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12 June 2008

By Fax (15 pages)  
(Fax: 2509 0775)

Mrs Sharon Tong  
Clerk to Panel on Security  
Legislative Council  
3/F, Citibank Tower  
3 Garden Road  
Central  
Hong Kong

Dear Sharon,

### **Panel on Security**

#### **Review of the Handling of Searches of Detainees**

I refer to our letter to the Security Panel on 14 December 2007 that was also copied to Members of the House Committee.

As we undertook in the letter, the Police conducted the first stage review of the handling of searches of persons detained under police custody. The review report was submitted to the Security Panel for discussion at its meeting on 4 March 2008. A copy of the review report is enclosed for easy reference.

In response to some Members' views on the detailed implementation of the review proposals, we set out in our written submission on 9 April 2008 the Police's undertaking to consider further improvements to the Police General Orders, the relevant police form and the proposed new guidelines governing the conduct of searches of detainees, with particular regard to searches that require complete removal of clothing.

The Police undertook to implement the comprehensive improved arrangements under the first stage review in mid-2008. In addition, upon the conclusion of the legal proceedings in respect of the Lee Tung Street court case, the Force would consider whether additional measures are warranted to further improve the handling of searches of detainees as the second stage review.

At the meeting of the Panel on Security on 10 April 2008, there was a request that Members be provided with an advance copy of the new guidelines and related improvement measures. We will gladly comply.

The Police are consulting their legal advisors, with a view to finalizing the new guidelines and improved procedures for implementation effective from July 2008. In response to Members' views, the new guidelines and procedures will make it explicit and clear that a search involving the removal of underwear should not be conducted as a matter of routine but only in circumstances with strong justification.

The new guidelines will also state that a search involving the removal of clothing should be conducted with proper regard to the privacy and dignity of the detained person and in accordance with our human rights obligations. Revisions are made to the Police General Orders to require that accurate records be kept in the Force's Communal Information System to record the search conducted on a particular detainee and the scope of the search.

In accordance with the Panel's request, the Police will provide an advance copy of the new guidelines and related amendment documents to Members as soon as we are able to finalize them. We expect this to be in the last week of June.

We should be most grateful for your assistance in bringing the above to the attention of Members.

Yours sincerely,



( Ms CHANG King-yiu )  
for Secretary for Security

Encl.

**For discussion  
on 4 March 2008**

**Legislative Council Panel on Security**

**Report on Stage One of the Review  
on the Police's Practices regarding the Search of Detainees**

**PURPOSE**

This paper reports on the outcome of stage one of the review conducted by the Police on the Force's practices regarding the search of persons to be detained in police custody.

**BACKGROUND**

2. Arising from the allegations made by some defendants in the "Lee Tung Street" case<sup>1</sup> that the Police had conducted searches on them involving the removal of clothing worn next to the skin unnecessarily whilst in detention, the Legislative Council Panel on Security (the Panel) invited the Administration to explain the practices of the Police in respect of the search of detainees at its meeting on 30 October 2007. Deputations gave their views on the issue at the Panel meeting on 4 December 2007. Some Members of the Legislative Council visited the Waterfront Police Station on 11 December 2007 for a better understanding of the Police's procedures in conducting searches of detainees.

3. Having regard to the comments raised by Members at the Panel meetings on 30 October 2007 and 4 December 2007, the Police undertook a review of their current practices and procedures regarding the search of detainees in two stages :

Stage one : Notwithstanding the hearing of the Lee Tung Street court case scheduled for July 2008, the Police would in the first instance review what immediate improvement measures they could implement without prejudicing the court proceedings.

Stage two : Upon the conclusion of all proceedings in respect of the afore-mentioned court case, the Police will consider whether additional measures are warranted to further improve on the handling of searches of detainees.

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<sup>1</sup> The trial on the case has been scheduled for 4 July 2008.

In the course of the review, the Police will consider how best to address their duty of care to a person to be detained and their obligation to respect the privacy and dignity of a person to be searched. We agreed to revert to the Panel on the findings and proposals arising from the review.

## **THE REVIEW**

### **Existing practices in handling detained persons**

4. The Police owe a duty of care to detained persons in police custody. They are also under a duty to prevent and detect crime. At the same time, detained persons have their human rights protected by the Basic Law which should not be interfered with unlawfully or arbitrarily.

5. Under section 10(d) of the Police Force Ordinance (Cap. 232), the Police have a duty to apprehend all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists. A person arrested by a police officer would be forthwith delivered into the custody of the Duty Officer of a police station. The Duty Officer needs to be satisfied that the arrest of the person concerned was lawful.

6. At common law, the Police have a duty to take all reasonable measures to ensure that detainees do not escape or assist others to do so, do not injure themselves or others, do not destroy or dispose of evidence and do not commit further crime. It is lawful for the Police to take such reasonable measures as are necessary to carry out these duties. In this connection, the Police are of the view that it is necessary to search each and every person prior to his being detained in a Temporary Holding Area (THA) or police cell for the above-mentioned purpose. The scope of each search, however, would be case specific and should be no more than what is rational and proportionate to achieve the purpose.

7. In this regard, Police General Order (PGO) 49-04 stipulates, inter alia, that :

“A Duty Officer, or an officer detailed by him, will search a detained person prior to his being secured in a Temporary Holding Area (THA) or cell block, the extent of which shall be determined by the prevailing circumstances, to satisfy himself that the detained person does not have :

- (a) on his person any weapon with which he might do himself or others an injury or any implement with which he might effect an escape;

- (b) in his possession evidence which is material to the offence with which he is charged; or
- (c) in his possession any article with which he could commit a further crime e.g. malicious damage to property or consumption or distribution of dangerous drugs.”

8. The search of a detainee prior to detention in a THA or police cell is usually conducted in an enclosed area in the police station where privacy is provided. Under no circumstances is an officer permitted to search a detainee of the opposite gender.

9. Under normal circumstances, a search would be conducted on a person's clothing and to his property. This may involve a “pat down”, an instruction to the person to empty his pockets, or the removal of footwear and headdress. If need be, the raising of a shirt worn next to the skin, or the lowering of trousers may be required. A more detailed search requiring removal of clothing worn next to the skin would not be ordered as a matter of routine. It would only be authorised in cases where it is considered necessary and proportionate to achieve the purpose of a search under PGO 49-04.

10. Furthermore, appreciating that a search which involves the removal of clothing worn next to the skin may be perceived as an unnecessary intrusion into a person's privacy and may cause embarrassment, in accordance with PGO 44-05(3), this type of search on a detainee shall only be carried out in the privacy of a police station, and shall be conducted only upon the direction of the Duty Officer who shall record the incident in the Communal Information System (CIS). After all, it is for the Duty Officer in the police station who authorizes the search to justify the need for a particular search and the manner in which it is carried out in the circumstances of that particular case.

11. Legal advice confirms that the search of a detained person, if properly conducted, with the scope of the search on each occasion to be determined having regard to the prevailing circumstances and on a case-by-case basis, would not be an unlawful or arbitrary interference with the detainee's privacy or personal integrity as the purpose of the search is legitimate — namely to ensure that the individual does not escape or assist others to escape, does not injure himself or others, does not destroy or dispose of evidence, and does not commit further crime.

## **Room for improvements**

12. Notwithstanding the legal position that it is lawful to search persons to be detained provided that the scope of the search on each occasion is necessary and proportionate having regard to the prevailing circumstances, the Police have reviewed the practices and procedures for conducting and recording searches on detained persons. They have identified three areas where there is room for improvement —

- (a) While it is already a matter of practice that the police officer will explain to a detainee the purpose of a search before it is conducted, there is no such specific stipulation in the Force's internal guidelines. Nor is there any requirement for the police officer to record the provision of such explanation to the detainee. There is also no arrangement for the detainee to acknowledge that he has been informed of the reason for and the scope of the search prior to it being carried out. The clarity and accessibility of information to both the public and detainees regarding the procedures for searches of detainees could be improved.
- (b) While the Police's internal guidelines already require that the authorizing officer should record searches of particular kinds, the Police have not stipulated any requirement as to the scope of information to be recorded. Moreover, the current flexibility as to where the record is to be made and where the record should be kept has given rise to practical difficulty in the effective retrieval of such information and records.
- (c) As the circumstances of each case vary, the scope of a search of a detainee is a matter of professional judgment of the officer who authorizes it and, depends on the circumstances prevailing at the time, the search is conducted having regard to the Police's duty of care towards the detainee and others as well as the other duties of the Police. To assist police officers in determining the scope of searches of persons to be detained, the Police see merit in providing more elaborate guidance to officers.

## **Improvement measures**

13. In the light of the observations in paragraph 12 above, and without affecting the criminal proceedings relating to the Lee Tung Street case

scheduled for hearing in July 2008, the Police have formulated the following measures to further improve on the procedures for searching detainees. The Force will seek to implement these measures as soon as possible, following briefings for the police officers concerned on the refined arrangement.

(a) Revision to PGO 49-04

14. To more clearly reflect the requirement to conduct searches of persons to be detained in fulfilment of the Police's statutory functions and their obligation of duty of care, and at the same time the need to respect the dignity and human rights of the individual concerned, the Police will revise relevant part of PGO 49-04 as follows (changes / additions made to the existing text are underlined for ease of reference) :

“ In order for the Police to properly discharge their statutory functions and fulfill their duty of care to all persons detained in their custody, the Commissioner of Police has determined that a search will be conducted on all persons to be detained in police custody.

2. A Duty Officer, or an officer authorized by him, will search a detained person prior to his being detained in a Temporary Holding Area or cell block, the scope of which shall be determined by the prevailing circumstances and on a case-by-case basis in order to satisfy himself that the detained person does not have :

- (a) on his person any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape;
- (b) in his possession evidence which is material to the offence with which he is charged; or
- (c) in his possession any article with which he could commit a further crime e.g. malicious damage to property or consumption or distribution of dangerous drugs.

3. The Duty Officer, or a designated deputy in his absence, in authorizing searches will ensure the following:

- (a) No search will be conducted before or in the sight of another officer or person of the opposite sex to the person to be detained; and
- (b) Only persons whose presence is necessary for the proper conduct of the search are permitted to be present during the search.

4. The Duty Officer, or a designated deputy in his absence, will take appropriate steps to protect the privacy and dignity of the person to be detained.”

15. We will update PGO 49-04 currently uploaded on the Police Homepage to enhance public accessibility to the Police’s improved practices regarding searching of detainees.

- (b) Review of the “Notice to Persons under Investigation by, or Detained in the Custody of, the Police”

16. The Police will revise the “Notice to Persons under Investigation by, or Detained in the Custody of, the Police” (Pol. 153)<sup>2</sup> to reflect the above improved version of PGO 49-04. Moreover, to enable those who have been arrested by the Police to clearly know before their detention in a THA or police cell that they will be searched, and the reason for and the scope of the search, the officer to conduct the search will be required to inform the person to be searched that he is to be searched, why a search is to be conducted, as well as the scope of the search. The officer to conduct the search will also serve the revised Notice on the person to be detained and have his acknowledgement recorded on the form. A copy of the revised Pol. 153 is at **Annex A**.

- (c) Issue of guidelines on factors to be considered when deciding on the scope of a search of a detained person

17. The Police have been providing training to officers of different ranks at various stages of their career, reminding them of the human rights provisions in the Basic Law which they must comply with in the daily exercise of their power. To provide additional guidance to frontline officers who are required to authorize or conduct a search on detained

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<sup>2</sup> Pol. 153 is displayed in poster-sized bilingual format in all interview rooms and detention areas in police stations / buildings.



persons, the Force will issue guidelines stipulating the need for all such officers to discharge their duties in accordance with the law and to respect the human rights of such individuals protected under the human rights provisions in the Basic Law. The guidelines will also include a non-exhaustive list of factors to be considered by Duty Officers when deciding on the scope of a search of a detained person. The key areas to be covered in the guidelines to be promulgated are set out at **Annex B**.

(d) The requirement to record the scope of a search of a detained person

18. Under current practice, there are varying stipulations in respect of the recording of searches conducted on persons to be detained depending on whether removal of clothing worn next to the skin is involved. In particular, there is no specific requirement to record the reason for and the scope pertaining to a particular search to be recorded. To ensure consistency in recording the reason for and the scope of each search of detainee and to facilitate subsequent retrieval of these records, the following mandatory requirements will be introduced in respect of all searches of detainees :

- (a) The Duty Officer, or a designated deputy in his absence, will record the reason(s) why a detained person was searched, the scope of the search so authorized, any concerns raised by the detainee prior to or during the search and how the concerns were dealt with, and the officer who conducted the search. Such information should be recorded in the CIS;
- (b) The officer who conducts the search of a detained person will cross-reference the entry about the search in his police notebook to the record made in the CIS and ensure that comprehensive and consistent information is so recorded; and
- (c) In the event that an officer removes a detained person from the THA or cell for whatever purpose, and searches the person again prior to re-admitting the person to the THA or cell, the procedures under (a) and (b) above will be followed.

19. To safeguard the rights and dignity of persons to be searched and detained, and to facilitate future reference in the event of any challenge regarding the manner in which a search has been conducted, the search records made must be of sufficient detail to enable the Duty Officer to justify his decision.

## **THE WAY FORWARD**

### **Implementation timetable**

20. To enable early implementation of the improvement measures set out above, the Police will promulgate the following within the Force as soon as possible :

- (a) To revise PGO 49-04 in order to highlight the need for officers to meet the Force's duty of care owed to persons to be detained in police custody and to carry out the Force's functions under the law, while respecting the human rights of the persons detained, as guaranteed under the human rights provisions of the Basic Law;
- (b) To require officers to serve the revised Pol. 153 on all persons arrested and taken into police custody and to inform the detainees of the reasons for and the scope of the searches to be conducted;
- (c) To arrange for detainees to acknowledge that they have been informed of the reasons for and the scope of the searches by asking them to sign on a copy of the revised Pol. 153;
- (d) To require the Duty Officer, or a designated deputy in his absence, to record the reasons why a search was conducted, the scope of the authorized search, any concerns raised by the detainee prior to or during the search and how the concerns were dealt with, and the officer who conducted the search in the CIS;
- (e) To require the officer who conducts the search on a detained person to cross-reference the search in his police notebook with the relevant record made in the CIS; and
- (f) In the event that an officer removes a detained person from the THA or cell for whatever purpose, and searches the person again prior to re-admitting the person to the THA or cell, the same procedures under (d) and (e) above should be followed.

### **Further Review**

21. Upon the full completion of the criminal proceedings scheduled for hearing in July 2008, the Police will consider whether additional

measures are necessary to further improve the manner in which persons to be detained in police custody are searched. They will also continue to explore the feasibility and pursue necessary upgrading to enhance the functions of the CIS for recording searches conducted on persons detained in police custody, and for retrieving essential information and records on such searches as and when necessary.

**Security Bureau  
Hong Kong Police Force**

**February 2008**

NOTICE TO PERSONS UNDER INVESTIGATION BY, OR DETAINED IN THE CUSTODY OF, THE POLICE  
YOUR RIGHTS

(PERSONAL DATA)

1. request to have your arrest/detention notified to the consulate of your home country in Hong Kong or, if there is no consular representation in Hong Kong, the authorities in your home country [Note: For foreign nationals (EXCLUDING Mainland residents) ONLY];
2. request that a friend or relative be notified of your detention;
3. be supplied with adequate food and refreshment free of charge;
4. request to be provided with drinking water;
5. request to receive medical attention should you feel ill;
6. request to be provided with a list of solicitors;
7. request to be released on bail (or to be released if under investigation);
8. make telephone calls, send e-mail or faxes to friends or relatives;
9. make private telephone calls to, or communicate in writing or in person with, a solicitor or barrister;
10. have a solicitor or barrister present during any interview with the Police;
11. communicate privately with a solicitor or barrister claiming to have been instructed by a third person on your behalf;
12. refuse to communicate with a solicitor or barrister claiming to have been instructed by a third person on your behalf;
13. request to be provided with a supply of writing materials;
14. request to have letters posted or delivered as soon as practicable, at your own expense;
15. be supplied with a copy of your cautioned statement(s) or questions and answers under caution as soon as practicable after the interview;
16. refuse to answer subsequent questions until a copy of the cautioned statement(s) or questions and answers under caution have been provided to you;
17. request to be provided with food/refreshment at your own expense – for persons detained in custody (I & II) this will be subject to the approval of the officer in charge of the police station and the inspection of such food; and
18. send a telegram at your own expense.

**SEARCH OF PERSONS TO BE DETAINED IN CUSTODY OF THE POLICE**

In order for the Police to properly discharge their statutory functions and fulfill their duty of care to all persons detained in their custody, the Commissioner of Police has determined that a search will be conducted on all persons to be detained in police custody. A Duty Officer, or an officer authorized by him, will search a detained person prior to his being detained in a Temporary Holding Area or cell block, the scope of which shall be determined by the prevailing circumstances and on a case-by-case basis in order to satisfy himself that the detained person does not have:

- (a) on his person any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape;
- (b) in his possession evidence which is material to the offence with which he is charged; or
- (c) in his possession any article with which he could commit a further crime e.g. malicious damage to property or consumption or distribution of dangerous drugs.

The officer conducting the search will inform the detained person of the reason for and the scope of the search before carrying out the search. If the detained person raises any concern about the reason for and/or the scope of the search prior to or during the search, the officer conducting the search will bring such concerns to the attention of the Duty Officer.

I **PERSONS DETAINED IN CUSTODY OF THE POLICE**

As a person who has been detained in the custody of the police, you are entitled to all the rights set out in paragraphs (1) to (7) opposite.

Provided that no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation or the administration of justice, you have the additional rights set out in the remaining paragraphs (8) to (18) opposite.

II **PERSONS DETAINED IN CUSTODY OF THE POLICE ON THE ORDER OF A MAGISTRATE**

As a person who has been detained in the custody of the police on the order of a magistrate or a court, you are entitled to all the rights as set out in paragraphs (1) to (6), (13), (14) and (18) opposite.

Provided that no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation or the administration of justice, you have the additional rights set out in the remaining paragraphs (8) to (12) and (15) to (17) opposite.

III **PERSONS UNDER INVESTIGATION BY THE POLICE**

As a person under investigation by the police, you are entitled to full civil rights: these include, but are not limited to, all the rights set out in paragraphs (4) to (18) opposite.

FORMATION (REF. NO.) \_\_\_\_\_

ISSUING OFFICER \_\_\_\_\_

INTERPRETER'S NAME \_\_\_\_\_

LANGUAGE/DIALECT \_\_\_\_\_

DATE & TIME \_\_\_\_\_

NAME OF RECIPIENT \_\_\_\_\_

ID CARD NO. OF RECIPIENT \_\_\_\_\_

I (\* have read / have had read over to me) the opposite paragraphs as listed in section (\* I / II / III) above.

For persons in Sections I and II: I have been informed of the reason for and the scope of the search to be conducted on me before it is carried out.

I acknowledge receipt of a copy of this Notice at ..... hours on ..... (Date).

\_\_\_\_\_  
(Recipient) (Interpreter) (Issuing Officer)

\* Delete as appropriate  Tick appropriate box

Note: Original of this Notice to be retained by the OC Case as an exhibit.

**Key areas to be covered in the guidelines to be issued to police officers  
on the searching of detained persons**

1. A search may be regarded as an intrusion into a person's privacy and dignity and therefore should be balanced against the requirement of a police officer carrying out his lawful duty. A search, if properly conducted, would not be an unlawful or arbitrary interference with the person's privacy or dignity, as the purpose of the search is legitimate – namely for the protection of law and order and protection of the well-being of the person to be searched and others.
2. Article 28 of the Basic Law states that 'No Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. Arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited.'
3. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) (incorporated into Hong Kong's domestic law by Article 14 of the Hong Kong Bill of Rights Ordinance and entrenched in Article 39 of the Basic Law) states that 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.'
4. Article 10 (1) of the ICCPR (Article 6(1) of the HKBOR) provides that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'
5. The scope of any search to be carried out must not be arbitrary. It should be determined by the prevailing circumstances on a case-by-case basis and should be proportionate to the purpose of ensuring that the detained person does not have :
  - (a) on his person any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape;
  - (b) in his possession evidence which is material to the offence with which he is charged; or
  - (c) in his possession any article with which he could commit a further

crime e.g. malicious damage to property or consumption or distribution of dangerous drugs.

6. When deciding on the scope of a search to be conducted, the following factors, which are not exhaustive, may be taken into consideration :
  - (a) offence(s) committed;
  - (b) criminal record;
  - (c) level of violence exhibited during offence and upon arrest;
  - (d) level of cooperation and attitude following arrest and case handling;
  - (e) suicidal tendencies exhibited; and
  - (f) previous record of self-harm, if known.
  
7. The police officer conducting the search is required to explain to the person concerned the reason for and the scope of the search, as well as his right to raise with the Duty Officer his concerns regarding the search, before conducting the search. If the person has any concerns about the search, the searching officer will make them known to the Duty Officer of the police station. The Duty Officer may uphold the decision to conduct the search, or modify the scope of search, after considering the concerns expressed by individual and will then direct the search to commence forthwith. Should a person who is lawfully arrested refuses to be searched prior to being detained in police detention facilities, he should be warned that minimum force necessary to complete the search will be used. The detained person should also be advised that continued refusal could render him liable to prosecution under Section 63 of the Police Force Ordinance (Cap. 232) or Section 36 of the Offences against the Person Ordinance (Cap. 212). If he continues to refuse to be searched, reasonable force may be used.
  
8. The Duty Officer, or a designated deputy in his absence, is required to record in the Communal Information System the reasons why a search is conducted (which will be for one, or more, reason(s) under PGO 49-04 (2) (a) to (c)), the scope of the search so authorized, who conducted the search, any concerns raised by the detainees prior to or during the search and how the concerns were dealt with. To facilitate future reference in the event of any challenge regarding the manner in which a search has been conducted, the records made must be of sufficient detail to enable the Duty Officer, or his designated deputy in

his absence, who authorized the scope of search subsequently conducted, to justify his decision. The police officer conducting the search will also cross-reference the entry about the search in his police notebook to the record made in the CIS and ensure that comprehensive and consistent information is so recorded. In the event that an officer removes detained person from the THA or cell for whatever purpose, and searches the person again prior to re-admitting the person to the THA or cell, the same procedures as above will be followed.