

立法會
Legislative Council

LC Paper No. CB(2)2087/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE/1

Panel on Security

Minutes of meeting
held on Tuesday, 4 March 2008, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Howard YOUNG, SBS, JP
Hon CHOY So-yuk, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public Officers attending** : Item IV
Mrs Apollonia LIU
Principal Assistant Secretary for Security

Mr Kennon TAM
Assistant Secretary for Security

Mr Austin KERRIGAN
Assistant Commissioner of Police (Support)

Mr Patrick D. G. HODSON
Senior Superintendent of Police (Support Branch)
(Support Wing)

Mr Eddy SIT
Senior Inspector (General)1 (Support Branch)
Hong Kong Police Force

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

Miss Helen DIN
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1210/07-08)

The minutes of the meeting held on 8 January 2008 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that no information paper had been issued since the last meeting.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1209/07-08(01) and CB(2)1209/07-08(02))

3. Members agreed that the following items would be discussed at the next meeting to be held on 10 April 2008 at 2:30 pm -

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- (a) Civil claims against law enforcement agencies;
- (b) Redevelopment of the Personnel Information Communal System of the Hong Kong Police Force; and
- (c) Youth drug abuse.

IV. Police's review of the existing practices regarding handling of searches of detainees

(LC Paper Nos. CB(2)1209/07-08(03) and CB(2)1124/07-08(01))

4. Members noted a submission from Civil Human Rights Front, which was tabled at the meeting.

(Post-meeting note : The submission tabled at the meeting was circulated to members vide LC Paper No. CB(2)1274/07-08 on 5 March 2008.)

5. Principal Assistant Secretary for Security (PAS(S)) briefed Members on the outcome of the first stage of the Police's review on its practices regarding the search of persons to be detained in Police custody. She recalled that Members had requested the Administration to provide a sample of the Police's record, with personal information excised, on searches involving the removal of clothing worn next to the skin and, in relation to some 200 detainees who were not granted bail on 5 October 2007, information on the number of persons on whom searches involving total removal of clothing had been conducted, the reasons for conducting such a search and the offences involved. In this connection, she informed Members that the Police had tried to examine its records but found that there were practical difficulties in the compilation of such information, as there were inconsistencies among officers in the interpretation of the term "removal of clothing worn next to the skin" as well as the scope of information recorded in respect of this level of searches.

6. Referring to the guidelines in Annex B to the Administration's paper, Mr Ronny TONG said that he was disappointed about the revised guidelines, as there was no mention of the requirements under Article 3 of the Hong Kong Bill of Rights (BOR) or how the rights and dignity of a person being searched were to be protected. There was also no mention of the requirement that a strip search should not be conducted within sight of persons of the opposite sex.

7. PAS(S) responded that the relevant articles on the protection of human rights under the Basic Law (BL) and the International Covenant on Civil and Political Rights (ICCPR) had been referred to in the proposed guidelines in Annex B to the Administration's paper. Referring to paragraph 14 of the

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Administration's paper, she said that under the revised Police General Order (PGO) 49-04, a Duty Officer (DO) who authorised a search of a person to be detained had to ensure that -

- (a) no search was conducted before or in the sight of another officer or person of the opposite sex in relation to the person to be detained; and
- (b) only persons whose presence was necessary for the proper conduct of the search were permitted to be present during the search.

8. Mr Ronny TONG queried whether there was any reference in the proposed guidelines to the dignity of a person being searched. PAS(S) responded that reference had been made to human dignity of detainees as provided for under Article 10(1) of the ICCPR in paragraph 4 of the proposed guidelines. Mr TONG said that the reference in the paragraph was inadequate in that there was no mention of how the protection of a person's dignity was to be implemented.

9. The Deputy Chairman considered that the revised PGO 49-04 and the proposed guidelines in Annex B to the Administration's paper would allow the Police to abuse its power under some situations. He said that according to the reasoning in paragraph 6 of the Administration's paper, it would be necessary to search all arrested persons rather than merely persons to be detained. He pointed out that the common law requirement for the Police to fulfil its duty of care for detainees did not immediately lead to the conclusion that a search should be conducted on all detainees.

10. PAS(S) responded that paragraph 6 of the Administration's paper set out the reason for the Police to search all detainees in fulfillment of its duty of care for all detainees under the common law. However, it did not point to the conclusion that all persons arrested would necessarily be searched and detained. Referring to paragraph 5 of the Administration's paper, she said that the circumstances under which the Police could arrest a person had been specified in the Police Force Ordinance (Cap. 232), and such persons would only be detained if considered appropriate.

11. Referring to paragraph 9 of the Administration's paper, the Deputy Chairman said that the raising of a shirt worn next to the skin or the lowering of trousers should be conducted only where there was reasonable suspicion and such a requirement should be spelt out in the revised PGO 49-04. Referring to paragraph 14 of the Administration's paper, he said that the requirement in the revised PGO 49-04 that a search should be conducted on all persons to be detained in Police custody should be revised to the effect that a DO should

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consider the factors set out in paragraph 2 of the revised PGO 49-04 before determining whether a search was needed.

12. PAS(S) responded that the Police's operational experience and its duty of care for detainees confirmed the need for the Force to conduct a search on all persons to be detained in its custody. Under the revised PGO 49-04 and guidelines for Police officers, the scope of a search should be determined by a DO on a case-by-case basis. Such a scope should be proportionate to the purposes set out in paragraph 2 of the revised PGO 49-04 and not more than necessary.

13. Dr Philip WONG considered that with the advancement of technology, there might be devices that could enable the Police to detect any article kept by a person to be detained without removal of all clothing. He said that the Police should explore the possibility of acquiring such equipment to assist it in the conduct of searches, with a view to minimising the need for strip searches and providing better protection for the privacy, human rights and dignity of detainees.

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14. Assistant Commissioner of Police (Support) (ACP) agreed to consider the suggestion. He informed Members that in order to fulfil the Police's duty of care for detainees, a search had to be conducted on all persons to be detained in Police custody. The scope of search would be determined by a DO on a case-by-case basis, having regard to factors such as those referred to in paragraph 6 of Annex B to the Administration's paper. Where the person to be detained was suspected to be in possession of dangerous drugs, a full search would be conducted. Where necessary, an intimate search might be conducted in an extreme case, with authorisation by an officer at the rank of inspector or above, by a medical practitioner.

15. Ms Emily LAU asked whether the issues raised in the submission from Civil Human Rights Front regarding the Lee Tung Street case fell within the second stage the Police's review.

16. PAS(S) responded that as the submission was just received at the meeting, time would be needed for studying the issues raised in the submission. She pointed out that as the Lee Tung Street case was pending trial, the Department of Justice (DoJ) had already advised that information relating to the Police's post-arrest handling of the detainees in the case were subject to the *sub judice* rule and should not be discussed outside the trial.

17. Ms Emily LAU asked whether legal advice provided by DoJ was only confined to that referred to in paragraph 11 of the Administration's paper.

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18. PAS(S) responded that DoJ had provided advice during the drafting of the Administration's paper. Its legal advice was thus not confined to those referred to in paragraph 11 of the Administration's paper.

19. Ms Emily LAU suggested that PGO should contain a specific section on strip search. Such a section should cover the circumstances under which strip searches would be conducted, how such searches were to be carried out and how the human rights, privacy and dignity of detainees could be protected during such searches. She considered that strip search should only be authorised by the most senior officer in a Police station.

20. PAS(S) responded that it was appropriate for the scope of search on a person to be detained to be determined by a DO, who would be a Police officer at the rank of station sergeant and who possessed substantial experience.

21. Referring to the "Notice to Persons under Investigation by, or Detained in the Custody of, the Police" (the Notice) in Annex A to the Administration's paper and the guidelines in Annex B to the Administration's paper, Ms Emily LAU queried why the description of the rights of a detainee in Annex A was less detailed than that in Annex B. She suggested that the more detailed procedures referred to in the second and third sentences of paragraph 7 of Annex B to the Administration's paper should also be set out in the Notice so that detainees would be fully aware of their rights.

22. PAS(S) responded that the Notice was intended for persons to be detained and thus focused on what the person was to be informed. On the other hand, the guidelines in Annex B to the Administration's paper were intended for Police officers. Hence the difference in the wording of the two documents.

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23. Ms Emily LAU requested the Administration to consider her suggestions in paragraphs 19 and 21 above.

24. Mr CHEUNG Man-kwong considered that a detainee should not be treated as a prisoner. He expressed concern that there were allegations that strip searches were conducted on the detainees in the Lee Tung Street case and some of them had been searched twice. Referring to paragraph 7 of the Administration's paper, he said that it could be noted that strip search would be needed only where there was reasonable suspicion that one of the three scenarios referred to in the paragraph would occur. He asked whether any Police officer would be disciplined, if it was found that strip search had been carried out in a case without such reasonable suspicion.

25. ACP responded that any person detained in a Police station had been under arrest, which required reasonable suspicion. He said that the scope of search on a person to be detained was case-specific, and the DO was the most appropriate person to determine this.

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26. Mr CHEUNG Man-kwong said that such an arrangement would allow a DO to abuse his power and the dignity of a person to be detained could not be protected. A DO could order conducting strip search on a person to be detained by claiming his suspicion of one of the three scenarios referred to in paragraph 7 of the Administration's paper. He asked whether the amendment of PGO 49-04 reflected that there were weaknesses in the existing PGO 49-04.

27. PAS(S) responded that, under the improved procedures, the scope of search on a person to be detained had to be decided on the circumstances of each case, and the DO concerned was required to record in detail why a search was conducted and the scope of the search. Any officer who had been confirmed to have exercised his power improperly would be subject to disciplinary action or, where there was any breach of the law, prosecuted. She said that the revision of PGO 49-04 sought to improve the arrangements regarding the search of a person to be detained.

28. Mr Albert HO queried why there were no statistics on strip searches conducted in the past. He said that if strip search was not frequently conducted in the past, the Administration should be able to provide information on the number of strip searches, the type of offences in which the detainees were involved and the environment under which the strip searches were conducted. He asked whether a DO who claimed that he did not remember the reasons for ordering a strip search in the past would be in breach of any internal guidelines of the Police.

29. PAS(S) responded that while the Police's existing internal guidelines required an authorising officer to record searches of particular kinds, there was no requirement as to the scope of information to be recorded. With the revised PGO 49-04, the required statistics should be available in the future.

30. Mr Albert HO said that the Administration should at least seek to compile the requested statistics from the limited information on hand. The Chairman asked whether it was very difficult to provide the statistics requested.

31. ACP responded that the technical design of the Police's Communal Information System (CIS) made it very difficult for the Police to discern the relevant entries to compile the required statistics. He said that it would be much easier to retrieve information in respect of a specific case if the relevant case reference number was provided. This notwithstanding, the Police also found that the existing PGO relating to the removal of clothing worn next to the skin was open to different interpretation by different Police officers. Hence, it was not possible for the Police to provide the statistics required.

32. Ms Audrey EU expressed concern that the guidelines referred to in the Administration's paper had not set out the circumstances under which a strip

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search would be conducted on a person to be detained. She said that the Police should include in its guidelines the specific circumstances under which strip searches would be conducted.

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33. ACP agreed to consider the suggestion. He quoted the example that where a DO reasonably believed that a person to be detained was in possession of dangerous drugs, it might be necessary to conduct a search involving complete removal of clothing. He pointed out that such a search was unpleasant to both the person being searched and the officer who conducted the search. He stressed that the Police was fully aware of the relevant requirements under BL, BOR and ICCPR relating to the search of a person. Under the new arrangements, if a DO decided that a search involving complete removal of clothing should be conducted, the justification for conducting such a search should be recorded, which would be subject to supervision on a daily basis. To prevent abuse, CIS had a supervisory function whereby the supervisor responsible for overseeing the report room could examine the detention notes and justifications concerned. Where it was found that a search was not justified, appropriate actions would be taken by the supervisor concerned.

34. Mr LEUNG Kwok-hung said that although many persons involved in more serious offences had been granted bail on 5 October 2007, all the arrestees in the Lee Tung Street case, who were alleged of causing obstruction to a public place, were detained and strip searched after their lawyers had left the Police station. Thus, it was obvious that the Police had abused its power in the case concerned. He queried why no record was kept on strip searches conducted in the past, whereas records were maintained even on items such as broken glasses. He also queried how the human rights of a detainee could be protected, if the decision as to whether a strip search should be conducted in a case was left to a DO.

35. PAS(S) responded that although the Police's internal guidelines required an authorising officer to record searches of particular kinds, there was no requirement as to the scope of information to be recorded. The Force found this undesirable and had thus proposed revisions to the guidelines. She said that all officers promoted to the rank of Station Sergeant were provided training in respect of the duty of care for detained persons and the measures to be adopted. They were also reminded of the relevant guidelines and informed of the consequences of non-compliance with the guidelines. She said that training and briefings on the proposed revisions to the internal guidelines would be provided to relevant Police officers.

36. Mr LEUNG Kwok-hung said that an officer should be designated in each Police station for overseeing the human rights of arrestees.

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37. ACP responded that such a role was already performed by the DOs in each Police station. All DOs had received the relevant training, including that related to the human rights of a detainee, after promotion. The proposed revisions to PGO 49-04 sought to improve the procedures in respect of the search of a person to be detained. DOs were accountable for their decisions in respect of the scope of search on a person to be detained. Mr LEUNG Kwok-hung said that the officer designated for overseeing the human rights of detainees should be accountable to the Commissioner of Police (CP) rather than other senior officers in the Police station.

38. Mr Ronny TONG said that it could be noted from the Panel's visit on 11 December 2007 regarding the searches of detainees that a strip search would be needed in very exceptional cases only. He suggested that clear guidelines should be drawn up in respect of the following in a strip search -

- (a) whether it was necessary to touch the body of the person being searched;
- (b) whether it was necessary to remove all clothing of the person being searched; and
- (c) whether it was necessary to request a detainee to lift his private part for examination.

39. Mr Ronny TONG further suggested that the Police should set out the following in its guidelines -

- (a) a strip search should not be carried out unless there were no other alternative means to conduct the search to achieve the purpose of search; and
- (b) any officer who contravened the guidelines would be subject to disciplinary actions.

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40. ACP agreed to consider the suggestions. He informed Members that there were 15, 30 and 36 cases where detainees caused self-harm in Police custody in 2005, 2006 and 2007 respectively. He stressed that the Police's duty of care to detainees included the protection of the detainees from self-harm. He added that as opposed to a breach of the Police's internal guidelines, a breach of PGO would be a breach of the Force's discipline code. Regarding the cases of detainees causing self-harm referred to by the Administration, the Chairman requested the Administration to provide information on the number of cases where searches had been conducted prior to detention, and the articles used by the detainees to cause self-harm.

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41. The Deputy Chairman suggested that the Administration should -

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- (a) consider relaxing paragraph 3(a) of the revised PGO 49-04 to the effect that the detainee's lawyer of the opposite sex would be allowed to be present during a search;
- (b) clarify whether lawyers would be one of the classes of persons under the new paragraph 3(b) of the revised PGO 49-04 whose presence was necessary for the conduct of the search;
- (c) consider requiring a strip search to be authorised by the most senior officer in a Police station instead of a DO; and
- (d) consider requiring the reasons for temporary removal of a detainee from a temporary holding area or cell block to be recorded.

42. The Deputy Chairman also asked why a search had to be conducted on all persons to be detained, although the detention areas in a Police station should be secure and the chance of an escape should be low.

43. PAS(S) responded that the search of a person prior to detention sought to prevent, among others, the detainee from causing self-harm or harm to other persons detained in the same cell.

44. The Deputy Chairman said that the Police should apply the reasonable suspicion test when determining whether a detainee had to be searched prior to detention. A detainee should only be searched if the DO concerned had reasonable suspicion that any of the three scenarios referred to in paragraph 7 of the Administration's paper would occur. The scope of the search should be necessary for and proportionate to the degree of suspicion held by the DO.

45. PAS(S) responded that in order for the Police to fulfil its duty of care to all persons detained in its custody, CP had determined that a search should be conducted on all persons to be detained in Police custody. The scope of search, which would depend on the prevailing circumstances of a case, had to be necessary and proportionate.

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46. The Deputy Chairman requested the Administration to consider applying the reasonable suspicion test when determining whether a detainee was to be searched prior to detention.

47. Referring to paragraph 21 of the Administration's paper, Ms Emily LAU asked whether there was any difference between CIS and the Personnel Information Communal System (PICS), the redevelopment of which was to be discussed at the meeting in April 2008. She also asked how the functions of CIS would be enhanced. Referring to a background brief prepared by the

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Secretariat on CIS, she requested the Administration to provide information on the Administration's expenditure for CIS and the subsequent upgrading of the system. She queried why statistics on strip searches could not be retrieved from CIS, despite the fact that one of the functions of CIS was to record the detention, movement and release of arrested persons.

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48. PAS(S) responded that CIS and PICS were two different systems. She agreed to provide the information on CIS as requested by Ms Emily LAU.

49. ACP informed Members that a CIS Redevelopment Feasibility Study (the Study) would be conducted. The Study would cover areas such as limitations of the current system, user requirements and the issues raised by Members. The Police hoped that all searches could be recorded in the future system.

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50. The Chairman expressed concern that the Study might take a very long time. He requested the Administration to consider introducing interim measures to enable searches to be properly recorded and the relevant statistics to be easily retrieved and revert to the Panel before the next meeting on 10 April 2008. Ms Emily LAU added that such interim measures to be drawn up should particularly facilitate the provision of statistics on strip searches. The Deputy Chairman said that he had been informed by a senior officer of the Police that the creation of an additional field for the relevant records in CIS would enable statistics on strip searches to be generated in the future. He added that if such improvement to CIS was not introduced, he would not support the funding proposal for the redevelopment of PICS. Mr LEUNG Kwok-hung said that even if the required statistics could not be generated from CIS, it should still be possible to compile the statistics manually.

51. Mr CHEUNG Man-kwong expressed concern that there was no specific requirement in the past to record the reasons for and scope of a search. He asked why there had not been any improvement in the area for many years and whether any Police officer should be held responsible. He queried whether the Police had made any improvement to its procedures on strip search after a complaint relating to strip search lodged by Mr LAU Shan-ching was substantiated many years ago. Mr LEUNG Kwok-hung recalled that the case dated back to 2001.

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52. The Chairman requested the Administration to advise on the measures that had been undertaken by the Police to improve its procedures on the searches of detainees after the complaint on strip search lodged by Mr LAU Shan-ching was substantiated.

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53. In closing, the Chairman requested the Administration to provide, before the Panel meeting on 10 April 2008, its response to the suggestions made and information sought by Members.

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54. The meeting ended at 4:40 pm.

Council Business Division 2
Legislative Council Secretariat
28 May 2008