

**Bills Committee on  
Independent Police Complaints Council Bill**

**Response to issues raised at the Bills Committee meeting  
held on 6 November 2007 (4) and 13 December 2007**

**Purpose**

This note provides information in response to a number of issues raised by the Bills Committee at its meeting held on 6 November and 13 December 2007.

**Clause 27 of the Bill**

*To provide information on the existing practice as to whether the Commissioner of Police (CP) may decide not to provide information or materials relating to reportable complaints on the ground that provision of the information or materials concerned to the Independent Police Complaints Council (IPCC) would be likely to prejudice the security of Hong Kong or the investigation of any crime; to advise, in relation to the IPCC's power to require CP to provide information or materials relating to reportable complaints, whether there are existing Ordinances that prohibit the release of information by CP*

2. Under the existing practice, CP is committed to providing sufficient information to the IPCC to facilitate the IPCC in the discharge of its functions to monitor and review CAPO's investigation reports on reportable complaints. As CP is responsible for law and order issues and has the obligation to safeguard the security of Hong Kong as well as the integrity of crime investigation, in the course of providing information or materials required by the IPCC, he has the duty to ensure that disclosure of the information or materials concerned would not prejudice the security of Hong Kong or crime investigation. According to available information, CP has not so far declined the IPCC's requests for information or materials on the ground that such provision would be likely to prejudice the security of Hong Kong or crime investigation.

3. The present police complaints system operates on an administrative basis. There are no existing Ordinances that specifically regulates the provision of information or materials by CP to the IPCC. CP is nevertheless generally bound by Ordinances governing disclosure of personal data and confidential information such as the Personal Data (Privacy) Ordinance (Cap. 486) and the Official Secrets Ordinance (Cap. 521).

***To consider the suggestion of substituting the Secretary for Security (S for S) or Secretary for Justice (SJ) for CP in clause 27 of the Bill; to consider deleting clause 27 of the Bill***

4. Under section 4 of the Police Force Ordinance (Cap. 232), CP, subject to the orders and control of the Chief Executive (CE), shall be charged with the supreme direction and administration of the police force. Clause 27 of the Bill seeks to ensure CP's compliance with the requirements of the IPCC under the Bill save in certain specified circumstances. CP will not lightly rely on this provision to decide not to comply with the IPCC's requirements. In response to the IPCC's requirement, CP will take into account the facts and evidence available, and assess the risk of the security of Hong Kong or crime investigation being prejudiced if the IPCC's requirements are complied with. In the very rare circumstances where CP makes decision of non-compliance, he will provide an explanation to the IPCC as to why the IPCC's requirement cannot be complied with. If the IPCC is not satisfied with CP's explanation, it may under clause 28 make a report to CE. CE may direct CP as he sees fit. This arrangement is consistent with Cap. 232.

5. We should add that in the very rare circumstances where CP decides not to provide information or materials required by the IPCC at a certain point in time having regard to clause 27, it is possible that such information or materials can be provided to the IPCC when CP is subsequently satisfied that such provision will no longer affect the security of Hong Kong or crime investigation.

6. On the suggestion of substituting S for S or SJ for CP in clause 27, at present S for S is not in any way involved in crime investigation or the scrutiny of CAPO's investigation reports on complaints against police

officers. We see merit in the arrangement now proposed under clause 27 rather than involving S for S in the process. In the case of SJ, in view of his role as the legal adviser to the Administration, we do not consider it appropriate to involve him in the executive function of determining whether the disclosure of certain information to the IPCC may prejudice the security of Hong Kong or crime investigation.

***To advise whether the Independent Commission Against Corruption (ICAC) has any existing document similar to clause 27 of the Bill in relation to its provision of information to the ICAC Operations Review Committee (ORC) and whether the provision of information to the ORC is subject to restrictions similar to those in clause 27; to advise whether members of ORC were required to swear an oath of secrecy***

7. At present, ICAC does not have any written document similar to clause 27 of the Bill in relation to its provision of information to the ICAC ORC. That said, the ICAC ensures that all necessary information is provided to the ORC to facilitate the discharge of its responsibility in monitoring the investigations carried out by the Commission. We understand that members of ORC are not required to swear an oath of secrecy.

Security Bureau  
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