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Clerk to Panel on Public Service
(Attn.: Ms Shirley CHAN)
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

31 March 2014

Dear Ms CHAN,

I refer to your letter of 10 March 2014 to the Secretary for the Civil Service, together with a submission on “Calls for Permanent Earth Burial of Civil Servants Who Died on Duty at Gallant Garden” from the Junior Police Officers’ Association of the Hong Kong Police Force (the “Association”). Our response to the Association’s submission is set out below.

Due to limited land for earth burials, the Government has been encouraging cremations instead of traditional earth burials, and all burials in public cemeteries are subject to the six-year exhumation policy in accordance with an Executive Council decision in 1976. Since Gallant Garden is part of the Wo Hop Shek Public Cemetery, the prevailing six-year exhumation policy, which applies to all public cemeteries, is also applicable to earth burials in Gallant Garden. At the end of the six-year period, the remains of a deceased civil servant buried in Gallant Garden have to be exhumed for re-interment in permanent urn spaces, or in niches after cremation, inside the Garden.

We are deeply saddened every time a civil servant dies in the course of his/her duty, and we fully understand the grief of his/her family members. The Administration has actively responded to the requests of the staff sides of the disciplined services and the family members concerned for permanent earth burials in Gallant Garden for civil servants who died on duty. In September 2000, after seeking legal advice (set out in detail below), the Administration

recommended the Chief Executive-in-Council to amend the six-year exhumation policy by allowing permanent earth burials in Gallant Garden for those civil servants who died while performing exceptional bravery acts in discharging their duties. An exceptional bravery act is deemed to be one that is recognised by the posthumous award of a bravery medal granted by the Chief Executive on the recommendation of the Honours Committee. As regards those members of the public who died whilst performing exceptional acts of bravery and are posthumously awarded bravery medals, they are eligible for permanent earth burials in Tribute Garden.

According to legal advice, allowing permanent earth burials in public cemetery for the remains of the civil servants who have died on duty, but not for the remains of other persons who have died on duty is likely to constitute discrimination within the meaning of Article 22 of the Hong Kong Bill of Rights (HKBOR) and Article 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR, which applies to Hong Kong and remains in force by virtue of Article 39 of the Basic Law, prohibits and protects against any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Any differential treatment in respect of the remains of a deceased person on the basis of his employment status whilst alive is likely to constitute discrimination and contravene the above pieces of legislation. Since the exemption to the six-year exhumation policy explained above is applicable to both civil servants and members of the public, it is in compliance with the ICCPR and the HKBOR.

Regarding the Association's suggestion to designate Gallant Garden as a private cemetery, it must be noted that the Executive Council decided in 1976 that the Government would no longer permit new organisations to open private cemeteries. The private cemeteries as mentioned in the Association's submission, such as Chinese Permanent Cemeteries, Chiu Yuen Cemetery, Buddhist Cemetery, Persian Cemetery and the Catholic Cemetery in Happy Valley, were set up and managed by organisations as approved by the Government years ago. These organisations have a long history, and the circumstances regarding the supply of land and regulation on earth burials when these cemeteries were set up were different from today's circumstances. In addition, having regard to religious and traditional grounds, permanent earth burial spaces need to be provided in some of these private cemeteries. In fact, the Government has not granted any land to new organisations for setting up private cemeteries for decades, and has encouraged cremations instead of earth burials for better use of land resource. The Association's suggestion to designate Gallant Garden as a private cemetery does not comply with Government policy, and may also give rise to other organisations asking the

Government to provide land for permanent earth burials of their staff who died on duty.

The Association also urges the Government to abolish the arrangement of permanent earth burial at Gallant Garden being solely decided by whether a civil servant has been posthumously awarded a bravery medal by the Chief Executive. It calls for adoption of a new criterion of “having sacrificed one’s life for Hong Kong” in discharging duty. The so-called “sacrificing one’s life for Hong Kong” includes “a civil servant losing his/her life as a result of unexpected reasons while discharging operational duties, or any person (including members of the public and civil servants) courageously standing against danger and giving his/her life eventually”. We have reservation about the proposed criterion as the meaning of “sacrificing one’s life for Hong Kong” is rather abstract. For instance, regarding the Association’s proposal to define “having sacrificed one’s life for Hong Kong” as “a civil servant who loses his/her life as a result of unexpected reasons while discharging operational duties”, there may be many “unexpected reasons” that may lead to “losing one’s life” and would subject to interpretations. Moreover, to comply with the relevant legislation, the same criterion must also be applicable to all members of the public. According to statistics from the Labour Department, there were 191 and 196 cases of occupational fatalities in 2011 and 2012 respectively. If permission for permanent earth burial in Gallant Garden or Tribute Garden were to be given to all civil servants and members of the public who died while discharging operational duties, all burial spaces would soon be taken up. As for “courageously standing against danger and giving one’s life eventually”, it is very similar to the notion underlying the posthumous award of a bravery medal granted by the Chief Executive for bravery acts which is widely accepted by the public.

We consider that the present policy on earth burials at Gallant Garden strikes the right balance between giving due respect to civil servants who died on duty, while drawing distinction between civil servants who died on duty and those who died while performing exceptional acts of bravery, and recognising the scarcity of land in Hong Kong as well as complying with the law.

Yours sincerely,



(Ms Jenny WAI)
for the Secretary for the Civil Service

c.c. Hon Mrs Regina IP LAU Suk-ye, GBS, JP, Chairman of the Panel on Public Service, Legislative Council