

立法會

Legislative Council

LC Paper No. LS44/03-04

Paper for the Special Joint Meeting of the Housing Panel and the Planning, Lands and Works Panel on 17 February 2004

Powers of the Legislative Council to require the Administration to produce records and documents

The Chairman of the Housing Panel has requested a paper to brief members of the joint meeting on the power of the Legislative Council to require the Administration to produce records and documents. This paper seeks to provide general information on the powers of the Legislative Council to require the Administration to produce records and documents. In relation to the production of specific records or documents, each case must be considered on its own facts and circumstances. In appropriate situation, the provisions of the Basic Law may also be relevant.

2. Under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (LCPPO)¹ the Legislative Council is empowered to order any person to attend before it to give evidence or to produce any paper, book, record or document in the possession or under the control of such person. The same power may be exercised by a Standing Committee (the Finance Committee, Public Accounts Committee or Committee on Members' Interest²). However, if any other committee of the Council wishes to exercise the power, it must first be authorised by the Council by resolution in respect of any matter or question specified in the resolution.

3. The power to order production of documents is, however, subject to limitations under sections 13, 14 and 16 of LCPPO. Section 13 of LCPPO provides that where any person lawfully ordered to attend to produce any paper,

¹ The sections of LCPPO discussed in this paper are appended as Annex for Members' easy reference.

² Each of the standing committees has specific powers under the Rules of Procedure to invite the production of records and documents. See Rules 71(12), 72(8) and 73(6).

book, record or document refuses to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the production may be, or if such paper, book, record or document is not relevant shall be, excused. In the case of the Council the determination shall be made by the President of the Council. In the case of a Committee, the refusal shall be reported to the President for determination. When a claim under the section is raised, the President of the Council shall determine the claim in accordance with the usage and practice of the Council³.

4. Section 14 states further that such a witness shall have the same right or privilege as before a court of law. These are the privilege against self-incrimination, legal professional privilege and public interest immunity. In respect of a claim of public interest immunity, the Council has passed a resolution setting out the usage and practice in regard to the determination of such claim⁴. Any claim of the privilege against self-incrimination is subject to the limitations contained in section 16 of LCPPO. The effect of the section is that unless excused under section 13, a person cannot on the ground of self-incrimination be excused from answering any relevant question or producing such paper, book, record or document.

5. It has been suggested that if the Administration is bound by an agreement to keep the contents of certain documents confidential, it should not be required to produce such documents in breach of an express obligation. This argument is of doubtful validity. There does not seem to be any judicial recognition that a private obligation of confidentiality is by itself either an absolute ground for non-disclosure or adequate for an absolute claim of public interest immunity⁵.

Prepared by

Legal Service Division
Legislative Council Secretariat
16 February 2004

³ See section 15 of LCPPO.

⁴ The resolution of the Legislative Council on 25 May 1994 (Hong Kong Hansard Session 1993/94 Vol. III p. 3992-3994) as amended on 20 November 1996 and further amended on 16 April 1997. The current version is reproduced as Appendix V to the House Rules.

⁵ *Marwood Commercial Inc v. Konzeny & others* [2004] All ER (D)121 (QBD); *Hamilton v. Naviede* [1994] 3 All ER 814 (HL); *Three Rivers District Council & others v. Bank of England* (No. 6) [2002] All ER (D) 130 (QBD).

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Section of Enactment



Chapter:	382	Title:	LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE	Gazette Number:	
Section:	9	Heading:	Power to order attendance of witnesses	Version Date:	30/06/1997

PART III

EVIDENCE

(1) The Council or a standing committee thereof may, subject to sections 13 and 14, order any person to attend before the Council or before such committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

(2) The powers conferred by subsection (1) on a standing committee may be exercised by any other committee which is specially authorized by a resolution of the Council to exercise such powers in respect of any matter or question specified in the resolution.

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Section of Enactment



Chapter:	382	Title:	LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE	Gazette Number:	
Section:	13	Heading:	Objection to answer question or produce papers	Version Date:	30/06/1997

(1) Subject to section 14, where any person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Council refuses to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the President may (and shall if such question or the production of such paper, book, record or document is not relevant) excuse the answering of such question or the production of such paper, book, record or document, or may order the answering or production thereof.

(2) Subject to section 14, where any person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before any committee refuses to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the chairman of the committee may report such refusal to the President with the reasons therefor; and the President may (and shall if such question or the production of such paper, book, record or document is not relevant) thereupon excuse the answering of such question or the production of such paper, book, record or document or may order the answering or production thereof.

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Chapter:	382	Title:	LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE	Gazette Number:	71 of 2000
Section:	14	Heading:	Privileges of witnesses	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 71 of 2000 s. 3

(1) Every person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Council or a committee shall, subject to section 16, be entitled, in respect of such evidence or the disclosure of any communication or the production of any such paper, book, record or document, to the same right or privilege as before a court of law.

(2) No person, other than a public officer acting with the consent of the Chief Executive, shall before the Council or a committee- (Amended 71 of 2000 s. 3)

- (a) give any evidence; or
- (b) produce any paper, book, record or document,

relating to the correspondence concerning-

- (i) any naval, military or air force matter or of any other matter relating to the security of Hong Kong; or
- (ii) the responsibilities of the Central People's Government otherwise than with respect to the administration of Hong Kong by its Government, (Amended 71 of 2000 s. 3)

nor shall secondary evidence be received by or produced before the Council or a committee of the contents of any such paper, book, record or document.

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Chapter:	382	Title:	LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE	Gazette Number:	
Section:	15	Heading:	Determination of questions relating to evidence and production of documents before the Council or committee	Version Date:	30/06/1997

Where at any time any question arises in the Council or a committee in regard to-

- (a) the right or power of the Council or a committee to hear, admit or receive oral evidence; or
- (b) the right or power of the Council or a committee to peruse or examine any paper, book, record or document or to order, direct or call upon any person to produce any paper, book, record or document before the Council or committee; or
- (c) the right or privilege of any person (including a member of the Council or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or document before the Council or committee,

that question may, subject to this Ordinance and except in so far as express provision is made therein for the determination of that question, be determined in accordance with the usage and practice of the Council which applied prior to the commencement of this Ordinance or applies thereafter by virtue of any resolution of the Council.

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Chapter:	382	Title:	LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE	Gazette Number:	
Section:	16	Heading:	Limitation on privilege against incrimination of self or spouse	Version Date:	30/06/1997

(1) In any proceedings in the Council or a committee, any person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Council or committee shall not, unless excused under section 13, be excused-

- (a) from answering any relevant question put to that person in the proceedings or producing any such paper, book, record or document; or
- (b) from complying with any order made in or in connection with the proceedings,

on the ground that to do so may tend to expose that person, or the wife or husband of that person, to proceedings for an offence or for the recovery of a penalty.

(2) Subject to subsection (3), no statement or admission made by a person-

- (a) in answering a question put to him in any proceedings to which subsection (1) applies; or
- (b) in complying with any order made in any such proceedings,

shall, in proceedings for any offence or for the recovery of any penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

(3) Nothing in subsection (2) shall render any statement or admission made by a person as there mentioned inadmissible in evidence against that person in proceedings for an offence under section 32 (which relates to false statements on oath made otherwise than in a judicial proceeding) or section 36 (which relates to false statutory declarations and other false statements without oath) of the Crimes Ordinance (Cap 200).

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