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香港下亞厘畢道



GOVERNMENT SECRETARIAT  
LOWER ALBERT ROAD  
HONG KONG

本函檔號 OUR REF.:

來函檔號 YOUR REF.:

電話號碼 TEL. NO.: 2810 2632

傳真號碼 FAX. NO.: 2810 7702

*By Fax : 2509 0775*  
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23 April 2009

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

Dear Mr Lam,

### **Follow Up to the Subcommittee Meeting held on 31 March 2009**

Thank you for your letter of 7 April 2009. We set out below our response to issues raised by Members of the Subcommittee at the meeting held on 31 March 2009.

#### **I. Police's Handling of Sex Workers**

- (a) Number of undercover operations against organized prostitution activities which resulted in successful prosecution in the previous year*
  - (b) Explanation on the need for the Police to undertake undercover operations against vice activities by quoting relevant court cases and organizing a closed door briefing if necessary*
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2. The Police are arranging a closed door session to brief Members on the need to conduct undercover operations against vice activities.

*(c) Proposed establishment of a licensing or registration system to regulate vice activities and one sex worker apartments so as to minimize the need for enforcement actions against sex workers who are not controlled by organized crime group*

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3. Under the existing law, the act of prostitution itself is not illegal, nor is the operation of one sex worker apartment *per se* prohibited. The various prostitution-related offences provided under Part XII of the Crimes Ordinance (Cap. 200) seek to prevent the exploitation of others for the purposes of prostitution, combat organized prostitution activities and lessen the nuisance to members of the public that vice activities may cause. Accordingly, the Police take enforcement actions, on a need basis, against these offences, targetting in particular persons controlling prostitutes and operating vice establishments. The Police will continue to take appropriate steps to ensure that enforcement actions target at unlawful activities.

4. Some Members have proposed the establishment of a licensing or registration system to regulate vice activities and one sex worker apartments under the impression that this would minimize the need for enforcement actions against sex workers who are not controlled by organized crime groups. As we understand it, with a licensing or registration system, the Administration would have a duty to conduct random, if not regular, inspections to ensure that the licensing or registration requirements are met, and hence would not minimise the need to visit one sex worker operations. Compared to this proposal, our current approach to conduct enforcement actions only on a targetted basis would be a preferable arrangement.

*(d) Consider enhancing the existing police complaint system, with a view to ensuring the confidentiality of complaints from sex workers and preventing possible tipping off of officers who were the subject of complaint*

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5. The Police are committed to ensuring that all complaints against their officers are handled in confidence and in a fair and impartial manner. Tipping off of officers who are the subjects of complaint is strictly prohibited by the Police General Orders. Officers in breach of the orders would be subject to disciplinary action and, if there is sufficient evidence, to criminal charges of “perverting the course of justice”, “assisting offender” or “concealing offence”.

*(e) Provide statistics on cases in which Police officers were authorized to receive masturbation service during undercover operations against vice activities to the Panel on Security*

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6. To protect the confidentiality of undercover operations, the Police will only be able to provide the information as and when required with a 12-month gap after the operations have completed.

*(f) Consider further tightening the control over officers undertaking undercover operations against vice activities, and to consider ways to better monitor the conduct of undercover operations*

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7. There is already an effective mechanism for monitoring police officers engaged in anti-vice undercover operations. Under the Police's stringent guidelines governing anti-vice undercover operations, the undercover officer is required to keep record of the details of the operation which will be subject to close scrutiny by senior officers at various levels, and by the court if prosecution is instituted against those arrested in the operation.

*(g) Consider employing other means of enforcement, such as interception of communications or covert surveillance, to combat vice establishment activities*

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8. In combating vice activities, the Police will decide on the most appropriate or practical investigative tools on a case-by-case basis, having regard to the specific circumstances of the case and subject to the necessity and proportionality tests. In particular, interception or covert surveillance operations would only be conducted in respect of serious crimes, and the tests of proportionality and necessity must be met.

*(h) Gather information from other jurisdictions, such as Miami of Florida in the United States and London in the United Kingdom, on the practice of their law enforcement agencies (LEAs) in conducting undercover anti-vice operations*

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9. The Police have made further enquiries with a number of overseas jurisdictions including the above and are awaiting their response. We should emphasize that given considerable differences across jurisdictions in their anti-vice legislation, the modus operandi of vice establishments and sex workers, and the enforcement practices and strategies, the enforcement approach and priorities of LEAs in different

jurisdictions in relation to vice activities are not directly comparable. Therefore, any further information on enforcement practices in overseas jurisdictions gathered would at best serve as a reference rather than as models which the operations of the Hong Kong police force should base on.

## II. Search of detainees

- (i) *Provide the number of Level III searches conducted on detainees involving full removal of underwear and the nature of offences involved in these searches to the Panel on Security on a regular basis*
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10. The Police have promulgated detailed guidelines on how custody searches should be conducted. Specifically, the Police do not conduct Level III searches on detainees involving full removal of underwear unless justified specifically. Each of such search cases must be proportionate to the prevailing circumstances, and is subject to close supervision by supervisory officers. The Police will provide the Panel on Security with the number of Level III searches conducted on detainees involving full removal of underwear and the nature of offences involved on an annual basis.

- (j) *Provide information on the number of searches involving full removal of underwear conducted by the Police on persons other than detainees inside the Police station*
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11. According to the record in the Communal Information System from January to March 2009, the Police searched a total of 20 persons in the Police stations who are not detainees. The searches conducted on five of them involved full removal of underwear.

- (k) *Consider requesting all LEAs to adopt the Police's practices on the searching of detained persons in conducting body searches*
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12. Under the common law, the LEAs conduct body searches on persons under their custody to ensure that such persons do not have any item of evidence; any unauthorized possession; or any weapon or article with which the detained person might injure himself or others, or use to effect an escape. As in the case for the Police, other LEAs under the Security Bureau's family observe the principles of proportionality and necessity when deciding on the level of search, and the officers

conducting the search are required to have proper regard to the privacy and dignity of the detained person searched. While each LEA has its unique legal basis and operational requirements in respect of the conduct of searches on persons under their custody, Security Bureau and the Police have made available to them the Police's practices for their reference.

*(l) Consider the 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 full removal of underwear during office hours*

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13. The higher ranking officer(s) in a Police station may not be readily available during their duty hours due to other official commitments, e.g. operations or meetings. Thus, the Force maintains the view that the Duty Officer of a Police station, who is the most senior officer stationed in a Police station round the clock to take charge of the report room, is the most appropriate officer to authorize a search on a detained person involving the removal of underwear. The Duty Officer is designated to deal with detention matters, and is required to account for his decision on the scope of custody searches. The Duty Officer is normally of Station Sergeant rank who has substantial knowledge of police work and ample operational experience. His performance is subject to close monitoring by his supervisors.

*(m) Follow up the allegations made in the submission from Zi Teng*


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14. In our letter to the Clerk to the Subcommittee of 25 March 2009, we have already provided a gist of the complaint made against the Police and the investigation results in respect of the case concerning Ms LI Yuen-yi. Under the current arrangements, a person aggrieved by actions of the Police can lodge a complaint to the Complaints Against Police Office (CAPO). CAPO is responsible for investigating the complaint and the outcome would be submitted to the Independent Police Complaints Council (IPCC) for scrutiny. Complainants who are not satisfied with the outcome of their complaints can apply for review of their cases. After completing the review, CAPO will submit the result to IPCC for scrutiny and IPCC will inform the complainant of the findings of the review.

15. As regards the issues raised in Zi Teng's submission for which specific case references of the complaints are provided, CAPO has

followed up with the complainants accordingly. As for the remaining allegations, the Police will need more specific information in order to take follow-up actions. The Force management would like to reassure Members that it has, on an ongoing basis, impressed on the frontline officers the need to comply with Force procedures in the performance of their constabulary duties.

Yours sincerely,

  
(Apollonia Liu)  
for Secretary for Security

c.c.

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(Attn : Mr Alan Yu)  
(Attn : Mr Ng Sai Kuen)

Fax : 2200 4328  
Fax : 2528 2284