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4 August 2011

Ms Sarah YUEN
Clerk to Panel on Public Service
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Ms YUEN,

**Panel on Public Service
Follow-up to Panel meetings**

At the meetings of the Panel on Public Service on 20 December 2010 and 18 April 2011, Members asked the Administration to provide supplementary information on certain civil service disciplinary matters. Please find attached a note setting out the required supplementary information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ivy LAW', written over a horizontal line.

(Ms Ivy LAW)
for Secretary for the Civil Service

Supplementary information on civil service disciplinary matters

At the meetings of the Legislative Council Panel on Public Service (“the Panel”) on 20 December 2010 and 18 April 2011, Members asked the Administration to –

- (a) provide information on how long the relevant audio-record and/or video-record of the disciplinary proceedings instituted against a civil servant who had subsequently been cleared of the misconduct concerned would be kept and when they would be destroyed, and on the circumstances under which the record would be provided to other parties for reference, particularly on whether consent of the civil servant concerned would be obtained beforehand;
- (b) conduct a research into overseas practices and find out whether any overseas jurisdictions reimbursed the defaulter concerned with the legal fees incurred as a result of having legal representation in disciplinary proceedings if he/she was subsequently acquitted of the misconduct;
- (c) in relation to the disciplinary cases involving disciplined services departments, other than the Hong Kong Police Force, since 1991 or 1997, provide the respective numbers of cases where the punishments imposed were dismissal or compulsory retirement, together with details on the misconducts that had led to the punishments, and whether legal representation had been applied for and denied;
- (d) explain why, although the number of civil servants subject to the Public Service (Administration) Order (“PS(A)O”)¹ doubled that of civil servants subject to the Disciplined Services Legislation (“DSL”)², the number of dismissal cases involving the latter nearly doubled that involving the former;

¹ The PS(A)O is an executive order made by the Chief Executive (“CE”) under Article 48(4) of the Basic Law. It sets out the CE’s authority in regard to the management of the civil service, including discipline matters.

² The DSL refers to the Customs and Excise Service Ordinance (Cap. 342), the Fire Services Ordinance (Cap. 95), the Government Flying Service Ordinance (Cap. 322), the Immigration Service Ordinance (Cap. 331), the Police Force Ordinance (Cap. 232) and the Prisons Ordinance (Cap. 234) and the related subsidiary legislation.

- (e) provide the numbers and types of disciplinary punishments imposed on directorate civil servants during the period from 2006/07 to 2010/11; and
- (f) advise whether any civilian civil servants had been subject to formal disciplinary actions solely because they had become insolvent or bankrupt and if so, provide the relevant details.

(A) Handling of the records of disciplinary proceedings

2. The Administration has put in place guidelines governing the management of records in Bureaux/Departments. Irrespective of whether an officer has been cleared of the misconduct charged after disciplinary proceedings, disciplinary records (including audio-record and/or video-record) of the officer concerned should be destroyed one year after the officer has left the service or one year after resolution of any claim/appeal/complaint, whichever is the later. Any request for access to the audio-record and/or video-record of disciplinary proceedings will be processed having regard to the requirements of the Personal Data (Privacy) Ordinance (Cap. 486). Consent from the officer concerned will be sought as necessary.

(B) Research on reimbursement of legal fees in overseas jurisdictions

3. We have conducted researches on the practices of Australia, Canada, the United Kingdom and Singapore. According to the information available, only the Australian government will reimburse a civil servant with the legal fee incurred for engaging legal representation at disciplinary hearing if the civil servant is subsequently cleared of the alleged misconduct. Nonetheless, if the civil servant is found culpable of the misconduct, he/she will be required to bear the costs of legal representation incurred by the Australian government. There are no reimbursement arrangements in the other three countries.

(C) Statistics on disciplinary misconduct cases leading to removal punishments

4. According to available records, a total of 19 disciplinary cases on staff misconduct were concluded under the relevant DSL by disciplined services departments (other than the Hong Kong Police Force) from 1997 to 2010 where the officers concerned were punished by dismissal or compulsory retirement. Records from 1991 are not available.

5. Amongst the 19 disciplinary cases, 18 were concluded before the Court of Final Appeal (“CFA”) handed down the judgement on *Lam Siu Po v*

the Commissioner of Police (FACV 9/2008)³ and one was concluded after the judgement. Before the said CFA judgement, applications for legal representation at disciplinary hearing under the DSL from officers charged with disciplinary offences would normally not be allowed. For the disciplinary case which was concluded after the said CFA judgement, the department concerned had informed the officer charged that he could apply for legal representation at the disciplinary hearing. Nevertheless, the officer concerned did not make such an application.

6. The disciplinary offences committed by the 19 officers leading to the imposition of dismissal or compulsory retirement were –

- (a) being absent from duty without leave or good cause;
- (b) by his conduct prejudicing the good order and discipline of the department;
- (c) contravening rules/orders/ regulations of the departments;
- (d) making false statements;
- (e) neglecting, or without good and sufficient cause failing to do, promptly and diligently, anything which it is his duty to do;
- (f) communicating with prisoners for improper purposes;
- (g) without proper authority, carrying out any pecuniary or business transaction with or on behalf of any prisoner or ex-prisoner, or with a relative or friend of any prisoner or ex-prisoner; and
- (h) soliciting or accepting any advantage from Vietnamese migrants.

(D) Dismissal cases meted out under the PS(A)O and the DSL

7. As mentioned in the paper considered by the Panel on 18 April 2011 (LC Paper No. CB(1) 1858/10-11(05)), formal disciplinary action in respect of civilian grades and generally senior ranking civil servants in the

³ On 26 March 2009, the CFA handed down a judgement that, inter alia, the provisions which expressly prohibit legal representation for police officers subject to disciplinary proceedings under the Police (Discipline) Regulations (Cap. 232A) contravene Article 10 of the Hong Kong Bill of Rights and should be repealed as they are unconstitutional, void and null.

disciplined services grades⁴ is taken according to the provisions under the PS(A)O. On the other hand, formal disciplinary action in respect of generally middle and junior ranking civil servants in the disciplined services grades is taken according to the provisions under the respective DSL. This arrangement is essential to the proper discharge of the law enforcement functions of the disciplined services.

8. Due to the unique operational requirements for middle and junior ranking officers in the disciplined services, they are subject to specific disciplinary offences stipulated under the DSL which are not applicable to officers subjecting to the PS(A)O. Examples of these specific disciplinary offences include cowardice in the performance of duty, deliberately acting in a manner calculated to provoke a prisoner, conduct to the prejudice of good order and discipline, etc.

9. Moreover, disciplined services officers are expected to uphold a high standard of integrity and probity given the positions of trust and powers reposed in them. The Administration hence takes a serious view of disciplinary and criminal offences committed by law enforcement officers, in particular over convictions of criminal offences associated with corruption, misuse of authority or those reflecting poorly on their integrity. Officers so convicted are often dealt with by heavy punishment, including dismissal which is the most severe form of punishment. As such, the number of dismissal cases meted out under the DSL is more than that under the PS(A)O.

(E) Formal disciplinary punishments imposed on directorate civil servants

10. During the period from 2006/07 to 2010/11, three directorate civil servants had been punished upon completion of formal disciplinary proceedings. The civil servants concerned were punished by compulsory retirement, severe reprimand plus financial penalty and reprimand respectively.

(F) Formal disciplinary actions against civil servants in the civilian grades due to insolvency or bankruptcy

11. The Administration will not punish a civil servant merely because he/she has become insolvent or bankrupt. The civil servant will be punished if his/her financial problems have led to misconduct (such as

⁴ These refer generally to civil servants at a rank equivalent to superintendent/assistant superintendent and above of Correctional Services Department, Customs and Excise Department, Fire Services Department, Government Flying Service, Hong Kong Police Force and Immigration Department.

undertaking unauthorised paid outside work, failing to report on indebtedness, etc.) or criminal conviction (such as accepting a bribe or accepting an advantage from a subordinate without permission, etc.).

Civil Service Bureau
August 2011