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電話號碼 TEL. NO.: 2810 2632

傳真號碼 FAX. NO.: 2810 7702

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23 June 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
Central
Hong Kong

Dear Mr Lam,

Follow Up to the Subcommittee Meeting held on 2 June 2009

Thank you for your letter of 4 June 2009. We set out below our response to the issues raised by Members of the Subcommittee at the meeting held on 2 June 2009.

(a) The most updated version of the custody search form (Pol. 1123), Police General Order 49-04 and Force Procedures Manual 49-04

2. The latest version of the custody search form (Pol. 1123) was issued on 1 January 2009. A copy is at **Annex A**¹. The revised Police General Order 49-04 and the revised Force Procedures Manual 49-04 were issued on 19 April 2009. Copies are at **Annex B** and **Annex C** respectively.

¹ We circulated a copy of this form to the Subcommittee under cover of our letter of 24 January 2009.

(b) *Whether the Police had contacted the arrestees involved in the Lee Tung Street incident in conducting the internal review on the handling of searches conducted on the arrestees*

3. Shortly after the incident, the Complaint Against Police Office (CAPO) contacted four (out of the five) arrested persons in the case who had lodged complaints and whom they could reach, and invited them to relay a message to other arrested persons in the same case that should any of them wish to lodge a complaint, they were asked to come forward and approach CAPO. However, CAPO did not receive any complaint from any of the other arrested persons. Hence, the Police conducted their internal review based on statements provided by officers involved in the handling of the arrested person in the Lee Tung Street case during their detention in the North Point Police Station, media reports which carried the allegations made by some of the arrested persons against the Police, and relevant materials such as records in the Communal Information System and recording of the closed-circuit television system at North Point Police Station.

(c) *Number of premises involved in the cases involving ten sex workers referred to in paragraph 6 of LC Paper No. CB(2)1630/08-09(01) were previously known to be one-sex-worker-apartments but found to have two or more sex workers working on the same premises during the enforcement actions taken by the Police*

4. For the five cases mentioned in paragraph 6 of LC Paper No. CB(2)1630/08-09(01) involving ten sex workers, five premises were involved. Three of them were previously known to be one-sex-worker-apartments, but the Police obtained new information that more than one female two-way-permit holder were working in the premises. The Police thus conducted investigation, including undercover operations, into the case. One of the remaining two premises was known to have been used as a vice establishment and was previously connected with five other cases involving persons arrested for "keeping a vice establishment". The remaining premises was not known to the Police as being connected with the provision of sexual service before the operation. In the case concerned, two sex workers solicited the undercover officer on the street for sex and offered sexual service to him in the premises in question.

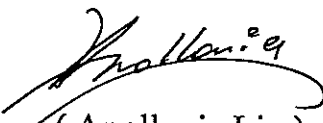
(d) Investigation into the complaint cases as referred to in the submission from Zi Teng

5. The cases quoted in Zi Teng's submission (LC Paper No. CB(2)1631/08-09(01)) were referred to CAPO for follow-up action. CAPO has contacted Zi Teng with a view to interviewing the aggrieved sex workers to obtain details of their complaints. The sex workers concerned have not come forward and CAPO has not received any further information yet.

(e) Consider providing, on a restricted basis if necessary, the report on the internal review conducted by the Police regarding the searching of detained persons in the Lee Tung Street incident

6. The Police will arrange a further "closed-door" session for the Subcommittee, at which copies of the report of the Police's internal review regarding the searching of detained persons in the Lee Tung Street incident will be made available for perusal by Subcommittee Members.

Yours sincerely,


(Apollonia Liu)
for Secretary for Security

c.c.

CP (Attn : Mr Austin Kerrigan)
(Attn : Mr Ng Sai Kuen)

Fax : 2200 4328
Fax : 2528 2284

(PERSONAL DATA 個人資料)
CUSTODY SEARCH FORM

Annex A

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)]

PGO 49-04 Searching of Detained Persons

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.**

2. A Duty Officer, or an officer authorized by him, will search a detained person prior to his being detained in a Temporary Holding Area (THA) or cell. The Duty Officer will determine the scope of the search on a case-by-case basis, based upon the prevailing circumstances, in order to satisfy himself that a detained person does not have in his possession:

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

3. The Duty Officer will make a record in CIS of all custody searches conducted on detained persons, distinguishing between a search that involves:

- (a) 'non-removal of clothing' e.g., a detained person is given a pat-down search and no items of clothing, except footwear, are removed. This may include the search of a handbag and/or a detained person is asked to empty his pockets;
- (b) 'removal of clothing' e.g., this would include a detained person being asked to remove coat, trousers, shirt / blouse and the search of such items; and
- (c) 'removal of underwear' e.g., this would include the removal / partial removal / looking into / search and request for removal of items of clothing usually worn to cover a person's private parts.

("Private Parts" in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman.)

4. Prior to conducting a search on a detained person, the Duty Officer, or in his absence, his authorized deputy, will explain to the detained person the reason(s) for the search and the scope of the search to be carried out.

5. The Duty Officer will ensure that a copy of the 'Custody Search Form' Pol. 1123 is served on the detained person, the contents explained and the detained person's signature is obtained on the Pol. 1123 in acknowledgement prior to the search. A new 'Custody Search Form' Pol. 1123 will be used for subsequent searches. A copy of signed Pol. 1123 will, subject to FPM 49-04(9)(d), be provided to the detained person for his retention.

6. The Duty Officer, or a designated deputy in his absence, will record in CIS as soon as reasonably practicable after the search for every detained person:

- (a) the reason(s) why a search was conducted;
- (b) the scope of the search ;

- (c) the service and signing of the Pol. 1123 ;
- (d) who conducted the search;
- (e) who witnessed the search;
- (f) where the search was carried out; and
- (g) any concern(s) raised by the detained person regarding the search and action taken to address the concern(s).

7. The officer who conducts or witnesses the search of a detained person will cross-reference the search in his police notebook with the relevant record made in CIS. 04/09

8. Searches will be conducted by police officers as follows:

- (a) only officers of the same gender as the detained person will be present when a search is conducted;
- (b) only officers of the same gender as the detained person will conduct the search;
- (c) at least two officers of the same gender as the detained person will be present; and
- (d) only in an area offering privacy.

04/09

9. Where clothing (including underwear) is to be removed, officers will:

- (a) not require a detained person to remove all of his / her clothes at the same time, e.g. a person whose clothing above the waist has been removed should be allowed to put the clothing back on before removing clothing below the waist;
- (b) conduct a search as quickly as practicable;
- (c) allow the detained person to put his clothing on as soon as the search is complete; and
- (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. The door of the area where the search is conducted should be locked or the access restricted during the search.

10. Searches of detained persons are never to be used as a punitive measure. In particular, a search involving the removal of underwear should not be conducted routinely but only in circumstances with strong justification. Police officers will conduct every search with proper regard to the privacy and dignity of the detained person. Duty Officers will make every practicable effort to minimize embarrassment and to secure the detained person's co-operation in the search process.

04/09

11. If a detained person is removed from the THA or cell for any reason, the detained person may be searched on return and prior to being detained in the THA or cell. The Duty Officer will decide whether a further custody search is required to be conducted for the reason(s) as set out in

PGO 49-04(2) (a) to (c). Such search, if needed, shall be conducted and recorded as per paras. 4 to 10 above.

12. If an officer has reason to suspect that a person being searched has concealed any article within his person, he shall report the matter to his DVC or equivalent.

13. The DVC or equivalent shall decide whether or not a medical examination is necessary and if he considers it necessary, shall contact the Forensic Pathologist.

14. If a medical examination is undertaken, it shall be made by the Forensic Pathologist or in accordance with arrangements made by him.

15. A "body cavity" or "Intimate" search may only be performed under Section 52(1A) of the Dangerous Drugs Ordinance, Cap. 134.

FPM 49-04 Searching of Detained Persons

07/08
04/09

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.**

2. A search of a person is an intrusion of a person's privacy and dignity and therefore any search carried out must not be arbitrary. The scope of a search should be balanced against the need for a police officer to carry out his statutory duty and should be determined on a case-by-case basis according to the prevailing circumstances.

3. The Duty Officer will arrange the search of a detained person to be conducted in accordance with PGO 49-04 prior to his being detained in a THA/cell to ensure that the detained person does not:

- (a) escape;
- (b) assist others to escape;
- (c) injure himself or others;
- (d) destroy or dispose of evidence; or
- (e) commit further crime.

4. When deciding the scope of a search to be conducted, the Duty Officer should take into consideration the following factors, which are not exhaustive, including:

- (a) offence(s) committed;
- (b) criminal record;
- (c) level of violence exhibited during offence and upon arrest;
- (d) demeanour following arrest and case processing;
- (e) suicidal tendency exhibited;
- (f) previous record of self-harm, if known;
- (g) any other behavioural characteristics displayed; and
- (h) any other relevant factors.

5. A copy of the 'Custody Search Form' (Pol. 1123) which clearly sets out the rights and entitlements of persons to be searched whilst detained in police custody will be served on the detained person prior to a search being conducted. The reason(s) for and the scope of the search will be explained to the detained person. The detained person will be invited to sign the Pol. 1123 to acknowledge that he has been notified of this. If the detained person refuses to sign the Pol. 1123, this will be recorded in the 'Brief Summary' in CIS for that particular case.

6. If a detained person continues to refuse to cooperate, he should be advised that force may be used to carry out the search. The detained person should be given an opportunity to comply and advised that refusal could render him 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.

7. Subject to paragraphs 8 and 10 below and prior to being detained in a cell, the detained person should have all of his property removed, including belts, braces, ties, cords, laces, etc. This is necessary for the following reason(s):

- (a) to ensure the safety of the property of the detained person; or
- (b) to protect the detained person from using his/her property to injure himself/herself; or
- (c) to protect the police from any allegation of theft and impropriety.

8. A detained person may be allowed to retain:

- (a) essential clothing;
- (b) spectacles, hearing aid, contact lenses, etc., provided the detained person does not have any suicidal tendency, in which case these items are to be secured in a locker in the report room, the keys to which are to be kept by ADO. The DO shall ensure that such items are to be temporarily returned to the detained person whenever he is removed from the cell and under close escort, or when such item is required for any legitimate purpose such as interviews, enquiries and statement taking;
- (c) head-dress, if the detained person is required by faith or custom to wear it, but is to be removed from him at any time he is not under close supervision; and
- (d) copies of any paper statement the detained person may have made whilst in custody, provided that the detained person does not have suicidal tendency.

9. Given that persons detained in a THA are subject to continuous watch, the requirement for the removal of any items of personal property only relate to articles which may pose an IMMEDIATE danger to either the detained person or to the others. Examples include, but are not limited to articles such as lighters, nail-files and other sharp objects.

10. The following special arrangements apply to uniformed servicemen and females detained in custody as appropriate:

- (a) in the case of a serviceman in uniform, such items of uniform and equipment as may be necessary to enable him to appear properly dressed before the Magistrate are to be returned to him before he goes to court;
- (b) a detained female is to be allowed to retain her underwear, unless she is mentally unbalanced, or there is reason to believe that she may do harm to herself or others, or the item of clothing is a case exhibit. Whenever an item of clothing that is an exhibit is removed from a detained person, attempts must be made to obtain a replacement in accordance with 49-27 below;
- (c) unless required as an exhibit, an item of clothing removed from a detained person should be returned prior to appearing in a Magistrates Court if it is required to ensure that the person so detained is properly and decently dressed. Items of clothing or serviceman's uniform returned prior to court appearance are to be endorsed with an appropriate entry in CIS; and

- (d) at the end of the hearing, if sentenced to imprisonment or remanded in custody by a Magistrates Court, the prisoner is to be searched by a police officer of the same gender under the direction of the OC Court and such articles are again to be removed and entered in the CIS generated Pol. 39. If committed to prison for sentence or to await trial, the property is to be sent to prison with the prisoner in the normal way. If the prisoner is remanded, such articles are to be returned to the prisoner by a police officer of the same gender under the direction of the OC Court prior to any subsequent hearing.

11. All searches are to be conducted in accordance with PGO 49-04 and in accordance with Force Guidelines issued on this subject. In carrying out searches due consideration must be given, as far as practicable, to reasonably maintaining the privacy and dignity of the person being searched, whilst at the same time achieving the lawful purpose of the search.