

立法會
Legislative Council

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LC Paper No. CB(2)156/06-07
(These minutes have been seen by
the Administration)

**Subcommittee on
Review of Existing Statutory Provisions
on Search and Seizure of Journalistic Material**

**Minutes of meeting
held on Thursday, 4 May 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Hon Howard YOUNG, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Member attending : Hon Ronny TONG Ka-wah, SC

Members absent : Hon Albert HO Chun-yan
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Daniel LAM Wai-keung, BBS, JP

Public Officers attending : Mrs Apollonia LIU
Principal Assistant Secretary for Security

Miss Rosalind CHEUNG
Assistant Secretary for Security

Mr Kevin Paul ZERVOS, SC
Senior Assistant Director of Public Prosecutions
Department of Justice

Ms Roxana CHENG
Senior Assistant Solicitor General
Department of Justice

Mr Alfred MA
Chief Superintendent of Police (Crime Headquarters) (Crime Wing)

Ms Bessie HO
Principal Investigator/Operations
Independent Commission Against Corruption

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2)5

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I. Meeting with the Administration
(LC Paper No. CB(2)1858/05-06(01))

Principal Assistant Secretary for Security (PAS(S)) briefed members on the Administration's paper entitled "Review/Appeal Mechanism".

2. Dr LUI Ming-wah asked about the timing and nature of the four cases referred to in paragraph 5 of the Administration's paper. The Chairman asked whether applications would have been made to the District Court or Court of First Instance (CFI) in the four cases, if the proposed measures referred to in paragraph 6 of the Administration's paper had been adopted.

3. PAS(S) responded that application for a production order was made in January 2003, while three applications for search warrants were made in November 1999, May 2003 and July 2004 respectively.

4. Senior Assistant Director of Public Prosecutions (SADPP) said that all the applications in the four cases would have been submitted to the District Court, if the

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arrangement referred to in paragraph 6 of the Administration's paper had been adopted.

5. The Chairman asked whether the guidelines for law enforcement agencies (LEAs) would be more detailed in comparison with the wording in paragraph 6 of the Administration's paper.

6. PAS(S) responded that instructions would be given by the Administration to LEAs, which would revise their internal guidelines accordingly.

7. The Chairman asked whether the revised internal guidelines of LEAs would be made public.

8. PAS(S) responded that the wording of the revised guidelines could be provided to the Subcommittee, if the Subcommittee considered it necessary.

(Post-meeting note: The Administration advised that major principles of the guidelines were provided to the Subcommittee via the Administration's paper entitled "Administration's response to the issues raised by members at the Subcommittee meeting on 4 May 2006" (LC Paper No. CB(2) 2625/05-06(1)).)

9. The Chairman asked how the revised internal guidelines would be disclosed to the public. He also asked whether the guidelines would be disclosed by way of a statement made by the Secretary for Security at a Council meeting.

10. PAS(S) advised members that there were different ways of disclosing, such as the issuance of a press statement. The Administration would consider the most appropriate measure to promulgate the proposed new measures.

11. Ms Audrey EU considered that the proposed new measures should be provided in the legislation so that everyone would be fully aware of the new measures. Her view was shared by Ms Margaret NG.

12. PAS(S) responded that as the proposed new measures focused on operational aspects, she did not see any need to include them in the legislation. Paragraph 6 of the Administration's paper only set out the policy intent and there might be situations not covered in the paragraph. It would not be possible to set out all scenarios in the law. Moreover, it was not unusual to set out new operational arrangement in the internal guidelines of LEAs. Ms Audrey EU and Ms Margaret NG considered that it would not be difficult to overcome such a drafting problem.

13. Mr Howard YOUNG said that the new arrangement proposed by the Administration had addressed the concerns of members and the Hong Kong Bar

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Association. He considered it not necessary to provide for the proposed arrangement in the legislation.

14. Ms Audrey EU said that it could be provided in legislation that applications for search warrants should be made to the District Court as far as possible. If the new arrangement could be written into the internal guidelines, there was no reason why the arrangement could not be written into the law.

15. SADPP responded that section 85 of the Interpretation and General Clauses Ordinance (IGCO) provided for an application for a search warrant to be submitted either to a judge of the District Court or CFI. He said that the arrangement outlined in paragraph 6 of the Administration's paper could be implemented through administrative directions, which would be promulgated. Administrative directions would provide for flexibility in implementation and the language used in such directions would be different from that used in legislation.

16. Mr Ronny TONG expressed concern that there might be inconsistency between the proposed guidelines and Part XII of IGCO. He said that disputes might arise on whether an application for search warrant should be submitted to the District Court or CFI. The proposed arrangement might result in a lack of review or appeal channel for more serious cases.

17. PAS(S) responded that under the proposed arrangement, all applications for production orders would be made to the District Court and all applications for search warrants would be made to the District Court except under certain circumstances. Confusion would not arise as to whether an application should be submitted to the District Court or CFI. There was no inconsistency between the proposed guidelines and Part XII of IGCO.

18. Dr LUI Ming-wah asked whether all applications for search warrants could be submitted to the District Court.

19. PAS(S) responded that there was a need to provide room for the submission of an application for search warrant to CFI under certain circumstances. Referring to paragraph 4 of the Administration's paper, she said that a number of remedies, including a channel for appeal, were generally available in relation to the decisions of CFI.

20. SADPP supplemented that it was arguable that a person who had initiated proceedings under section 87 of IGCO was a party to the proceedings and thus had the right of appeal under section 31(b) of the Hong Kong Court of Final Appeal Ordinance (CFAO).

21. The Chairman said that the proposed arrangement should be written into the law.

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Administrative directions might easily be forgotten by members of the public, who would usually refer to provisions in legislation. He added that having the new arrangement written into the law would not restrict flexibility in implementation. The Administration should examine whether the new arrangement could be written into the law.

22. PAS(S) responded that administrative directions provided flexibility, whereas provisions in legislation had to be precise. The Administration had studied different options before coming up with its current proposal.

23. SADPP said that the contents of paragraph 6 of the Administration's paper were fairly descriptive and contained examples. He stressed that administrative directions were directed at LEAs and had legal effect. The administrative directions would be a document accessible to members of the public so that the public could monitor whether LEAs were complying with the guidelines.

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24. The Chairman requested the Administration to provide -

- (a) information on the details of the appeal channel provided under section 31(b) of CFAO; and
- (b) the guidelines for LEAs and advise how the guidelines would be promulgated.

25. Members agreed that a further meeting of the Subcommittee would be scheduled to discuss the information to be provided by the Administration before the Subcommittee made a report to the Panel on Security.

26. The meeting ended at 4:00 pm.

Council Business Division 2
Legislative Council Secretariat
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