

**For information  
on 10 May 2005**

**Legislative Council Panel on Security  
Subcommittee on Review of Existing Statutory Provisions  
on Search and Seizure of Journalistic Material**

**Administration's response to issues raised by  
Members at the Subcommittee meeting on 8 March 2005**

**Purpose**

This paper sets out the Administration's response to the list of issues raised by Members at the Subcommittee meeting on 8 March 2005.

**The Issues**

2. In her letter of 14 March 2005, the Clerk to the Subcommittee has set out the following list of issues raised by Members –

*Issue no. 1*

To consider providing in legislation “a real risk that journalistic material may be hidden or destroyed” put forward in the judgment of Hartmann, J as the test for the issue of warrants to search journalistic material; if not, to explain the justifications for not doing so.

*Issue no. 2*

To research into court cases on application for Mareva Injunction and provide a summary of the cases highlighting how the test of “real risk” was applied.

*Issue no. 3*

To explain the criteria adopted for satisfying the test of “seriously prejudice the investigation” in section 85(5)(c) of the Interpretation and General Clauses Ordinance (Cap.1).

*Issue no. 4*

Referring to section 85(7) of Cap.1, to clarify whether a judge is

obliged to consider “public interest” in determining whether an application for immediate access to the material seized should be allowed.

*Issue no. 5*

To clarify whether section 89(2) of Cap.1 also applies to section 85(6).

*Issue no. 6*

To provide court cases in common law jurisdictions in relation to the definition of “journalistic material”.

*Issue no. 7*

To provide the Police’s guidelines on search and seizure of journalistic material, and advise on any inadequacies in the guidelines in terms of enforcement.

## **Administration’s Response**

*The “real risk” criterion (issue no. 1)*

3. In Hartmann J’s judgment he says “[the] risk that journalistic material may be hidden or destroyed must be a ‘real risk’, which is the phrase I prefer, or, as the court accepted in *R v. Leeds Crown Court, ex parte Switalski* (unreported) CO/1322/89-Lexis Transport, should amount to a ‘substantial probability’”. We have the following observations on these remarks –

- (a) As pointed out in the Court of Appeal’s judgment, the phrase “substantial probability” was used by the prosecution of the Switalski case describing the likelihood of loss or destruction of material in that particular case, and the judge accepted it as such: a statement of fact, not a test in law.
- (b) In that case the judge in fact reached his decision taking into account another criterion. The judge noted that the judge who had issued the warrants “would undoubtedly have been satisfied” in respect of another of the possible criteria under the UK legislation for the approval of a warrant authorising a constable to enter and search the premises, “that service of notice of an

*application for an order under paragraph 4 may seriously prejudice the investigation*". In the end the judge dismissed the application for judicial review.

In other words, in this UK case cited by Hartmann J the judge did not use a "real risk" criterion, and instead used the criterion of "may seriously prejudice the investigation", which of course is the same criterion used in our legislation.

4. The concept of "real risk" has not, as far as we are aware, been used in similar cases in the UK or Hong Kong. By contrast the concept of "may seriously prejudice the investigation" is used in both Hong Kong and the UK. As the Court of Appeal noted when commenting on the wording "real risk", "*a judge will be perfectly able to test the evidence before him against these words ["may seriously prejudice the investigation"] without the need for additional words which, if anything, may confuse*".

5. We concur with the Court of Appeal, and we do not see a need to qualify "may seriously prejudice the investigation". The phrase already conveys a test which is clear as to the nature and level of satisfaction that a judge must fulfil. The judge must be satisfied that the issuance of a production order may prejudice the investigation to a serious degree. This will entirely depend upon the facts and circumstances of the case and will be for a judge to address when dealing with an application under section 85.

6. More important, the intention behind the "may seriously prejudice investigation" criterion in our legislation is that the judge should take into account the many ways, of which the loss or destruction of materials is only one, an investigation may be seriously prejudiced by an application for a production order. As noted by the Court of Appeal (CACV/245/2004), had an application for a production order been made, "*those very people would or might well then have been alerted by the newspapers or journalists, perhaps quite innocently, to the fact that the authorities were onto them*", or "*the Respondents would also have been alerted to the state of the investigation with all its details, with the added risk that this information might find its way to the suspected perpetrators of the alleged conspiracy*". (Please also see paragraphs 8 to 9 below). It would, therefore, be inappropriate to limit the current test of "may seriously prejudice the investigation", which caters for a range of contingencies, to just the risk of the material being hidden or destroyed.

*Mareva Injunction (issue no. 2)*

7. A Mareva Injunction is a kind of interlocutory injunction which could be granted by the court in civil proceedings to restrain the defendant from disposing of, or even merely dealing with, his assets, being assets which after judgment may be attached to satisfy a money judgment. One of the requirements for the grant of a Mareva Injunction is that “*there is a real risk of dissipation of assets, or removal of assets from the jurisdiction, which would render the plaintiff’s judgment of no effect*” (*HK Civil Procedure 2004*, at para 29/1/56). The context in which the “real risk” test applies in relation to Mareva Injunction is entirely different from the criminal context of a production order or search warrant concerned in Part XII of Cap. 1. We therefore consider that comparison of a production order or search warrant with a Mareva Injunction is not an apposite one. They are entirely different in nature, purpose and the context of the proceedings in which they arise.

*“May seriously prejudice the investigation” (issue no. 3)*

8. Following on from paragraphs 3 to 6 above, situations where the serving of notice of an application for a production order may seriously prejudice the investigation vary from case to case. It would be impracticable to list them out exhaustively. Rather, each case has to be considered on its own merits. Nonetheless, **by way of example**, the following description illustrates some of the factors that may need to be taken into account **by the judge**. The papers for a production order will contain the nature of the investigation and certain information about it which would be necessary to obtain the order. The papers are required to be served on an affected party and with notice. This means that in certain circumstances a number of people may have sight of the papers. Depending on the nature and stage of the investigation and the persons likely to have sight of the papers, the investigation may be seriously undermined. This may result in evidence or witnesses being interfered with or persons being tipped off. For instance, an affected party as a suspect (that is, he/she is alleged to have committed a criminal offence) or closely associated with a suspect could be the basis for showing serious prejudice to the investigation. The same applies to an affected party who has dealings or an association with a suspect and who may innocently or unwittingly inform the suspect of an investigation. An investigation may be seriously prejudiced by a person interfering with evidence (falsifies, conceals, tampers with, destroys or otherwise disposes of) or by a person providing misinformation or false information in relation to the investigation. Tipping off may undermine the investigation by a suspect

absconding or by a suspect interfering with evidence or potential witnesses.

9. At the end of the day, whether a particular situation may seriously prejudice the investigation is a matter for the judge to decide, after taking into consideration all the relevant facts and circumstances of the case.

*Public interest (issue nos. 4 and 5)*

10. The Court of Appeal has made it clear that a judge is obliged to consider “public interest” as required under section 89(2) and that includes situations covered by sections 85(6) and (7)<sup>1</sup>. We agree with the Court of Appeal’s comments.

*Definition of “journalistic material” (issue no. 6)*

11. We are not aware of any case where the definition of journalistic material in the present context has been examined.

*Police guidelines on search and seizure of journalistic material (issue no. 7)*

12. The guidelines of the Police on search and seizure of journalistic material under Part XII of Cap. 1 are at the **Annex** for Members’ reference. As these guidelines are modelled on the provisions under Part XII of Cap. 1 and Order 118 of the Rules of the High Court, they should be read together with the relevant legislative provisions and rules.

13. There have been very few occasions when the Police have had to resort to the provisions of Part XII of Cap. 1. So far, the Police have not identified any problem with the guidelines.

**Security Bureau**  
**May 2005**

---

<sup>1</sup> See CACV 245/2004 at pp.52Q-53B

## Extracted from Chapter 44, Force Procedures Manual

\* \* \*

The Interpretation and General Clauses Ordinance, Cap.1 (the Ordinance), was amended in August 1996 to provide legal safeguards concerning the search for and seizure of **journalistic material**. Since then, the power to obtain a search warrant in relation to journalistic material is governed by Part XII of the Ordinance.

2. The following paragraphs set out the legislation and procedures to be adopted for accessing and obtaining journalistic material.

### **Meaning of “journalistic material”**

3. Under section 82 of the Ordinance, “journalistic material” means any material acquired or created for the purposes of journalism. Material is only journalistic material if it is in the possession of a person who acquired or created it for the purposes of journalism. A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

### **Access to Journalistic Material**

4. The Ordinance provides two means to gain access to and obtain journalistic material:

(1) Section 84 of the Ordinance – an application for a production order made inter partes

5. Where access to known or suspected journalistic material is required other than by the execution of a search warrant, a Police officer may apply to a judge of the Court of First Instance or District Court for an order under subsection 84(2) that the person who appears to be in possession of journalistic material specified in the application shall –

- (a) produce it to the Applicant to take away; or
- (b) give the Applicant access to it,

not later than the end of the period of 7 days from the date of the order or the end of such longer period as the order may specify. Any person who without reasonable cause fails to comply with a production order commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year: subsection 84(5).

6. The judge must be satisfied that the following conditions are fulfilled before making such an order -

- (a) there are reasonable grounds for believing –
  - (i) that an arrestable offence has been committed (an arrestable offence is defined under section 3 of the Ordinance as “an offence for which the sentence is fixed by law or for which a person may under or by virtue of any law be sentenced to imprisonment for a term exceeding 12 months, and an attempt to commit any such offence”);
  - (ii) that there is material which consists of or includes material known or suspected to be journalistic material on premises specified in the application;
  - (iii) that the material is likely to be -
    - (A) of substantial value to the investigation of the arrestable offence; or
    - (B) relevant evidence in proceedings for the arrestable offence;
- (b) but for section 83 the Applicant would be or could have been authorized under the provision mentioned in subsection 84(1) (a person on whom there is or may be conferred under a provision in any Ordinance, the power to enter any premises and to search the premises or any person found on the premises or to seize any material) to enter onto the premises specified in the application and to search the premises or a person found on the premises or to seize the material specified in the application;
- (c) other methods of obtaining the material -

- (i) have been tried and failed; or
  - (ii) have not been tried because they were unlikely to succeed or would be likely to seriously prejudice the investigation; and
- (d) there are reasonable grounds for believing that it is in the public interest that an order should be granted, having regard to -
- (i) the benefit likely to accrue to the investigation; and
  - (ii) the circumstances under which a person in possession of the material holds it.

7. An application for an order under section 84 shall be made by originating summons in the expedited form supported by affidavit and shall be made inter partes, that is, with both the Applicant and the Respondent present in open court.

8. The affidavit must contain the evidence relied on to show that the conditions set out in paragraph 6 above have been fulfilled.

9. Unless the court otherwise directs, the affidavit may contain statements of information or belief with the sources and grounds of such information or belief.

10. The forms on which to apply for a production order are attached as Annexures [I, II and III].

11. All applications should be routed through the Prosecutions Division of the Department of Justice and Government Counsel will be assigned to represent the Applicant. If the case has been the subject of legal advice, completed draft forms should be forwarded to the advising counsel concerned. If it is a fresh case, completed draft forms (with a covering report, etc.) should be forwarded to the Senior Assistant Director of Public Prosecutions/Management and Training for allocation of counsel. In view of the nature of such applications, case officers are advised to make an appointment to see counsel in person.

### **Access to Computer Data**



12. Where access is required to journalistic material consisting of information contained in a computer, the Respondent is required -

- (a) to produce the material in a form in which it can be taken away and in which it is visible and legible; or
- (b) to give the Applicant access to the material in a form in which it is visible and legible.

**Notice to the Respondent regarding the Production Order**

13. The Applicant for a production order is required to serve notice of his application to the Respondent by service of a copy of the originating summons and affidavit not less than 3 clear days before the date fixed for the hearing of the application.

14. Notice of an application for an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter.

15. Such a notice may be served -

- (a) on a body corporate, by serving it on a person who is an officer of the body within the meaning of section 2(1) of the Companies Ordinance, Cap. 32; and
- (b) on a partnership, by serving it on one of the partners.

For the purposes of this Ordinance, the proper address of a person -

- (i) in the case of an officer of a body corporate, shall be that of the registered or principal office of that body;
- (ii) in the case of a partner of a firm, shall be that of the principal office of the firm; and
- (iii) in any other case, shall be the last known address of the person to be served.

16. Where notice of an application for an order under the Ordinance has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except -

- (a) with the leave of a judge; or
- (b) with the written permission of the Applicant, until -
  - (i) the application is dismissed or abandoned; or
  - (ii) he has complied with an order made on the application.

17. Any person who knowingly contravenes the above prohibitions commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year: subsection 88(6). Note that a production order does not authorise a Police officer to enter premises. Such a power is conferred only by search warrant.

### **Police Retention of Seized Material**

18. Material produced under order shall be retained only for as long as is necessary in the circumstances. It may be retained, amongst other purposes -

- (a) for use as evidence in proceedings for an offence;
- (b) for forensic examination or for other investigation in connection with an offence; or
- (c) where there are reasonable grounds for believing that it has been stolen or unlawfully obtained, in order to establish its lawful owner.

19. Where material is retained, the person who produced it in accordance with an order shall be given a receipt as soon as reasonably practicable, and must on request be provided with a list or description of the material so retained within a reasonable time.

20. A person who has produced material in accordance with an order, or his representative, must be allowed supervised access to the material to examine it or have it photographed or copied or must be provided with a photograph or copy. The person is normally entitled to this within a reasonable time of any request and at his own expense. However, this does not apply if a supervisory officer has reasonable grounds for believing that this is likely to prejudice the investigation of an offence or any criminal proceedings. In that case, a record of the grounds must be made and supplied to the person who produced the material or his representative.

(2) Section 85 of the Ordinance – an application for a search warrant made ex parte

21. Any Police officer may apply to a judge of the Court of First Instance or District Court for the issue of a search warrant under subsection 85(3) authorizing him to enter premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material. However, the application must be personally approved by a Police Officer at or above the rank of Chief Superintendent of Police: subsection 85(2).

22. A judge may issue a search warrant if he is satisfied that -

(1)(a) there are reasonable grounds for believing -

- (i) that an arrestable offence has been committed;
- (ii) that there is material which consists of or includes material known or suspected to be journalistic material on premises specified in the application;
- (iii) that the material is likely to be -
  - (A) of substantial value to the investigation of the arrestable offence; or
  - (B) relevant evidence in proceedings for the arrestable offence;

(b) other methods of obtaining the material -

- (i) have been tried and failed; or
  - (ii) have not been tried because they were unlikely to succeed or would be likely to seriously prejudice the investigation; and
- (c) there are reasonable grounds for believing that it is in the public interest that a search warrant should be issued, having regard to the benefit likely to accrue to the investigation;

*AND*

(d) that one of the following conditions is also fulfilled -

- (i) it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;
- (ii) while it might be practicable to communicate with a person entitled to grant entry to the premises, it is not practicable to communicate with any person entitled to grant access to the material;
- (iii) service of notice of an application for a production order under Section 84 may seriously prejudice the investigation.

OR

- (2) that a production order under section 84 relating to the material has not been complied with.

23. The warrant when issued authorises only the Applicant for such (not each and all of the Police officers of Hong Kong) to enter onto the premises and to search the premises and any person found on the premises and to seize any material. The Applicant can, however, be accompanied by other Police officers, not named in the warrant, to assist in the search.

24. An application for a warrant under section 85 shall be made ex parte by originating summons supported by affidavit. The affidavit shall -

- (a) state which of the grounds set out in section 85 (paragraph 22) is relied on;
- (b) contain the evidence relied on in support of those grounds; and
- (c) specify the name, rank, title and address of the officer (CSP or above) who has approved the making of the application.

25. Unless the court otherwise directs, the affidavit may contain statements of information or belief with the sources and grounds of such information or belief. All applications under section 85 shall be heard in chambers.

26. The forms on which to apply for a search warrant are attached as Annexures [IV, V and VI].

27. All applications should be routed through the Prosecutions Division of the Department of Justice for scrutiny by Government Counsel. If the case has been the subject of legal advice, completed draft forms should be forwarded to the advising Counsel concerned. If it is a fresh case, completed draft forms (with a covering report, etc.) should be forwarded to Senior Assistant Director of Public Prosecutions/Management and Training for allocation of counsel. In view of the nature of such applications, case officers are advised to make an appointment to see counsel in person.

### **Execution of Warrant**

28. Any Police officer empowered by a warrant issued under section 85 may -

- (a) use such force as may be necessary to enter the premises specified in the warrant;
- (b) on the premises, seize such material, including journalistic material, as may be found; and
- (c) detain for a reasonable period any person found on the premises who may have such material in his possession or under his control and who if not so detained may prejudice the purpose of the search.

29. The terms of the warrant will either permit immediate access to the material seized where the judge is satisfied that there may be serious prejudice to the investigation if the Applicant is not so permitted or require that the material be sealed upon seizure. It is therefore incumbent upon the Police officer to justify in his application why he requires immediate access to seized material if this is indeed the case.

30. If immediate access to material seized is not required or not granted by the judge issuing the warrant, the Police officer who seizes journalistic material pursuant to the warrant shall hold the sealed material until otherwise authorized or required under section 87 which is detailed in paragraphs 33-38 herein. This type of warrant when issued shall -

- (a) specify the name of the Applicant and the court issuing the warrant;

- (b) contain a statement setting out -
  - (i) the terms of the warrant applying;
  - (ii) the rights conferred under section 87 to apply within a specified period for the immediate return of journalistic material seized under the warrant, and the consequences provided for in that section of not so applying.

31. A Police officer executing or seeking to execute this type of warrant shall -

- (a) where the occupier of the premises being entered is present, supply the occupier with a copy of the warrant;
- (b) where the occupier of the premises is not present but some other person who appears to be in charge of the premises is present, supply that person with a copy of the warrant; or
- (c) if there is no person present who appears to be in charge of the premises, leave a copy of the warrant in a prominent place on the premises.

32. Where, pursuant to such a warrant, material is seized which is required to be sealed and held, the Police officer executing the warrant shall make an endorsement on the warrant setting out details of such material and shall return the warrant to the court from which it was issued.

### **Procedure in relation to Sealed Material - Section 87 of the Ordinance**

33. Where the terms of a warrant issued do not provide for immediate access to journalistic material seized, a person from whom such material has been seized or a person claiming to be the owner of such material may within 3 days of such seizure apply to the court from which the warrant was issued for an order returning the material to him/her.

34. On an application for such an order, unless the judge is satisfied that it would be in the public interest that the material be made use of for the purposes of the investigation, he shall order that the material be immediately returned to the person from whom it was seized.

35. An application for a return order shall be made by summons which

may be supported by affidavit. The summons shall set out the grounds on which the Applicant relies.

36. A copy of the summons and affidavit (if any) shall be served on the Police officer (the applicant) named in the warrant by delivering it to him not less than 3 clear days before the date fixed for the hearing of the summons.

37. In determining a return order application, a judge may require the Police officer who seized the material to produce it to him/her for examination. A return order application shall be made inter parties in open court.

38. Where the judge determines not to grant a return order or where no application has been made within the 3 days period, the material may be unsealed and Police access afforded.

#### **Seizure of Journalistic Material where Legal Privilege may apply**

39. Police officers executing a search warrant to seize journalistic material must be cognisant of the fact that in certain circumstances legal privilege may apply, for example where the premises of a legal practitioner is to be entered. Whenever a Police officer executing a warrant considers that a valid claim of legal privilege exists, he shall :-

- (a) not examine the articles about which legal privilege is claimed;
- (b) nonetheless seize those articles and seal them in an exhibit envelope or other suitable container;
- (c) sign his name across the seal and request the person claiming privilege to do likewise;
- (d) deposit the sealed articles in the Formation Property Office pending later determination of the claim of privilege in court; and
- (e) seek legal advice on the matter at the earliest opportunity.

\* \* \*

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ..... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant) for a production order pursuant  
to section 84 of the Interpretation and General  
Clauses Ordinance, Cap. 1

Between

and

Applicant

Respondent

\_\_\_\_\_  
INFORMATION OF (Name of Officer)  
\_\_\_\_\_

I, (name and rank of Police officer), of the Hong Kong Police Force, make oath/do solemnly,  
sincerely and truly affirm and say -

1. I am a Police officer attached to (name of unit) and am thereby authorised pursuant to  
section 50(7) of the Police Force Ordinance, Cap. 232 to apply for a search warrant under  
section 50(7) of that Ordinance in connection with the investigation of (specify offences  
believed to have been committed) described hereunder. I swear/affirm this Information in  
support of an application for a Production Order, pursuant to section 84 of the Interpretation and  
General Clauses Ordinance, Cap. 1 ("the Ordinance"), in relation to the journalistic material  
referred to below. The facts and matters deposed to are within my personal knowledge or are  
based upon information supplied to me by other Police officers who are involved in this  
investigation and which I verily believe to be true.

Section 84(3)(a)

2. The following arrestable offence(s) are under investigation -

(Narrative of case. It must contain sufficient information relevant to the conditions in  
section 84(3)(a) to satisfy the judge of the Court of First Instance or District Court that  
these are met before he will grant a production order.)



3. Based on the matters set out in paragraph 2 above and for the reasons set out below I believe that -

- (a) (name of person committing offence) has committed an arrestable offence(s) (explain);
- (b) the following journalistic material is in Hong Kong and is in the possession of the following person(s) -

(details of the known or suspected journalistic material, the person having possession and its location.)

- (c) the material is likely to be  
(of substantial value to the investigation of the arrestable offence) or  
(relevant evidence in proceedings for the arrestable offence) (details)

Section 84(3)(b)

4. But for section 83 of the Ordinance, I would have been authorised pursuant to section 50(7) of the Police Force Ordinance, Cap. 232 to apply for a search warrant under section 50(7) of that Ordinance to enter onto the premises specified above, to search the premises or any person found on the premises and to seize the journalistic material referred to in paragraph 3(b) above.

Section 84(3)(c)

5. Other methods of obtaining the material referred to in paragraph 3(b) above have been tried and failed (set out details, probably relating to requests for the voluntary production of the material).

OR

6. Other methods of obtaining the material (specify alternative methods) referred to in paragraph 3(b) above have not been tried because I believe that -

- (a) it is not likely that they would have succeeded (explain), or
- (b) to use these methods would have been likely to seriously prejudice the investigation (explain).

Section 84(3)(d)

7. I believe that it is in the public interest having regard to -

- (i) the benefit likely to accrue to the investigation if the material is obtained namely, (explain); and
- (ii) the circumstances under which the person in possession of the material holds it namely, (details),

that the material should be produced (or that access to it should be given).

[The application for the production order will be inter-partes and in open court. If you wish to apply in Chambers, that is, in private, then in the Information you must ask the court for a direction to this effect and set out the reasons why.]

Sworn/Affirmed at the ..... )  
Hong Kong ..... )  
this ..... day of ..... 20 ... )

.....  
Name of Officer

Before me,

.....  
A Commissioner for Oaths  
Judiciary

\* Delete as appropriate.

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant) for a production order pursuant  
to section 84 of the Interpretation and General  
Clauses Ordinance, Cap. 1

Between . . . . . Applicant  
And Respondent

---

INFORMATION OF (Name of Officer)

---

Sworn/Affirmed this ..... day of ..... 20 ...  
Filed this ..... day of ..... 20...

Hong Kong Police Force  
Ref.:  
Tel.:

Department of Justice  
Counsel:  
Tel:

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ..... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant) for a production order pursuant  
to section 84 of the Interpretation and General  
Clauses Ordinance, Cap. 1

Between

and

Applicant

Respondent

---

ORIGINATING SUMMONS

---

Let all parties concerned attend before the Honourable Mr. Justice ..... at the  
High Court, Hong Kong on ..... day, the ..... day of ..... 20 ..., at .....  
o'clock in the fore/after-noon, (or, if no application has yet been made for a day to be fixed, on  
a day to be fixed) on the hearing of an application by the Applicant that .....

And let the Respondent within (14 days) after service of this summons on him counting  
the day of service, return the accompanying Acknowledgment of Service to the Registry of the  
High Court.

Dated the ..... day of ..... 20 ...

.....  
Registrar

Note : This summons may not be served later than 12 calendar months beginning with  
the above date unless renewed by order of the Court.

This summons was taken out by the said Applicant whose address  
is .....

.....  
Applicant

Note : If a Respondent does not attend personally or is not represented by his counsel or  
solicitor at the time and place above-mentioned such order will be made as the Court may think  
just and expedient

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant) for a production order pursuant  
to section 84 of the Interpretation and General  
Clauses Ordinance, Cap. 1

Between

And

Applicant

Respondent

---

ORIGINATING SUMMONS

---

Issued this ..... day of ..... 20 .....,  
at ..... a.m./p.m.  
Our Ref.

Department of Justice  
Queensway Government Offices  
66 Queensway  
Hong Kong

Fax No.:  
Tel No.:

---

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ..... OF 200 ...

IN THE MATTER of an application by (name  
of Applicant) for a production order pursuant  
to section 84 of the Interpretation and General  
Clauses Ordinance, Cap. 1

Between

and

Applicant

Respondent

BEFORE THE HONOURABLE MR. JUSTICE

IN CHAMBERS

---

ORIGINATING SUMMONS

---

UPON the application of (name of Police officer), being an officer authorised to so apply for a production order pursuant to section 84 of the Interpretation and General Clauses Ordinance, Cap. 1 ("the Ordinance");

AND UPON hearing (name of Police officer) (or name of Government Counsel for the Applicant), and counsel/a solicitor for (specify person against whom the order is sought);

AND UPON reading the Information of (name of Police officer who laid the Information) dated the ..... day of ..... 20 ...;

AND UPON being satisfied that the conditions in section 84(3) are fulfilled;

IT IS ORDERED THAT

1. (The person against whom the order is granted) located at Hong Kong, produce to a Police officer of the Hong Kong Police Force for him to take away (or give access to the Police officer) the following journalistic material :

(specify – for example, copies of all photographs, video tapes, papers and records possessed by the person which relate to the incident under investigation)

2. The material is to be produced to a Police officer for him to take away or access to be given to a Police officer\* not later than the ..... day of ..... 20 ... (usually 7 days from the date of the order)

3. Where the material consists of information recorded otherwise than in legible form, the material shall be produced or access shall be given to a Police officer\* in a form in which it is visible and legible and can be taken away.

Dated this ..... day of ..... 20 ...

.....  
JUDGE OF THE COURT OF FIRST INSTANCE

\* Delete as appropriate



HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant) for a production order pursuant  
to section 84 of the Interpretation and General  
Clauses Ordinance, Cap. 1

Between

And

Applicant

Respondent

---

PRODUCTION ORDER

---

Filed this ..... day of ..... 20 ...

Hong Kong Police Force

Ref.:

Tel.:

Department of Justice

Counsel:

Tel:

---

No. 15

Acknowledgment of Service of Originating Summons  
( 0.10 r. 5 )  
Directions for Acknowledgment of Service

The accompanying form of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Respondent or by the Respondent if acting in person. After completion it must be delivered or sent by post to the Registry of the High Court at the following address-

The High Court Building, No. 38 Queensway, Hong Kong

See over for Notes for Guidance

### Notes for Guidance

1. Each Respondent (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Registry of the High Court.

\*2. For the purpose of calculating the period of 14 days for acknowledging service, an originating summons served on the Respondent personally is treated as having been served on the day it was delivered to him and an originating summons served by post or by insertion through the Respondent's letter box is treated as having been served on the seventh day after the date of posting or insertion.

\* [Not applicable if the Respondent is a company served at its registered office.]

3. Where the Respondent is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Originating Summons)".

4. Where the Respondent is a FIRM and a Solicitor is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "partner in the firm of ( ..... )" after his name.

5. Where the Respondent is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as ( ..... )" after his name.

6. Where the Respondent is a LIMITED COMPANY the form must be completed by a Solicitor or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without a Solicitor acting on its behalf.

7. Where the Respondent is a MINOR or a MENTAL Patient, the form must be completed by a Solicitor acting for a guardian ad litem.

8. A Respondent acting in person may obtain help in completing the form at the Registry of the High Court.

9. These notes deal only with the more usual cases. In case of difficulty a Respondent in person should refer to Paragraph 8 above.

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ..... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant) for a production order pursuant  
to section 84 of the Interpretation and General  
Clauses Ordinance, Cap. 1

Between

and

Applicant )

Respondent

---

ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING SUMMONS

---

If you intend to instruct a Solicitor to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

See Notes 1,  
3, 4 and 5.

1. State the full name of the Respondent by whom or on whose behalf the service of the Originating Summons is being acknowledged.

2. State whether the Respondent intends to contest the proceedings (tick appropriate box)

yes

no

Where words  
appear between  
square brackets,  
delete if  
inapplicable.

---

Service of the Originating Summons is acknowledged accordingly.

(Signed)

[Solicitor]

( )

[Respondent in person]

Address for service

Notes as to Address for Service

Solicitor. Where the Respondent is represented by a Solicitor, state the Solicitor's place of business in Hong Kong.

Respondent in person. Where the Respondent is acting in person, he must give his residence OR, if he does not reside in Hong Kong, he must give an address in Hong Kong where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

( Back of page (1) )

.....  
Applicant  
(the Applicant's address and reference, if any).

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ..... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant), Ex parte (name of party or  
parties), for a search warrant pursuant to  
section 85 of the Interpretation and General  
Clauses Ordinance, Cap. 1

\_\_\_\_\_  
INFORMATION OF (Name of Officer)  
\_\_\_\_\_

I, (name and rank of Police officer), of the Hong Kong Police Force, make oath/do solemnly,  
sincerely and truly affirm and say -

1. I am a Police officer attached to (name of unit) and am thereby authorised pursuant to  
section 50(7) of the Police Force Ordinance, Cap. 232 to apply for a search warrant under  
section 50(7) of that Ordinance in connection with the investigation of (specify offences  
reasonably believed to have been committed) described hereunder. I swear/affirm this  
Information in support of an application for a Search Warrant, pursuant to section 85 of the  
Interpretation and General Clauses Ordinance, Cap. 1 ("the Ordinance"), in relation to the  
journalistic material referred to below. The facts and matters deposed to are within my  
personal knowledge or are based upon information supplied to me by other Police officers who  
are involved in this investigation and which I verily believe to be true.

2. This application is approved by (specify the name, rank, and position of the officer  
approving the application) who is at or above the rank specified in Schedule 7 (Chief  
Superintendent of Police or above)

Signature .....

Name .....

Rank .....

Position .....

Date .....

[You must either satisfy section 84(3)(a)(c) and (d)(i) and one of the options at section 85(5) or  
show that a section 84 order has not been complied with]

Section 84(3)(a)

3. The following arrestable offence(s) are under investigation -

(Narrative of case. It must contain sufficient information relevant to the conditions in section 84(3)(a) that the District Court Judge must be satisfied of before granting a production order).

4. Based on the matters set out in paragraph 3 above and for the reasons set out below I reasonably believe that -

(a) (Name of person(s) committing offence) has committed an arrestable offence(s) (explain);

(b) The following journalistic material is in Hong Kong and is in the possession of the following person(s) -

(details of the known or suspected journalistic material, the person having possession, and its location)

(c) the material is likely to be

(of substantial value to the investigation of the arrestable offence)

OR

(relevant evidence in proceedings for the arrestable offence)

(details)

Section 84(3)(c)

5. Other methods of obtaining the material referred to in paragraph 4(b) above have been tried and failed

(set out details, probably relating to requests for the voluntary production of the material).

OR

6. Other methods of obtaining the material (specify alternative methods) referred to in paragraph 4(b) above have not been tried because I believe that -

(a) it is not likely that they would have succeeded (explain); or

(b) to use these methods would have been likely to seriously prejudice the investigation (explain).

Section 84(3)(d)(i)

7. I believe that it is in the public interest to grant this application, having regard to the benefit likely to accrue to the investigation if the material is obtained namely, (explain)

Section 85(5)

8. It is not practicable to communicate with any person entitled to grant entry to the premises to which this application relates because (details).

OR

9. It is not practicable to communicate with any person entitled to grant access to the journalistic material to which this application relates because (details).

OR

10. Service of a notice for an order under section 84(2) may seriously prejudice the investigation because (details).

11. If the court is prepared to grant this application I want to apply for immediate access to the journalistic material pursuant to section 85(7) of the Ordinance as I believe that the investigation may be seriously prejudiced if I do not have such access (specify in detail why you require immediate access.)

Sworn/Affirmed at the ..... )  
Hong Kong ..... )  
this ..... day of ..... 20 ... )

.....  
Name of Officer

Before me,

.....  
A Commissioner for Oaths  
Judiciary

\* Delete as appropriate.



HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant), Ex parte (name of party or  
parties), for a search warrant pursuant to  
section 85 of the Interpretation and General  
Clauses Ordinance, Cap. 1

---

INFORMATION OF (Name of Officer)

---

Sworn/Affirmed this ..... day of ..... 20 ...  
Filed this ..... day of ..... 20...

Hong Kong Police Force  
Ref.:  
Tel.:

Department of Justice  
Counsel:  
Tel:

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ..... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant), Ex parte (name of party or  
parties), for a search warrant pursuant to  
section 85 of the Interpretation and General  
Clauses Ordinance, Cap. 1

EX PARTE ORIGINATING SUMMONS

Let all parties concerned attend before the Honourable Mr. Justice ..... in  
Chambers at the High Court of Hong Kong, on ..... day, the ..... day of .....,  
20 ....., at ..... o'clock in the fore/after-noon, on the hearing of an application by the  
Applicant for an order that the search warrant as attached hereto be issued.

Dated the ..... day of ..... 20 ...

.....  
Registrar

This summons was taken out by (name of Police Officer) whose address is (details).

.....  
Applicant

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant), Ex parte (name of party or  
parties), for a search warrant pursuant to  
section 85 of the Interpretation and General  
Clauses Ordinance, Cap. 1

---

EX PARTE ORIGINATING SUMMONS

---

Issued this ..... day of ..... 20 ....  
at ..... a.m./p.m.  
Our Ref.

Commissioner of Police

(Address)

Fax No.:  
Tel. No.:

---

2. It is a condition of this search warrant that any journalistic material seized shall be sealed upon seizure and the sealed material be held until otherwise authorised or required under section 87 of the Ordinance.

(section 85(6) requires that material be sealed and that it cannot be accessed, except where there is a risk of serious prejudice if immediate access is not permitted - section 85(7))

3. Any person from whom journalistic material is seized under this warrant or a person who is an owner of such material may apply within 3 days of its seizure under section 87 for the immediate return of such material. Failure to so apply will result in the material being unsealed.

Dated this ..... day of ..... 20 ...

.....  
JUDGE OF THE COURT OF FIRST INSTANCE

\* Delete as appropriate.

Endorsement

This Search Warrant was executed at (premises) on (date) and the following materials were seized :

(set out list of material seized which is known or suspected to be journalistic material)

Note : The person from whom journalistic material is seized or who is an owner of such material may apply within 3 days of its seizure under section 87 for the immediate return of such material. Failure to so apply will result in the material being unsealed.

Signature of Police Officer  
Name  
Rank  
Formation  
Date

Note : A copy of this warrant should be left with the occupier of the premises, or in his absence, with a person who appears to be in charge of the premises. If no such person is present, a copy should be left in a prominent place on the premises (applies only to warrant where material is required to be sealed upon seizure).

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ..... OF 20 ...

IN THE MATTER of an application by (name of Applicant), Ex parte (name of party or parties), for a search warrant pursuant to section 85 of the Interpretation and General Clauses Ordinance, Cap. 1

---

SEARCH WARRANT

---

TO (details of Applicant for search warrant)

UPON the ex parte application of (name of Police officer), an officer authorised to so apply for a search warrant pursuant to Section 85(1) of the Interpretation and General Clauses Ordinance ("the Ordinance")

AND UPON hearing (name of Police officer)

AND UPON reading the Information of (name of Police officer who laid the Information) dated the ..... day of ..... 20 ....;

AND UPON being satisfied that the conditions in sections 85(2) and (3)\*(a) or (b) are fulfilled;

IT IS ORDERED THAT

1. You are authorised to enter, by force if necessary, (address and description of premises), and to search for and seize (describe material), which is material that consists of or includes journalistic material, which is likely to be \*of substantial value to the investigation of an arrestable offence, namely, (describe with sufficient particularity) or relevant evidence in the proceedings for the arrestable offence, namely, (describe with sufficient particularity).

HCMP ..... of 20 ...

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO ... OF 20 ...

IN THE MATTER of an application by (name  
of Applicant), Ex parte (name of party or  
parties), for a search warrant pursuant to  
section 85 of the Interpretation and General  
Clauses Ordinance, Cap. 1

---

SEARCH WARRANT

---

Sworn/Affirmed this ..... day of ..... 20 ...

Filed this ..... day of ..... 20...

Hong Kong Police Force  
Ref.:  
Tel.:

Department of Justice  
Counsel:  
Tel: