

**A Note for the 10th Bills Committee on the
Dangerous Drugs, ICAC and Police Force (Amendment) Bill 1999
to be held at 12:45 p.m. on 28 April 2000**

**Justifications and Rationale for
ICAC officers to take non-intimate samples**

PURPOSE

The purpose of this note is to explain to members why ICAC officers need the power to take non-intimate samples.

BACKGROUND

2. At the 3rd Bills Committee held on 28 February 2000, members asked for further information on how the power to take non-intimate samples may assist the ICAC in its investigation of corruption offences and other related crime.

3. Members also wished to know the procedures that the ICAC proposes to put in place to safeguard the exercise of this power, if granted, against possible abuse.

CORRUPTION OFFENCES

4. As corruption is a secretive crime, very often there is no direct

evidence of the corrupt transaction. Where direct evidence is available, it will invariably be the oral testimony of either the offeror or the acceptor against the other party. As an accomplice, the evidence of the offeror or the acceptor is tainted and therefore corroborative evidence is essential for a court to safely convict a defendant.

5. In this regard, DNA identification obtained from non-intimate samples will provide an important source of corroborative evidence for ICAC's investigation of corruption offences, particularly in the following scenarios :

- (a) Exchange of bribe money - Where there is an exchange of bribe money between a witness and the suspect, DNA evidence in terms of the suspect's perspiration or saliva traced from the money or the envelope containing the money could help prove the suspect's connection with the payment. There have been 18 such occasions in the past 2 years, where the ICAC might have been able to take advantage of such evidence if it had the power to collect non-intimate samples.
- (b) Ambush situations - In the past 2 years, the ICAC has successfully laid 15 ambushes to arrest suspects red-handed in corrupt transactions. There were 2 instances where the suspect put up a struggle in an apparent attempt to flee the scene. Any non-intimate sample e.g. hair, left by the suspect at the scene could have proven his presence at the material time.

- (c) Search and seizure of exhibits - During the course of investigations, ICAC officers often carry out searches of premises under judicial warrants for evidence. A suspect's DNA traces found in a premises or on a document or article could prove his connection to the premises, document or article.

OTHER RELATED CRIMINAL OFFENCES

6. Under Section 10(2) of the ICAC Ordinance, the ICAC is empowered to investigate other criminal offences which are connected with or facilitated by corruption. This was intended by the legislature to cater for, among other things, situations where, for instance, law enforcement officers are bribed to protect drug trafficking or illegal gambling, or to cover-up illegal immigration or fraudulent passport offences. As an integral part of the corruption case, it is necessary for the ICAC to investigate the related criminal offences. In investigating such related offences, the ICAC requires powers similar to the police.

7. One typical example is corruption involving protection of drug trafficking activities. In the past 5 years, ICAC has prosecuted 19 defendants for illegal drug manufacturing and trafficking offences. Whilst police and customs officers have existing power to draw certain non-intimate samples from suspects under the Dangerous Drugs Ordinance, the ICAC does not have such power and has to call for police assistance when necessary.

UNDERCOVER OPERATIONS

8. In recent years, the ICAC has adopted a proactive approach in a bid to root out corruption, by deploying more undercover operations. Such operations involve ICAC undercover agents purchasing drug samples, forged documents and other forms of samples from criminals allegedly protected by corrupt government officers. Often, the criminals are allowed to leave the scene in order that further evidence could be gathered. DNA evidence linking the suspects to the samples would be important corroborative evidence in any subsequent trial.

OPERATIONAL INDEPENDENCE

9. The ICAC strongly believes that its investigations will benefit from DNA evidence by rendering the investigations more cost-effective and the evidence more reliable. In the absence of DNA evidence it may be necessary to conduct further enquiries and interview other witnesses to establish the case.

10. In the event that the ICAC is not given the power, it would be obliged to seek police assistance where necessary. However, this arrangement will be most unsatisfactory as it undermines the operational independence of the ICAC. Public support is a critical factor in determining ICAC's success and its operational independence plays an equally critical role in securing that support.

SAFEGUARD MECHANISM

11. Should the ICAC be granted the power to take non-intimate samples, besides the statutory conditions in the Bill (i.e. the proposed sections 10E and 10F of the Independent Commission Against Corruption Ordinance), the ICAC will put in place the following procedures to ensure that the power will not be abused :

- (a) A non-intimate sample will only be obtained from a person under arrest and detention, as stipulated in the proposed Bill. It should be noted that under ICAC legislation, only officers in the rank of Senior Commission Against Corruption Officer, i.e. Principal Investigator - PI (equivalent in rank to Police Senior Superintendent), or above can authorise detention of suspects.
- (b) When an investigating officer considers it necessary to take a non-intimate sample from a detainee, he will submit a written report with full justification through his Chief Investigator to his PI for approval.
- (c) If the PI decides that there are sufficient grounds to take the sample, he will sign the authorization.
- (d) Where there is insufficient time to prepare the written justification before hand because of operational reasons, a case conference will be held to seek verbal approval of the PI.

- (e) A written report will be submitted as soon as practicable recording the justification and the decision of the PI.

Security Bureau

17 April 2000

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