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30 September 2013

Clerk to Panel on Public Service
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

(Attn.: Ms Anita SIT)

Dear Ms SIT,

Granting Paid Study Leave to Civil Servants

At its meeting held on 15 July 2013, the Legislative Council Panel on Public Service (the Panel) passed a motion requesting the Civil Service Bureau (CSB) to look critically into the decision of the Department of Health (DH) whereby Dr. Sarah Choi was granted paid leave to serve pupillage, with a view to clarifying the relevant policy and procedure, and to make a reprimand and take remedial actions where appropriate if maladministration has been identified. In addition, the Panel requested the Administration to provide information on the previous cases of granting paid leave for civil servants to serve pupillage by Bureaux/Departments (B/Ds).

The Administration's Response

I. Study Leave Approval for Dr. Choi

2. CSB and the Food and Health Bureau (FHB) have reviewed the procedures and decision of the Director of Health to grant Dr. Choi full-pay study leave to undertake a 12-month full-time pupillage attachment

programme from 1 November 2012 to 31 October 2013. The major findings and assessment are set out in the paragraphs below.

3. In May 2012, the then Controller, Centre for Health Protection (then CCHP) of DH nominated Dr. Choi for a one-year full-time pupillage attachment programme and recommended the granting of full-pay study leave to her during the attachment period. On the need to train an in-house professional with strong legal background, the considerations were as follows :

- (a) over the past few years, there had been a clear and marked increase in DH's workload in relation to the formulation and execution of statutory functions. DH was responsible for the enforcement of over 10 pieces of legislation and several more pieces of new legislation were in the pipeline. Performing statutory functions formed a very prominent part of DH's core business in public health;
- (b) there was a rising trend for disputes to be resolved through legal means, including compensation claims against medical negligence in relation to provision of health services and applications for judicial review against DH's decisions;
- (c) in providing legal advice on cases and situations, the Department of Justice (DoJ) depended critically on proper instructions and framing of the public health law perspective provided by DH. Without properly framed instructions, DoJ would have difficulties in tendering appropriate legal advice;
- (d) an in-house staff member with professional qualifications in both law and public health was much needed to improve DH's performance in addressing various pressing legal issues relating to the administration of law, enforcement and personal injuries; and
- (e) through the attachment programme, the candidate will acquire skills on conduct of judicial review, medico-negligence and criminal cases, as well as experience on the operation of law in real life situations.

4. On the suitability of Dr. Choi to undertake the attachment programme, the considerations were as follows :

- (a) since 2004, Dr. Choi had been involved in tasks in relation to the review and amendment of public health law. She had been assigned by DH as the subject officer to undertake various legal assignments and law amendments and had achieved a good record of service in her medico-legal duties. In recent years, Dr. Choi had been closely involved handling a number of major public health incidents. She often had to liaise with DoJ in performing her duties and discharging the Department's responsibilities;
- (b) in the past few years, Dr. Choi had demonstrated initiatives and commitment to acquire legal knowledge which would facilitate discharging of her public health duties. She had acquired, out of her own resources, the legal academic qualifications, including the Juris Doctor (JD) Programme which she completed during 2006 – 2010 and the Postgraduate Certificate in Laws (PCLL) in 2012; and
- (c) Dr. Choi was one of the officers with potential to rise to the senior leadership of the Department.

FHB's Assessment

5. In reviewing the case, FHB notes that Dr. Choi was nominated by her then supervisor to undertake a 12-month full-time pupillage attachment programme and granted full-pay study leave during the same period in accordance with the relevant Civil Service Regulations. Noting that Dr. Choi has consistently put up a good performance and has been identified as an officer who has good potential to rise to the senior leadership position in the Department in due course and that she has pursued legal training through her own time and resources, FHB shares DH's view that the pupillage attachment programme would help widen her exposure and equip her with some practical legal experience which would help benefit her future career development in the Department and enhance the efficiency of the Department in performing its many public health regulatory and emergency response responsibilities. Having said that, FHB and DH have agreed that DH should consult FHB on cases of similar nature in future.

CSB's Assessment

6. Under Civil Service Regulation (CSR) 1001, full-pay study leave may be granted to officers nominated to undertake full-time training which is relevant to their duties, and the authority for granting full-pay study leave is Heads of Department/Grade (HoDs/Gs).

7. In nominating and granting approval for Dr. Choi to undertake her study leave, DH had given due consideration to various relevant factors set out in paragraphs 3 and 4, and had considered the case in accordance with the relevant policy and procedures.

8. While the decision in respect of Dr Choi's case was made in accordance with established procedures, CSB considers that the guidelines on granting approval for full-pay study leave should be strengthened in the light of public concern raised over this case. In particular, CSB will draw HoDs/Gs' attention to the following factors when granting full-pay study leave :

- (a) there should be a strong relevance of the training concerned with the work of the department/grade; and
- (b) the training should support goals and priorities of the department/grade.

CSB will also set out the circumstances under which HoDs/Gs should seek views from their respective policy bureau.

II. Previous Cases of Full-pay Study Leave for Civil Servants to Serve Pupilage

9. CSB has requested all B/Ds to report on cases of granting full-pay study leave for pupilage training in the past 10 years. Apart from DH's case as set out above, there have been no other cases.

Yours sincerely,



(Anthony Mak)

for Secretary for the Civil Service