

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

**Response to issues raised at the Bills Committee meeting
held on 15 January 2008 (1)**

Purpose

This note provides information in response to a number of issues raised by the Bills Committee at its meeting held on 15 January 2008.

Categorization of complaints

To consider including an express provision in clause 7 to provide for the monitoring of whether a complaint should be categorized by the Commissioner of Police (CP) as a non-reportable complaint as one of the functions of the Independent Police Complaints Council (IPCC)

2. IPCC's monitoring of whether a complaint should be categorized by the Police as a non-reportable complaint is to ensure that all complaints which should properly be categorized as reportable complaints will be so categorized and that their investigations will consequentially be subject to the IPCC's monitoring and review. This is a task that is reasonably necessary for the performance of the IPCC's monitoring functions in respect of reportable complaints and as such, is already covered by clause 7(2) of the Bill. We do not consider it necessary to include an express provision in clause 7 of the Bill to cover this specific task.

To explain what constitutes a complaint "made in good faith" under clause 10(b) and to explain whether a complaint which was not vexatious or frivolous but lodged by a person who had previous disputes with the police officer under complaint could be considered as a complaint made in good faith under clause 10(b)

3. A complaint is "made in good faith" if the complaint is lodged with the objective of seeking an impartial investigation by the police force of the complaint and a response from the Police following the investigation. Where a complaint is seen to be motivated by personal feud or other factors not related to a concern about the effect of certain

police conduct on the complainant, it may be regarded as not being “made in good faith”. If a complaint is lodged by a person who had previous disputes with the police officer under complaint, as long as it is not motivated by personal feud and satisfies the other provisions under clause 10, it will be categorized as a reportable complaint.

4. Provisions that exclude the consideration of complaints which are not made in good faith can also be found in other Ordinances. Examples are: section 39(2) of the Personal Data Privacy Ordinance (Cap. 486), and section 10(2) of The Ombudsman Ordinance (Cap. 397) (see relevant extracts at the Annex).

To explain with examples the meaning of and need for the term “directly affected” in clause 10(c)

5. Clause 10 of the Bill provides that a complaint must be categorized as a reportable complaint if, in addition to satisfying the other provisions under that clause, it is made by or on behalf of a person “directly affected” by the conduct of a member of the police force, or any practice or procedure adopted by the police force. The intention is to cover complaints made by persons who are personally aggrieved by the police conduct concerned (or the representatives of such persons as provided for under clause 14). Examples of reportable complaints made by “directly affected” persons include –

- (a) if the complaint relates to the conduct of a member of the police force while on duty or in the execution or purported execution of his duties (clause 10(a)(i)) - A police officer in uniform utters abusive language when dealing with a member of the public during an enforcement action. That member of the public is a “directly affected” person;
- (b) if the complaint relates to the conduct of a member of the police force who identified himself as such a member while off duty (clause 10(a)(ii)) - An off-duty police officer is involved in a dispute with a member of the public during a traffic accident. The police officer makes his police identity known to that member of the public, who subsequently complains against the former for “unnecessary use of authority”. That member of the public is a “directly affected” person; and

- (c) if the complaint relates to any practice or procedure adopted by the police force (clause 10(a)(iii)) - A taxi driver affected by the Police's road diversion measures during a public procession complains against such diversion measures. That taxi driver is a "directly affected" person.

To consider including a complaint relating to the conduct of a member of the police force believed to be on duty but had not identified himself as such a member as a reportable complaint

6. If the Complaints Against Police Office receives a complaint from a personally aggrieved party relating to the conduct of a member of the police force believed to be on duty but who had not identified himself as such a member, it will ascertain the facts of the case and verify whether the complainee is actually a member of the police force. If such verification confirms that the complainee is a member of the police force (and hence the complaint is covered under clause 10(a)(i)) and the complaint satisfies the other provisions under clause 10, it will be categorized as a reportable complaint. We therefore do not consider it necessary to make additional provisions in the Bill to cover such complaints.

Security Bureau
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Extract of provisions in other Ordinances which exclude the consideration of complaints not made in good faith

(a) Personal Data (Privacy) Ordinance (Cap. 486)

Section 39 - Restrictions on investigations initiated by complaints

(2) The Commissioner may refuse to carry out or continue an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case-

- (a) the complaint, or a complaint of a substantially similar nature, has previously initiated an investigation as a result of which the Commissioner was of the opinion that there had been no contravention of a requirement under this Ordinance;
- (b) the act or practice specified in the complaint is trivial;
- (c) **the complaint is frivolous or vexatious or is not made in good faith;** or
- (d) any investigation or further investigation is for any other reason unnecessary.

(b) The Ombudsman Ordinance (Cap. 397)

Section 10 - Restrictions on investigation of complaints

(2) The Ombudsman may in his discretion decide not to undertake or continue an investigation into a complaint, if he is of the opinion, having regard to all the circumstances of the case, that-

- (a) the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Ombudsman was of the opinion that there had been no maladministration;
- (b) the subject matter of the complaint is trivial;
- (c) **the complaint is frivolous or vexatious or is not made in good faith;** or
- (d) any investigation or further investigation is for any other reason unnecessary.