Members' reference.

(f) Measures for monitoring the undercover operatives engaged in undercover anti-vice operations

9. There is already an effective mechanism for monitoring undercover operatives engaged in anti-vice undercover operations. The officer-in-charge of an operation will brief the undercover operative in detail before each operation, including specific instructions regarding the permitted extent of body contact, if any. The undercover operative must keep a detailed record of the operation for inspection by their supervisory officers. If prosecution is eventually instituted following the operation, the undercover operative will be cross-examined in court. We consider that the existing monitoring arrangement already provides for effective checks and balances.

(g) Change money collected from sex workers during undercover operations

10. The Sub-committee enquired whether change money collected from sex workers during undercover operations would be confiscated or returned to the sex worker concerned. The Police have advised that in conducting undercover anti-vice operations, the undercover operatives are normally provided with the exact amount of marked money or they would effect the arrest when sexual services are offered before any payment is

made. The Police have not come across any cases in recent years where change money collected from sex workers during undercover operations was confiscated.

11. The court is empowered under section 102 of the Criminal Procedure Ordinance (Cap. 221) to dispose of any property connected with any offences, of its own motion or upon application, by, inter alia, making an order for “the delivery of such property to the person who appears to the court to be entitled thereto”.

(h) Conduct of police officers off-duty

12. The Sub-committee enquired whether off-duty police officers were allowed to visit “one sex worker apartments” and patronize services from sex workers within or outside the district to which an officer was posted. While there is no specific police order restricting officers from visiting one sex worker apartments while off duty, the Police General Orders prohibit officers from associating with criminal and undesirable characters and require officers to abstain from any activity which is likely to interfere with the impartial discharge of duties, or which is likely to give rise to impression among members of the public that it may so interfere. Where the circumstances suggest that the police orders or other internal instructions have been contravened or an officer’s conduct has brought the Police Force into disrepute, the Force will take disciplinary action against the officer concerned.

Yours sincerely,



(Apollonia Liu)
for Secretary for Security

(PERSONAL DATA 個人資料)
CUSTODY SEARCH FORM

YOUR RIGHTS IN RESPECT OF CUSTODY SEARCH

1. Article 28 of the Basic Law prohibits arbitrary or unlawful body searches of any resident and Article 6 (1) of the Hong Kong Bill of Rights (Chapter 383, Laws of Hong Kong), requires that all persons deprived of their liberty shall be treated with humanity and dignity.

SPECIAL NEEDS / VULNERABLE PERSONS

2. If you are under the age of 16, have special needs or are a vulnerable person, you will normally be searched in the presence of a parent or guardian or an appropriate adult of the same gender as yourself.

3. If you have any special needs or you are a vulnerable person, please bring these to the attention of the Duty Officer before a search is conducted.

REASON(S) FOR SEARCH

4. The Commissioner of Police has determined that in order for police officers to properly discharge their statutory functions and fulfill the Force's duty of care to persons detained in custody and to ensure the safety of others who may come into contact with them, a search will be conducted on all persons to be detained in police custody.

5. A Duty Officer, or an officer authorized by him, will search you prior to being detained in a Temporary Holding Area (THA) or cell. The Duty Officer has determined the scope of the search and the reasons will be explained to you. The search is conducted to ensure that you do not have in your possession:

- any weapon or article with which you might do yourself or others an injury or any implement with which you might effect an escape; and/or
- evidence which is material to the offence for which you have been arrested or charged and any other offences; and/or
- any article with which you could commit a further crime e.g. malicious damage to property or consumption or distribution of dangerous drugs.

FACTOR(S) CONSIDERED

6. In deciding the scope of the search to be conducted on you, the Duty Officer has taken into consideration the following factor(s):

- offence(s) committed;
- criminal record;
- level of violence exhibited during offence and upon arrest;
- suicidal tendency exhibited;

- previous record of self-harm, if known;
- demeanour following arrest and case processing*;
- any other behavioural characteristics displayed*; and
- any other relevant factor*

* Please specify:

SCOPE OF SEARCH

7. The scope of the search has been determined as follows:

- Non-Removal of Clothing** - means emptying pockets, searching of belongings and a pat-down search with no clothing, except footwear, to be removed; or
- Removal of Clothing** - means removal of coat, shirt / blouse, trousers and skirt; or
- Removal of Underwear** - means looking into / partial removal / full removal / search and request for removal of clothing worn to cover your private parts.

"Private Parts" in relation to your body means the genital and anal areas and includes the breasts in the case of a woman.

The Duty Officer has determined the scope of search with **Removal of Underwear**. Specifically:

- Looking into your underwear; or
- Partial removal of your underwear; or
- Full removal of your underwear.

CONDUCT OF SEARCH

8. A search on you will be conducted by police officers as follows:

- (a) only officers of the same gender as you will be present when the search is conducted;
- (b) only officers of the same gender as you will conduct the search;
- (c) at least two officers of the same gender as you will be present; and
- (d) the search will take place only in a room offering privacy.

9. Where your clothing is to be removed, officers will:

- (a) not require you to remove all of your clothes at the same time;
- (b) conduct a search as quickly as possible;
- (c) allow you to put your clothing on as soon as the search is complete;
- (d) conduct the search in an area not in view of persons other than those officers required to carry out, witness or supervise the search.

[Please turn overleaf for more information and to acknowledge receipt of this Form]

(PERSONAL DATA 個人資料)
CUSTODY SEARCH FORM

10. Your legal representative, if available, may be allowed to be present during the search provided no undue hindrance is caused to the investigation or the administration of justice.

WHAT YOU MAY RETAIN

11. You may be allowed to retain the following while in police custody, except to the extent that the Duty Officer considers that it is necessary to remove any of them to prevent harm being done to yourself or others:

- (a) essential clothing;
- (b) spectacles, hearing aid, contact lenses, etc. If removed these items will be temporarily returned to you when required for interviews, enquiries or statement taking;
- (c) head-dress, if you are required by faith or custom to wear it; and
- (d) copies of any paper statements you may have made whilst in custody (including a copy of this form).

SUBSEQUENT SEARCHES

12. Whilst being detained in police custody, you may be searched again for reasons as set out in paragraph 4 and 5 above and in accordance with procedures set out in paragraphs 6-11 above.

CONCERNS/OBJECTIONS

13. If you have any concerns / objections* regarding the search, you may bring these to the attention of the Duty Officer. The Duty Officer will record your concerns / objections. Based on your concerns / objections, the Duty Officer will re-consider his decision. His decision is final.

* Please specify:

REFUSAL TO BE SEARCHED

14. If you refuse to be searched, minimum force may be used to carry out the search. You may also be liable to prosecution under section 63 of the Police Force Ordinance, Cap. 232 or section 36 of the Offences Against the Person Ordinance, Cap. 212.

RECEIPT OF FORM

15. The Duty Officer has explained the above to you. The Duty Officer will invite you to sign this Form and will provide you with a copy of this Form prior to the search.

FORMATION R.N.

ISSUING OFFICER

DATE & TIME

NAME OF RECIPIENT

IDENTITY DOCUMENT & NO.

I (have read/have had read over to me#) the above paragraphs and acknowledge receipt of a copy of this FORM athours on(Date).

(Recipient)

(Issuing Officer)

(Interpreter, if any)

(Parent/Guardian/Appropriate Adult)

The search was conducted between and hours on(Date) at(location of search)

[A NEW FORM WILL BE USED FOR A SUBSEQUENT SEARCH. ALL SEARCHES SHOULD BE CONDUCTED AND RECORDED IN ACCORDANCE WITH PGO 49-04(4) TO (10) AND FPM 49-04(6) TO (12)]

Examples of Input in the Communal Information System (CIS)**Example (1)**

<p>Reason for Search PGO 49-04(2)(a)(c)</p>
<p>Case Background AP xxx was arrested for "Obtaining Property By Deception".</p>
<p>Reasons/Factors Considered Before placing AP xxx in the THA, an intention to search for reason PGO 49-04(2)(a)(c) was explained to him. AP xxx agreed.</p>
<p>Pol. 1123 At xxx hrs, a Pol. 1123 was served and signed by AP xxx.</p>
<p>Scope "Custody Search – Removal of underwear" Having considered the nature of the case, AP's CRO record and he is a DD addict receiving methadone treatment, SSGT xxx of DO xxx at xxx hrs on xxx, instructed PC xxx to conduct a custody search by removing all the items of clothing, including underwear to establish whether any weapons or articles were in his clothing and underwear of which he might use to hurt himself/others or any implement with which he might effect an escape, or any DD / Pt I Poison of which he might use for his own consumption or distribution to others. SSGT xxx also instructed the officer of the need to carefully check all items of clothing including underwear for small items and the removal of clothing be done on a top half/bottom half basis.</p>
<p>Searching Officer PC xxx of xxx was detailed to conduct the search.</p>
<p>Witnessing Officer PC xxx of xxx was detailed to act as a witness of the search.</p>
<p>Location of the Search At xxx - xxx hrs, the search was conducted in xxx room.</p>

Note

"PGO" stands for "Police General Orders"

"AP" stands for "Arrested Person"

"THA" stands for "Temporary Holding Area"

"CRO" stands for "Criminal Record Office"

"DD" stands for "Dangerous Drugs"

"SSGT" stands for "Station Sergeant"

"DO" stands for "Duty Officer"

"PC" stands for "Police Constable"

"Pt" stands for "Part"

Example (2)

Reason for Search PGO 49-04(2)(c)
Case Background AP was arrested for "Wanted Person located for Deception".
Reasons/Factors Considered AP appeared to be very nervous and avoided DO SSGT xxx's eye contact when presented before DO by AO. Furthermore he was shivering and acting suspiciously during the interview. DO suspected AP concealed some DD or suspicious article under AP's underpants and clothing which could result in distribution of dangerous drugs and committing other crime. The reasons of search were explained to the AP. The AP agreed.
Pol. 1123 At xxx hrs, the Pol. 1123 was served and signed by the AP.
Scope "Custody Search – removal of underwear" DO SSGT xxx instructed the searching officer to remove all items of clothing to establish whether any DD or suspicious articles were in the AP's clothing and under clothing and check all items carefully and instructed that the removal of clothing be done on a top half/bottom half basis.
Searching Officer PC xxx was detailed to conduct the search.
Witnessing Officer PC xxx was detailed to act as a witness of the search.
Location of the Search Between xxx and xxx hrs, the search was conducted in room xxx, report room.

Note

"AO" stands for "Arresting Officer"

Example (3)

Reason for Search PGO 49-04(2)(a)
Case Background M/xxx was arrested for "Possession of DD". Some exhibits have already been retrieved at scene from his pockets.
Reasons/Factors Considered AP had previous history of DD convictions and appeared to be very nervous and depressed when presented before me by AO. PGO 49-04(2)(a) was explained to him. The detained person agreed.
Pol. 1123 At xxx hrs, the Pol. 1123 was served and signed by the detained person.
Scope "Custody Search – removal of underwear" At xxx hrs, SSGT xxx of DO xxx instructed PC xxx of xxx of the need to carefully check all items of clothing including underwear for DD and instructed that the removal of clothing be done on a top half basis.
Searching Officer PC xxx of xxx was detailed to conduct the search.
Witnessing Officer PC xxx was detailed to act as a witness of the search.
Location of the Search At xxx hrs, the search was conducted in interview room xxx.

Example (4)

Reason for Search PGO 49-04(2)(b)
Case Background AP was arrested for "Theft (Pickpocketing)".
Reasons/Factors Considered The lost property is still unrecovered. PGO 49-04(2) (b) was explained to detainee. He agreed.
Pol. 1123 Pol. 1123 was served by DO xxx SSGT xxx and signed by the detainee at xxx hrs on xxx.
Scope Level (3) to search if any stolen property is hiding under the private pants.
Searching Officer PC xxx.
Witnessing Officer PC xxx.
Location of the Search Room xxx, Search room, xxx stn.

Note

"Stn" stands for Station

Example (5)

Reason for Search PGO 49-04(2)(a) and (c)
Case Background AO spotted AP acting suspiciously. AP was thus stopped for search. Upon searching, Exh was found inside the right pocket of AP's jeans. AP was then arrested for the offence of "Possession of Dangerous Drugs" by AO. Under caution, AP admitted the offence and to have the Ketamine for self-consumption. AP was brought back to xxx Police Station for further action.
Reasons/Factors Considered AP had previous history of DD convictions. He had slightly struggled during the arrest reported by AO. Reasons for search were detailed for PGO 49-04 (2)(a) and (c). The reasons were explained to the detained person by SGT xxx of DO xxx and he agreed.
Pol. 1123 At xxx - xxx hrs, the Pol. 1123 was served and signed by the detained person.
Scope "Custody Search – removal of underwear" At xxx hrs, DO xxx instructed PC xxx to remove all items of clothing to establish whether any weapons or articles were in his clothing and under clothing. In particular I instructed the officer of the need to carefully check all items of clothing including underwear for DD and instructed that the removal of clothing be done on a top half / bottom half basis.
Searching Officer PC xxx was detailed to conduct the search.
Witnessing Officer PC xxx was detailed to act as a witness of the search.
Location of the Search At xxx - xxx hrs, the search was conducted in interview room xxx.

Note

"Exh" stands for "Exhibit"

Summary of the Police's Guidelines on Undercover Anti-vice Operations¹

Policy

Every effort will be made to reduce illegal vice activities and to prosecute or otherwise counteract organisations and persons profiting from organised prostitution and hard-core pornography. Particular attention will be paid to the exploitation of juveniles and young persons involved in prostitution.

Undercover anti-vice operations

Identification of suitable undercover operatives

2. Police officers may act as undercover operatives in anti-vice operations for the purpose of evidence collection in order to enhance the chance of successful prosecution. Supervisory officers should adhere to the following principles when selecting undercover operatives :

- (a) must be a volunteer;
- (b) preferably be unattached; and
- (c) able to work under pressure.

3. Supervisory officers must be satisfied that the officer fully understands that his duty cannot exceed the boundary of the law when carrying out undercover operations, and that the officer fully understands the risks posed to him.

Control over extent of body contact

4. In collecting evidence of illegal vice activities, where for evidential / operational reasons the circumstances necessitate that an operative receives some form of sexual service in order to maintain his cover, the operative may need to have body contact with the sex worker.

5. However, the integrity and personal safety of the officers involved must be accorded the highest priority. It is emphasised that

¹ The summary is based on the Police's guidelines promulgated in October 2007 on undercover anti-vice operations. Operational strategy and tactics employed by the Police in anti-vice operations are excluded to avoid compromising the Police's operational effectiveness.

sexual intercourse, oral sex and any forms of body contact with girls under 16 years of age, are strictly forbidden in all circumstances. In respect of other body contact, the following guidelines apply :

- (a) The contact is genuinely necessary in order to achieve the objective of the operation. Once the objective is achieved, the body contact should cease. The undercover operative will have to justify his action if he allows any sexual contact to take place before initiating arrest action;
- (b) Body contact may be required in some long-term operations, but such operations are limited in number and will therefore form exceptions rather than the rule; and
- (c) Where it is anticipated that the receipt of masturbation service is genuinely necessary to achieve the objective of the operation, the operative must obtain approval from a Senior Superintendent of Police (SSP) before the operation.

Pre-operation briefings

6. Inspectorate officer in charge of the operation must personally brief the undercover operative on the plan and objective of the operation, and supervisory officer at Chief Inspector (CIP) rank have to ensure that the guidelines on undercover anti-vice operations are fully understood and complied with. These guidelines have been incorporated into a briefing form. The officer-in-charge of an undercover operation must ensure that a briefing form is completed before each operation. These forms will be retained on a classified file register for supervisory inspection.

Supervision²

7. It is essential that the officer-in-charge of an undercover operation closely supervises the undercover operative. He should properly record all communications with the undercover operative in respect of the operation. The anti-vice operative must also keep a similar record of such communications.

² Undercover anti-vice operations are subject to general supervisory control (e.g. on recording, reporting and checking) applicable to police operations in general. In addition, undercover anti-vice operations are also subject to supervisory control set out below which is specific to such operations.

8. The supervisory officer at CIP rank of the officer-in-charge of the undercover operation will, as frequently as practicable, attend police agent briefings held before operations to ensure that such briefings take place in the manner prescribed. They are also required to check all briefing forms once a month and record such checks in the file register inspection sheet. Furthermore, they should conduct random interviews with the operatives to ensure that the pre-operation briefings were properly given and fully understood.

9. District Deputy Commanders (DDC) (or equivalent at SSP rank) are required to hold regular tasking meetings, at least once a month, with their District Operations Officer or equivalent at CIP rank and officers-in-charge of undercover anti-vice operations to brief them on District enforcement priorities, targets, trends and other matters that may be of importance. Any irregularities noted during inspections of the briefing forms should be reported by the respective CIP and examined at the meetings.

10. DDC must ensure that operational guidelines are strictly observed by the operatives and the officers-in-charge of undercover anti-vice operations.