



廉政公署

INDEPENDENT COMMISSION AGAINST CORRUPTION

廉政專員 Commissioner, ICAC

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Our Ref: ICAC ADM CR 1-55/23 (C) Pt 1

Your Ref: CB4/SC/12

By Hand

6 September 2013

Ms Anita SIT
Clerk to Select Committee
Legislative Council
Legislation Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms Sit,

**Select Committee to Inquire into Matters Relating to
Mr Timothy TONG's Duty Visits, Entertainment, and
Bestowing and Receipt of Gifts during his Tenure as
Commissioner of the Independent Commission Against Corruption**

In relation to the above matter and further to the letter sent to the Chairman of the Public Accounts Committee, Hon Mr Abraham SHEK Lai-him, SBS, JP, by me on 16 May 2013, the ICAC acknowledges the importance of the Major Areas of Study (MAS) identified at the appendix and, naturally, is willing to cooperate with the work of the Select Committee. However we think it is important to bring to your attention certain observations regarding these MAS. These observations in a substantial part echo the matters raised by the Director of Public Prosecutions, Mr Kevin Zervos SC in his letter dated 24 May 2013 to Mr SHEK.

In relation to the area under Part I (a) of the MAS the ICAC is ready to cooperate fully in this regard. Similarly, the ICAC will assist in the provision of the information requested at Part II paragraphs (a) and (b).

Our main concern relates to the MAS under paragraphs (b) to (e) of Part I. As you are aware I am currently leading a specially formed investigation unit to inquire into various matters concerning former ICAC Commissioner TONG. This inquiry, although not limited in scope, is currently focusing on establishing whether, and if so to what extent, certain identified conduct of former Commissioner TONG might amount to criminal misconduct, either under the Prevention of Bribery Ordinance (POBO), the common law offence of Misconduct in Public Office or any other offence that might be disclosed. The formation of this special investigation unit was announced on 14 May 2013.

I am sure you are aware it is usual practice for any law enforcement agency to decline to disclose specific details of its investigations especially while inquiries are in progress. This is in order to protect the integrity of the investigation as well as the reputation of suspected persons while facts are accurately established and evidence secured. In view of the nature of corruption, this is particularly necessary in relation to investigations undertaken by this Commission into alleged bribery and related corrupt practices. Premature disclosure of facts under investigation could adversely affect the current investigation in a number of ways. For instance, the impact on and perception of witnesses from whom statements have been obtained if details of their evidence are discussed, especially in open forum, prior to any decision as to whether a prosecution is warranted in the public interest. Similarly, such disclosure could discourage other potential witnesses from coming forward if there is a perception that their evidence will be publicly examined and commented on other than in the course of court proceedings. The areas covered by (b) to (e) of Part I of the MAS are factual matters that are under specific investigation by the special investigation unit.

The ICAC places much emphasis on the principle of sub judice, not just in relation to investigations which could be statutorily protected by section 30 of the POBO, but in response to the trust placed in the ICAC by members of the community who report corrupt practices to this Commission in the expectation that any subsequent investigation will be carried out fairly, impartially and in the strictest confidence. It should also be noted that there is a general principle that the use of statements and documents obtained in the course of a criminal investigation should only be used for that purpose.

Therefore whilst we understand that the Select Committee may see a need to examine the points raised at Part I (b) to (e) we equally believe that any examination or discussion on those matters should not encroach on the objectives and function of the special investigation unit, which as stated above is led personally by me.

Furthermore we are concerned that if the ICAC investigation establishes evidence upon which the Department of Justice recommends a prosecution in the public interest, it could impact on any subsequent trial in relation to issues of admissibility of evidence and fairness of the trial if evidence collected by the special investigation unit has been examined and discussed in other forums.

We would be most grateful if the Select Committee could bear our concerns in mind when preparing to undertake its study.

ICAC1

I hereby attach the ~~replies to items 1-6, 16-21, 30-35 and 44-48 requested under Part I (a) and Part II (a) and (b) of the Major Areas of Study~~ in both Chinese and English together with the softcopy for your further action.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Y. L. PEH', written in a cursive style.

(Simon Y L PEH)
Commissioner

Independent Commission Against Corruption