

For information

Legislative Council Panel on Public Service

Supplementary information on the expression of comments by civil servants who are the chairmen or representatives of staff unions/associations on the Government or its policies

Background

At the meeting of the Panel on Public Service on 15 December 2008, Members requested the Administration to provide information on whether civil servants could, in their capacities as the chairmen or representatives of staff unions/associations of civil servants, criticise the Government or its policies. The relevant information is provided in the ensuing paragraphs.

Relevant legal provisions

2. Under Article 27 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Hong Kong residents "shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike". The right to freedom of expression is also guaranteed by Article 16 of the Hong Kong Bill of Rights, set out under section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383). Civil servants, as Hong Kong residents and irrespective of whether they are the chairmen or representatives of civil service staff unions/associations, enjoy these rights under the Basic Law.

3. Under the Trade Unions Ordinance ("TUO") (Cap. 332), all trade unions in Hong Kong, including civil service staff unions/associations, must register with the Registry of Trade Unions. Civil service staff unions/associations registered under the TUO enjoy the right of corporation, which includes the ability to own property, enter into contracts, to sue and be sued and to do all things necessary for the purpose of their constitutions. The objectives and scope of activities of civil service staff unions/associations are defined in their respective constitutions. While the detailed constitutions of individual staff unions/associations vary, broadly speaking, their objectives are to achieve better understanding and cooperation

between the Government as the employer and civil servants as the employees through liaison/discussion on matters affecting the well being of the latter, with a view to promoting their welfare and improving the efficiency of the civil service. Civil service staff unions/associations operate independently from the Administration and have autonomy in conducting their own affairs (including participation in public affairs) subject to the provisions in the TUO and their constitutions.

4. Notwithstanding the rights mentioned in paragraphs 2 and 3 above, civil servants, irrespective of whether they are the chairmen or representatives of civil service staff unions/associations, have to comply with the relevant provisions of the Official Secrets Ordinance (Cap. 521) with regard to the handling/disclosure of official information.

Government's policy

5. Generally speaking, the Government's policy on individual civil servants taking part in public affairs is that while they enjoy the civil and political rights as citizens as provided for under the prevailing laws, they should ensure that their contribution to any public debate or discussion on public matters is compatible with the need to maintain a politically neutral civil service. Civil servants shall ensure that the views they express will not compromise their capacity to fulfil their official duties professionally, effectively and impartially. They shall use information gained by virtue of their official position for authorised purposes only. They shall not disclose document, information or knowledge received in confidence from others in the course of their duties or by virtue of their official position. Civil servants who by actions bring the Government into disrepute are liable to punishments depending upon the gravity of their actions. A civil servant acting in his capacity as the chairman or member of a staff union/association will not absolve himself from the requirements as an individual civil servant under the above-mentioned policy.