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27 June 2008

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

Dear Mrs Tong,

Panel on Security

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

----- Further to our letter to the Panel on Security on 12 June 2008, please find attached for Members' reference the finalized documents relating to the Police's new arrangements for the handling of searches of detainees, as follows :

- (a) revised Police General Orders 49-04 (at **Annex A**);
- (b) revised Force Procedural Manual 49-04 (at **Annex B**);
- (c) new "Custody Search Form" (Pol. 1123) (at **Annex C**); and
- (d) new "Guidelines on the Searching of Detained Persons" (at **Annex D**).

The new arrangements will take effect on 1 July 2008. The Police have briefed all frontline officers responsible for searches on detained persons on the revised procedures to ensure their familiarity and compliance with the new requirements. The gist of the new arrangements is set out below –

- (a) Officers are reminded that they should conduct every search with proper regard to the reasonable privacy and dignity of the detained person. The scope of a search should be determined on a case-by-case basis according to the prevailing circumstances.
- (b) A clear delineation is made between searches of different degree of intrusiveness – i.e. “non-removal of clothing”, “removal of clothing” and “removal of underwear”. It is made explicit that police officers should not conduct searches involving removal of underwear routinely, but only in circumstances with strong justification.
- (c) Apart from general requirements on how searches on detainees should be conducted, more stringent requirements in respect of searches where clothing is to be removed (including removal of underwear) are stipulated.
- (d) The officer conducting the search is required to explain to the detained person the reason(s) for and the scope of the search to be carried out, before the search is to be conducted. The Duty Officer will ensure that the purposefully designed “Custody Search Form” (Pol. 1123) will be served on the detained person, with the contents explained to the individual concerned. The form sets out clearly the reason(s) for and the scope of the search in question, the procedures of the search, and the rights and entitlements of the person to be searched during his/her detention. The responsible officer will ask the detained person to sign on the form in acknowledgement after the explanation and prior to the search.
- (e) The required details concerning the searches conducted in respect of a detained person (including the reason(s) for and the scope of the search, and any concern(s) raised by the detainee in respect of the search and any actions taken to address such concern(s)) should be recorded in the Force’s Communal Information System. The Police have provided guidance to the responsible officers, explaining the level of details required for such records.

The new arrangements reflect the statutory functions that police officers should discharge and the need to ensure the safety of the detained persons and others. On the other hand, the new arrangements also provide appropriate safeguards in respect of the requirements to respect the rights of the detained persons and to prevent arbitrary searches. We believe that the new arrangements could provide clear guidelines to both persons to be searched and police officers so that complaints arising from misunderstanding could be minimised.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Apollonia Liu', written in a cursive style.

(Apollonia Liu)
for Secretary for Security

PGO 49-04 Searching of Detained Persons

The Commissioner of Police has determined that in order for Police officers to properly discharge their statutory functions and fulfill the Force's duty of care to persons detained in custody and to ensure the safety of others who may come into contact with them, **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 (THA) or cell. The Duty Officer will determine the scope of the search on a case-by-case basis, based upon the prevailing circumstances, in order to satisfy himself that a detained person does not have in his possession:

- (a) any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape; and/or
- (b) evidence which is material to the offence with which he is arrested or charged and any other offences; and/or
- (c) 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 will make a record in CIS of all custody searches conducted on detained persons, distinguishing between a search that involves:

- (a) 'non-removal of clothing' e.g., a detained person is given a pat-down search and no items of clothing, except footwear, are removed. This may include the search of a handbag and/or a detained person is asked to empty his pockets;
- (b) 'removal of clothing' e.g., this would include a detained person being asked to remove coat, trousers, shirt / blouse and the search of such items; and

- (c) 'removal of underwear' e.g., this would include the removal / partial removal / looking into / search and request for removal of items of clothing usually worn to cover a person's private parts.
("Private Parts" in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman.)

4. Prior to conducting a search on a detained person, the Duty Officer, or in his absence, his authorized deputy, will explain to the detained person the reason(s) for the search and the scope of the search to be carried out.

5. The Duty Officer will ensure that a copy of the 'Custody Search Form' Pol. 1123 is served on the detained person, the contents explained and the detained person's signature is obtained on the Pol. 1123 in acknowledgement prior to the search. A new 'Custody Search Form' Pol. 1123 will be used for subsequent searches. A copy of signed Pol. 1123 will, subject to FPM 49-04(9)(d), be provided to the detained person for his retention.

6. The Duty Officer, or a designated deputy in his absence, will record in CIS as soon as reasonably practicable after the search for every detained person:

- (a) the reason(s) why a search was conducted;
- (b) the scope of the search ;
- (c) the service and signing of the Pol. 1123 ;
- (d) who conducted the search;
- (e) who witnessed the search;
- (f) where the search was carried out; and
- (g) any concern(s) raised by the detained person regarding the search and action taken to address the concern(s).

7. The officer who conducts or witnesses the search of a detained person will cross-reference the search in his police notebook with the relevant record made in CIS and make an appropriate entry in EOS.
8. Searches will be conducted by police officers as follows:
 - (a) only officers of the same gender as the detained person will be present when a search is conducted;
 - (b) only officers of the same gender as the detained person will conduct the search;
 - (c) at least two officers of the same gender as the detained person will be present; and
 - (d) only in an area offering reasonable privacy.
9. Where clothing (including underwear) is to be removed, officers will:
 - (a) not require a detained person to remove all of his / her clothes at the same time, e.g. a person whose clothing above the waist has been removed should be allowed to put the clothing back on before removing clothing below the waist;
 - (b) conduct a search as quickly as practicable;
 - (c) allow the detained person to put his clothing on as soon as the search is complete; and
 - (d) conduct the search in an area not in view of persons other than those officers required to carry out, witness or supervise the search. The door of the area where the search is conducted should be locked or the access restricted during the search.
10. Searches of detained persons are never to be used as a punitive measure. In particular, a search involving the removal of underwear should not be conducted

routinely but only in circumstances with strong justification. Police officers will conduct every search with proper regard to the privacy and dignity of the detained person. Duty Officers will make every practicable effort to minimize embarrassment and to secure the detained person's co-operation in the search process.

11. If a detained person is removed from the THA or cell for any reason, he will be searched on his return and prior to being detained in the THA or cell. The search will be for the reason(s) as set out in PGO 49-04(2) (a) to (c) and conducted and recorded as per paras. 4 to 10 above.

12. If an officer has reason to suspect that a person being searched has concealed any article within his person, he shall report the matter to his DVC or equivalent.

13. The DVC or equivalent shall decide whether or not a medical examination is necessary and if he considers it necessary, shall contact the Forensic Pathologist.

14. If a medical examination is undertaken, it shall be made by the Forensic Pathologist or in accordance with arrangements made by him.

15. A "body cavity" or "Intimate" search may only be performed under Section 52(1A) of the Dangerous Drugs Ordinance, Cap. 134.

FPM 49-04 Searching of Detained Persons

The Commissioner of Police has determined that in order for Police officers to properly discharge their statutory functions and fulfill the Force's duty of care to persons detained in custody and to ensure the safety of others who may come into contact with them, **a search will be conducted on all persons to be detained in police custody.**

2. A search of a person is an intrusion of a person's privacy and dignity and therefore any search carried out must not be arbitrary. The scope of a search should be balanced against the need for a police officer to carry out his statutory duty and should be determined on a case-by-case basis according to the prevailing circumstances.

3. A person is searched immediately upon arrest in order to remove from him any weapon and article of evidential value that may be in his possession. A further search will be conducted on return to a Police station to ensure that the person to be detained does not have in his possession:

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

4. The Duty Officer will arrange the search of a detained person to be conducted in accordance with PGO 49-04 prior to his being detained in a THA/cell to ensure that the detained person does not:

- (a) escape;
- (b) assist others to escape;

- (c) injure himself or others;
- (d) destroy or dispose of evidence; or
- (e) commit further crime.

5. When deciding the scope of a search to be conducted, the Duty Officer should take into consideration the following factors, which are not exhaustive, including:

- (a) offence(s) committed;
- (b) criminal record;
- (c) level of violence exhibited during offence and upon arrest;
- (d) demeanour following arrest and case processing;
- (e) suicidal tendency exhibited;
- (f) previous record of self-harm, if known;
- (g) any other behavioural characteristics displayed; and
- (h) any other relevant factors.

6. A copy of the 'Custody Search Form' (Pol. 1123) which clearly sets out the rights and entitlements of persons to be searched whilst detained in police custody will be served on the detained person prior to a search being conducted. The reason(s) for and the scope of the search will be explained to the detained person. The detained person will be invited to sign the Pol. 1123 to acknowledge that he has been notified of this. If the detained person refuses to sign the Pol. 1123, this will be recorded in the 'Brief Summary' in CIS for that particular case.

7. If a detained person continues to refuse to cooperate, he should be advised that force may be used to carry out the search. The detained person should be given an opportunity to comply and advised that 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.

8. Subject to paragraphs 9 and 11 below and prior to being detained in a cell, the detained person should have all of his property removed, including belts, braces, ties, cords, laces, etc. This is necessary for the following reason(s):

- (a) to ensure the safety of the property of the detained person; or
- (b) to protect the detained person from using his/her property to injure himself/herself; or
- (c) to protect the police from any allegation of theft and impropriety.

9. A detained person may be allowed to retain:

- (a) essential clothing;
- (b) spectacles, hearing aid, contact lenses, etc., provided the detained person does not have any suicidal tendency, in which case these items are to be secured in a locker in the report room, the keys to which are to be kept by ADO. The DO shall ensure that such items are to be temporarily returned to the detained person whenever he is removed from the cell and under close escort, or when such item is required for any legitimate purpose such as interviews, enquiries and statement taking;
- (c) head-dress, if the detained person is required by faith or custom to wear it, but is to be removed from him at any time he is not under close supervision; and
- (d) copies of any paper statement the detained person may have made whilst in custody, provided that the detained person does not have suicidal tendency.

10. Given that persons detained in a THA are subject to continuous watch, the requirement for the removal of any items of personal property only relate to articles which may pose an IMMEDIATE danger to either the detained person or to the others. Examples include, but are not limited to articles such as lighters, nail-files and other sharp objects.

11. The following special arrangements apply to uniformed servicemen and females detained in custody as appropriate:

- (a) in the case of a serviceman in uniform, such items of uniform and equipment as may be necessary to enable him to appear properly dressed before the Magistrate are to be returned to him before he goes to court;
- (b) a detained female is to be allowed to retain her underwear, unless she is mentally unbalanced, or there is reason to believe that she may do harm to herself or others, or the item of clothing is a case exhibit. Whenever an item of clothing that is an exhibit is removed from a detained person, attempts must be made to obtain a replacement in accordance with 49-27 below;
- (c) unless required as an exhibit, an item of clothing removed from a detained person should be returned prior to appearing in a Magistrates Court if it is required to ensure that the person so detained is properly and decently dressed. Items of clothing or serviceman's uniform returned prior to court appearance are to be endorsed with an appropriate entry in CIS; and
- (d) at the end of the hearing, if sentenced to imprisonment or remanded in custody by a Magistrates Court, the prisoner is to be searched by a police officer of the same gender under the direction of the OC Court and such articles are again to be removed and entered in the CIS generated Pol. 39. If committed to prison for sentence or to await trial, the property is to be sent to prison with the prisoner in the normal way. If the prisoner is remanded, such articles are to be returned to the prisoner by a police officer of the same gender under the direction of the OC Court prior to any subsequent hearing.

12. All searches are to be conducted in accordance with PGO 49-04 and in accordance with Force Guidelines issued on this subject. In carrying out searches due consideration must be given, as far as practicable, to reasonably maintaining the privacy and dignity of the person being searched, whilst at the same time achieving the lawful purpose of the search.

**(PERSONAL DATA 個人資料)
CUSTODY SEARCH FORM**

YOUR RIGHTS

1. The Commissioner of Police has determined that in order for Police officers to properly discharge their statutory functions and fulfill the Force's duty of care to persons detained in custody and to ensure the safety of others who may come into contact with them, 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 you prior to your being detained in a Temporary Holding Area (THA) or cell. The Duty Officer will determine the scope of the search on a case-by-case basis, based upon the prevailing circumstances in order to satisfy himself that you do not have in your possession:
 - any weapon or article with which you might do yourself or others an injury or any implement with which you might effect an escape; and/or
 - evidence which is material to the offence with which you are arrested or charged and any other offences; and/or
 - any article with which you could commit a further crime e.g. malicious damage to property or consumption or distribution of dangerous drug.
3. The scope of the search will be as follows:
 - 'Custody Search - non-removal of clothing';
 - 'Custody Search - removal of clothing'; or
 - 'Custody Search - removal of underwear'
4. The Duty Officer will provide you with a copy of this Form and you will be asked to sign this Form prior to being searched. If you refuse to cooperate, then force may be used to carry out the search. You may also be 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.
5. If you have any concern(s) regarding the search, you may bring these to the attention of the Duty Officer.
6. Search(es) on you will be conducted by police officers as follows:
 - (a) only officers of the same gender as you will be present when the search is conducted;
 - (b) only officers of the same gender as you will conduct the search;
 - (c) at least two officers of the same gender as you will be present; and
 - (d) the search will take place only in an area offering reasonable privacy.
7. Where your clothing (including underwear) is to be removed, officers will:
 - (a) not require you to remove all of your clothes at the same time;
 - (b) conduct a search as quickly as possible;
 - (c) allow you to put your clothing on as soon as the search is complete;
 - (d) conduct the search in an area not in view of persons other than those officers required to carry out, witness or supervise the search. The door of the area where the search is conducted will be locked or the access restricted during the search.
8. Whilst in police custody, you may be allowed to retain:
 - (a) essential clothing;
 - (b) spectacles, hearing aid, contact lenses, etc., provided you do not have any suicidal tendency, in which case these items are to be secured in a locker in the report room. Such items will be temporarily returned to you whenever you are removed from the cell and under close escort, or when such item is required for any legitimate purpose such as interviews, enquiries and statement taking;
 - (c) head-dress, if you are required by faith or custom to wear it, but is to be removed from you at any time you are not under close supervision; and
 - (d) copies of any paper statement you may have made whilst in custody (including a copy of this form), provided that you do not have suicidal tendency.
9. Whilst being detained in police custody, subsequent search(es) may be conducted on you for reasons as set out in paragraph 2 above.

FORMATION (REF. NO.) _____

ISSUING OFFICER _____

DATE & TIME _____

NAME OF RECIPIENT _____

TYPE OF IDENTIFICATION _____

DOCUMENT AND NO. OF RECIPIENT _____

I (*have read/have had read over to me) the opposite paragraphs and acknowledge receipt of a copy of this NOTICE at hours on..... (Date).

(Recipient)

(Issuing Officer)

[A FRESH 'CUSTODY SEARCH FORM' POL. 1123 IS TO BE USED FOR EACH SEARCH. ALL SEARCHES SHOULD BE CONDUCTED AND RECORDED IN ACCORDANCE WITH PGO 49-04(4) TO (10) AND FPM 49-04(6) TO (12).]

Guidelines on the Searching of Detained Persons

Introduction

These Guidelines have been prepared to assist officers in understanding the law relating to detained persons' human rights, the reason(s) why a search of detained persons is necessary and the process which a Duty Officer must go through in deciding the scope of the search to be conducted and what is to be recorded.

2. A search, of any scope, of a detained person is an intrusion of a person's privacy and dignity and therefore any search carried out must not be arbitrary and must be conducted in accordance with PGO and FPM 49-04. A search involving the removal of a person's underwear and exposure of a person's private parts is embarrassing and is a serious interference with a person's privacy and dignity. It is, however, occasionally unavoidable when dealing with detained persons. In such circumstances and in order to address human rights concerns, there is a need for safeguards against arbitrary searches and abuse of authority.
3. The scope of a search should be balanced against the need for a police officer to carry out his statutory duty and should be determined on a case-by-case basis according to the prevailing circumstances.
4. Simply put, a police officer must be in a position to justify:
 - a) The reason(s) WHY a search was necessary;
 - b) HOW and in WHAT manner the search was carried out;
 - c) WHERE and WHEN the search was carried out; and
 - d) The SCOPE of the search.
5. The Guidelines also include advice on how searches are to be recorded (in the Communal Information System (CIS), Police Notebooks and the End of Shift (EOS) Report) and explain the requirement to formally advise a detained person of the reason(s) for and scope of a search.
6. Keeping accurate records of all searches is an essential safeguard to both comply with a detained person's rights and also to protect officers from allegations of abuse of authority or impropriety.

The Legal Background

7. **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.'**

8. **Article 17 of the International Covenant on Civil and Political Rights (incorporated into Hong Kong domestic law by Article 14 of the Hong Kong Bill of Rights Ordinance, Cap 383 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 provision of the law against such interference or attacks.'**

9. **Article 10(1) of the International Covenant on Civil and Political Rights (incorporated into Hong Kong domestic law by Article 6(1) of the Hong Kong Bill of Rights Ordinance, Cap. 383) states that 'All persons deprived of their liberty shall be treated with humanity and with respect of the inherent dignity of the human person.'**

10. **Legal advice has confirmed that a search, if properly conducted, would not be an unlawful or arbitrary interference with the person's privacy or dignity, if 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. The scope of the search on each occasion is to be determined having regard to the prevailing circumstances and should be proportionate to such circumstances.**

11. **It is important to understand that when a search is conducted, irrespective of the scope, it must be carried out in a manner which is consistent with The International and Covenant on Civil and Political Rights, The Hong Kong Basic Law and the Hong Kong Bill of Rights Ordinance, Cap. 383.**

Detained Persons

12. **The Commissioner of Police has determined that in order for Police officers to properly discharge their statutory functions and fulfill the Force's duty of care to persons detained in custody and to ensure the safety of others who may come into contact with them, a search will be conducted on all persons to be detained in police custody. The scope of a search on each occasion is to be**

determined having regard to the prevailing circumstances and should be proportionate to such circumstances. A search involving the removal of underwear should not be conducted routinely but only in circumstances with strong justification. Police officers will conduct every search with proper regard to the privacy and dignity of the detained person. Duty Officers will make every practicable effort to minimize embarrassment and to secure the detained person's co-operation in the search process.

13. A Duty Officer, or an officer authorized by him, will search a detained person prior to his being detained in a Temporary Holding Area (THA) or cell. The Duty Officer will determine the scope of the search on a case-by-case basis, based upon the prevailing circumstances in order to satisfy himself that a detained person does not have in his possession:

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

14. The original stipulations in PGO 49-05(4) and FPM 49-05(6) to search persons detained in police cells at least once per shift will be **cancelled**. However, the requirement for the Duty Officer to personally supervise the searching of all cells not less than once per shift remains.

Recording of Searches

15. The Duty Officer, or a designated deputy in his absence, will record in CIS as soon as reasonably practicable after the search for every detained person:

- (a) the reason(s) why a search was conducted;
- (b) the scope of the search ;
- (c) the service and signature of a Pol. 1123;
- (d) who conducted the search;
- (e) who witnessed the search;

- (f) where the search was carried out; and
- (g) any concern(s) raised by the detained person regarding the search and action taken to address the concern(s).

Scope & Recording of Searches

16. In order to distinguish the scope of a search carried out and to maintain accurate records of searches, it is important to be able to differentiate between a search that simply involves a pat-down and turning out of pockets, to one that also includes the removal of clothing, or ultimately a search that includes the removal of underwear.

17. Duty Officers will therefore record in CIS the scope of custody searches as follows:

- (a) **'non-removal of clothing'** e.g., a detained person is given a pat-down search and no items of clothing, except footwear, are removed. This may include the search of a handbag and/or a detained person is asked to empty their pockets;
- (b) **'removal of clothing'** e.g., this would include a detained person being asked to remove coat, trousers, shirt / blouse and the search of such items; and
- (c) **'removal of underwear'** e.g., this would include the removal / partial removal / looking into / search and request for removal of items of clothing usually worn to cover a person's private parts.

("Private Parts" in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman.)

18. A copy of the 'Custody Search Form' (Pol. 1123) which clearly sets out the rights and entitlements of persons to be searched whilst detained in police custody will be served on the detained person and signed prior to a search being conducted. Before the search is carried out, the detained person should be advised of the reason(s) for and scope of the search and he/she may be subject to further search(es) whilst in police custody. The detained person should be informed that he may raise any concern(s) about the search to the Duty Officer. The

consequences of not allowing a search to be carried out must also be explained to the detained person who should then be given the opportunity to comply and raise any concern(s) about the search. If the detained person refuses to sign the Pol. 1123, this will be recorded in the 'Brief Summary' in CIS for that detained person.

19. Any concerns raised by the detained person will be considered by the Duty Officer who will document these concerns in the 'Brief Summary' in CIS and reconsider the scope of the search. The Duty Officer's decision together with his reasoning and/or any other actions taken will be final and conveyed to the detained person and recorded in the 'Brief Summary' in CIS for that detained person.

20. When deciding on the scope of a search to be conducted, the following factors, which are not exhaustive, may be taken into consideration by Duty Officers:

- (a) offence(s) committed;
- (b) criminal record;
- (c) level of violence exhibited during the offence and upon arrest;
- (d) demeanour following arrest and case processing;
- (e) suicidal tendency exhibited;
- (f) previous record of self-harm, if known;
- (g) any other behavioural characteristics displayed; and
- (h) any other relevant factors.

Further Search(es)

21. If a detained person is removed from the THA or cell for any reason, he will be searched on his return and prior to being detained in the THA or cell. The search will be for the reason(s) as set out in PGO 49-04(2) (a) to (c) and the search/scope conducted and recorded as per PGO 49-04(4) to (10).

22. Before a further search is conducted on a detained person, the Duty Officer will explain to the detained person the reason(s) for and scope of the search as well as his rights as set out on the Pol. 1123 and require him to acknowledge that this has been done by signing a new Pol. 1123. A copy of the signed Pol. 1123 will, subject to FPM 49-04(9)(d), be provided to the detained person and the original will be kept by the Duty Officer. OSSUCs will retain signed Pol. 1123s until the case has been disposed of, or for a period of two years before disposal, whichever is later.

Refusal To Be Searched – Obstruction

23. If the detained person continues to refuse to cooperate, then the minimum level of force required to carry out the search should be exercised. The detained person should also be advised that 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.

24. If the detained person continues to refuse to be searched, minimum force may be used but detailed records must be kept of the actions of the detained person, explanations and/or warnings given and the amount of force used. A search must never be used as a punitive measure when dealing with uncooperative or abusive arrested persons.

Supervision & Record Keeping

25. **Records of searches in CIS of persons to be detained will be subject to supervisory checks in accordance with FPM 21-50 'Use of the Communal Information System Supervisory Functions Program (CIS SF)'. Such entries may also be subject to disclosure in accordance with Headquarters Order No. 17 of 2003 'The Disclosure of Material to the Defence in Criminal Cases' or when an officer is required to give evidence at court.**

26. In order to protect officers from vexatious complaints and to safeguard the rights and dignity of persons to be searched and detained, it is important for officers to fully document their actions. Records made must be of sufficient detail to enable the Duty Officer who authorized the scope of search to justify his decision.

27. **All searches conducted will be recorded in EOS under the standardized counting rules in accordance with Headquarters Order No. 3 of 2007 under three newly created productivity parameters namely:**

- (a) **"Custody Search (non-removal of clothing)";**
- (b) **"Custody Search (removal of clothing)"; and**
- (c) **"Custody Search (removal of underwear)".**

28. Supervisory officers shall ensure that duties under their respective command who are required to record their productivity in EOS, make a proper

record in EOS of searches conducted on a detained person in accordance with the abovementioned Headquarters Order. An example of the EOS Productivity Report is attached at **Annex 'F'** for officers' reference.

[not
attached]

29. Common examples of how a search should be entered into CIS are included in **Annex 'D' Appendix I** for officers' reference.

**Common Examples of Input in CIS Free Text Field
of a Search on a Person to be Detained**

Reason for Search - PGO 49-04(2)(a)
(a) Has in his possession any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape.
Example 1
Case Background F/50 was arrested for shop theft in a supermarket. She is to be detained in THA awaiting OC Case.
Suggested Narrative in 'Brief Summary' in CIS
<u>Reason(s) / Factors Considered</u> At 2230 hrs, intention to search the detained person for reason PGO 49-04(2)(a) was explained to detained person. She agreed.
<u>Pol. 1123</u> At 2235 hrs, the Pol. 1123 was served and signed by the detained person.
<u>Scope</u> "Custody Search - non-removal of clothing" At 2240 hrs, I instructed WPC 1234 to ask the detained person to empty her pockets and handbag.
<u>Searching Officer</u> WPC 1234 was detailed to conduct the search.
<u>Witnessing Officer</u> WPC 2345 was detailed to act as a witness of the search.
<u>Location of the Search</u> At 2245 hrs, the search was conducted in interview room G01.
Please see Annex 'E' Page 2. [not attached]

**Common Examples of Input in CIS Free Text Field
of a Search on a Person to be Detained**

Reason for Search - PGO 49-04(2)(a)
(a) Has in his possession any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape.
Example 2
Case Background M/40 was arrested for assaulting his wife (Domestic Violence) at home. He seemed very calm and collected. He was only wearing a pair of shorts and T- shirt at the time of arrest.
Suggested Narrative in 'Brief Summary' in CIS
<u>Reason(s) / Factors Considered</u> No previous record of self-harm whilst in police custody, but I wished to check he had nothing to inflict injury on himself or others. Intention to search him for reason PGO 49-04(2)(a) was explained to detained person. He agreed.
<u>Pol. 1123</u> At 0745 hrs, the Pol. 1123 was served and signed by the detained person.
<u>Scope</u> "Custody Search - removal of clothing" At 0755 hrs, I instructed PC 3456 to check all items of outer clothing and removal of T-shirt and shorts (not underwear) to search for any weapons or articles in his clothing.
<u>Searching Officer</u> PC 3456 was detailed to conduct the search.
<u>Witnessing Officer</u> PC 4567 was detailed to act as a witness of the search.
<u>Location of the Search</u> At 0800 hrs, the search was conducted in interview room G02.

**Common Examples of Input in CIS Free Text Field
of a Search on a Person to be Detained**

Reason for Search - PGO 49-04(2)(a)
(a) Has in his possession any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape.
Example 3
Case Background M/40 was arrested for burglary. He is to be detained in cell for court appearance the following morning.
Suggested Narrative in 'Brief Summary' in CIS
<u>Reason(s) / Factors Considered</u> Previous record of attempted suicide whilst in police custody. In view of the suicidal history of the detained person, intention to search for reason PGO 49-04(2)(a) was explained to him. The detained person agreed.
<u>Pol. 1123</u> At 1130 hrs, the Pol. 1123 was served on the detained person. However, it was reported by PC 3456 that the detained person refused to sign the Pol. 1123. I explained to the detained person that the purpose of the Pol. 1123 is to inform him of his rights and information with regard to search(es) to be conducted whilst detained in police custody. Upon my explanation and further request, the detained person signed the Pol. 1123 at 1140 hrs.
<u>Scope</u> "Custody Search - removal of underwear" At 1145 hrs, I informed detained person (PC 3456 was present) of my intention to remove all items of clothing, including underwear to establish whether any weapons or articles were in his clothing and underwear. In particular I instructed the officer of the need to carefully check all items of clothing including underwear for small items that can be used for self-harm and instructed that the removal of clothing be done on a top half/bottom half basis.
<u>Searching Officer</u> PC 3456 was detailed to conduct the search.
<u>Witnessing Officer</u> PC 4567 was detailed to act as a witness of the search.
<u>Location of the Search</u> At 1150 hrs, the search was conducted in interview room G03.
Please see Annex 'E' Page 3. [not attached]

**Common Examples of Input in CIS Free Text Field
of a Search on a Person to be Detained**

Reason for Search - PGO 49-04(2)(a)
(a) Has in his possession any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape.
Example 4
Case Background M/35 was arrested for street deception. He attempted to escape while being escorted to a police vehicle after his arrest. He is to be detained in cell awaiting escort for House Search by DVIT.
Suggested Narrative in 'Brief Summary' in CIS
<u>Reason(s) / Factors Considered</u> In view of the detained person's previous attempt to escape after his arrest, intention to search the detained person for reason PGO 49-04(2)(a) was explained to detained person. He agreed.
<u>Pol. 1123</u> At 1820 hrs, the Pol. 1123 was served but the detained person refused to sign the Pol. 1123. The detained person disagreed with the scope of the search and refused to be searched. Reason for the search was further explained to the detained person. He was informed that force required to carry out the search would be used should he continue to refuse to be searched. The detained person was also advised that 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. At 1830 hrs, the Pol. 1123 was signed by the detained person.
<u>Scope</u> "Custody Search - removal of clothing" At 1835 hrs, I instructed PC 3456 to check all items of outer clothing and removal of sweater and jeans (not underwear) to search for any articles in his clothing.
<u>Searching Officer</u> PC 3456 was detailed to conduct the search.
<u>Witnessing Officer</u> PC 4567 was detailed to act as a witness of the search.
<u>Location of the Search</u> At 1845 hrs, the search was conducted in interview room G01.
Please see Annex 'E' Page 4. [not attached]

**Common Examples of Input in CIS Free Text Field
of a Search on a Person to be Detained**

Reason for Search - PGO 49-04(2)(b)
(b) Has in his possession evidence which is material to the offence with which he is charged.
Example 1
Case Background M/45 had been arrested for Criminal Damage by using a marker pen to deface posters.
Suggested Narrative in 'Brief Summary' in CIS
<u>Reason(s) / Factors Considered</u> As I believed the pen may be concealed in or under his clothing, intention to search the detained person for reason PGO 49-04(2)(b) was explained to detained person. He agreed.
<u>Pol. 1123</u> At 0920 hrs, the Pol. 1123 was served and signed by the detained person.
<u>Scope</u> "Custody Search - removal of clothing" (revised to "Custody Search - removal of underwear") At 0930 hours, I instructed the PC 3456 to remove the outer clothing of the detained person including the removal of T-shirt and trousers, excluding the underwear with a view to finding the pen. At 0940 hrs, PC 3456 reported to DO SSGT LAU that when the detained person took off his trousers in the process of the search, it was found that the detained person was not wearing any underwear and as a result, the private parts of the detained person were exposed during the search. The scope of the search was therefore re-categorized as "removal of underwear" .
<u>Searching Officer</u> PC 3456 was detailed to conduct the search.
<u>Witnessing Officer</u> PC 4567 was detailed to act as a witness of the search.
<u>Location of the Search</u> At 0935 hrs, the search was conducted in interview room G01.
Please see Annex 'E' Page 5. [not attached]

**Common Examples of Input in CIS Free Text Field
of a Search on a Person to be Detained**

Reason for Search - PGO 49-04(2)(b)
(b) Has in his possession evidence which is material to the offence with which he is charged.
Example 2
Case Background M/24 was arrested for possession of DD. Some exhibits have already been retrieved at scene from his pockets.
Suggested Narrative in 'Brief Summary' in CIS
<u>Reason(s) / Factors Considered</u> In view of the detained person's general behaviour, avoiding eye contact, was very agitated and sweating, when he was presented before me by AO, I suspected that he had concealed some other DD under his clothing. Since the detained person needed to be detained in the THA awaiting the OC Case, intention to search the detained person for reason PGO 49-04(2)(b) was explained to him who agreed.
<u>Pol. 1123</u> At 0400 hrs, the Pol. 1123 was served and signed by the detained person.
<u>Scope</u> "Custody Search - removal of underwear" At 0410 hrs, I instructed PC 3456 to remove all items of clothing, including underwear, to establish whether any exhibits were in the clothing and/or under clothing of the detained person. In particular I instructed the officer of the need to carefully check all items of clothing including underwear for DD and instructed that the removal of clothing be done on a top half/bottom half basis.
<u>Searching Officer</u> PC 3456 was detailed to conduct the search.
<u>Witnessing Officer</u> PC 4567 was detailed to act as a witness of the search.
<u>Location of the Search</u> At 0415 hrs, the search was conducted in interview room G02.

**Common Examples of Input in CIS Free Text Field
of a Search on a Person to be Detained**

Reason for Search PGO 49-04(2)(c)
(c) Has 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.
Example 1
Case Background F/35 was arrested on suspicion of soliciting for an immoral purpose. She was a TWP holder. She is to be detained in cell pending charging.
Suggested Narrative in 'Brief Summary' in CIS
<u>Reason(s) / Factors Considered</u> Before placing her in a cell pending charging, intention to ask the detained person to empty her handbag and pockets for reason PGO 49-04(2)(c) was explained to the detained person who agreed to cooperate.
<u>Pol. 1123</u> At 0140 hrs, the Pol. 1123 was served and signed by the detained person.
<u>Scope</u> "Custody Search - non-removal of clothing" At 0150 hrs, I instructed WPC 1234 to ask the detained person to empty all her pockets and handbag for a thorough inspection by the officer.
<u>Searching Officer</u> WPC 1234 was detailed to conduct the search.
<u>Witnessing Officer</u> WPC 2345 was detailed to act as a witness of the search.
<u>Location of the Search</u> At 0200 hrs, the search was conducted in interview room G01.

**Common Examples of Input in CIS Free Text Field
of a Search on a Person to be Detained**

Reason for Search - PGO 49-04(2)(c)
(c) Has 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.
Example 2
Case Background M/25 was arrested for Robbery. As informed by the OC Case, the arrested person is to be detained for appearance at court the following morning.
Suggested Narrative in 'Brief Summary' in CIS
<u>Reason(s) / Factors Considered</u> AP had previous history of DD convictions and appeared to be very nervous and depressed when presented before me by AO. Reasons for search were detailed for PGO 49-04(2)(a) and (c). The reasons were explained to the detained person and he agreed.
<u>Pol. 1123</u> At 1550 hrs, the Pol. 1123 was served and signed by the detained person.
<u>Scope</u> "Custody Search - removal of underwear" At 1555 hrs, I instructed PC 3456 to remove all items of clothing to establish whether any weapons or articles were in his clothing and under clothing. In particular I instructed the officer of the need to carefully check all items of clothing including underwear for DD and instructed that the removal of clothing be done on a top half/bottom half basis.
<u>Searching Officer</u> PC 3456 was detailed to conduct the search.
<u>Witnessing Officer</u> PC 4567 was detailed to act as a witness of the search.
<u>Location of the Search</u> At 1605 hrs, the search was conducted in interview room G02.
Please see Annex 'E' Page 6. [not attached]