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29 May 2012

Miss Polly YEUNG
Legislative Council Secretariat
Council Business Division 1
Principal Council Secretary (Subcommittee)1
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss YEUNG,

**Subcommittee on Amendments to Subsidiary Legislation on Discipline
Made under Disciplined Services Ordinances**

Follow-up to meeting on 16 May 2012

Further to my letter of 25 May, I attach a note setting out the Administration's response on the issue of review of completed disciplinary cases by the Hong Kong Police Force.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Ivy LAW', written in a cursive style.

(Ms Ivy LAW)
for Secretary for the Civil Service

c.c. DoJ (Attn.: Mr Sunny CHAN, Senior Assistant Law Draftsman
Ms Carman CHAN, Government Counsel)
Commissioner of Police (Attn.: Mr Anthony LAM)

Subcommittee on Amendments to Subsidiary Legislation on Discipline made under Disciplined Services Ordinances

Response to Subcommittee's question on review of completed disciplinary cases raised at its meeting on 16 May 2012

In response to the Subcommittee's query on whether the Police Force would consider to review completed disciplinary cases processed under the Police (Discipline) Regulations, Cap 232A in the light of the Court of Final Appeal ("CFA")'s judgment in *Lam Siu Po v. Commissioner of Police* (FACV 9/2008), the Police Force advises that CFA has, in *Lam Siu Po*, quashed only the guilty finding and punishment in Mr Lam Siu Po's case but not the other cases. The decisions made in the other completed cases were made after careful examination of evidence and surrounding circumstances and in accordance with the Police (Discipline) Regulations and internal procedures in force at the time. They remain valid unless and until they are quashed by the court by way of judicial review.

2. The Court of First Instance in *Tsui Kin Kwok Johnnie v. Commissioner of Police* (HCAL 50/2009) had no doubt that consideration of finality was applicable to decisions made in police disciplinary proceedings. The applicant could not circumvent the time restriction placed on applications for judicial review by requesting the Commissioner of Police ("Commissioner") to review decisions made years ago which had never been challenged before. The Commissioner's refusal to review his earlier decisions did not constitute a decision that might be challenged in an application for judicial review. The Commissioner had already exercised his power or discharged his duty when making those earlier decisions, i.e. he was *functus officio* in the matter.

3. The CFA in *HKSAR v Hung Chan Wa* (FACC 1/2006) held that an extension of time to appeal should **not** be granted only on the ground that a subsequent judgment has held the previous understanding of the law to be incorrect. There could be exceptional circumstances which would justify an extension of time and a departure from the principle of finality. However, the circumstances must be so exceptional that the occasions when they would be held to exist would be very rare. The CFA further stated in *Clarence Chan v Commissioner of Police* (FAMV 15/2010) that the mere fact that the fairness of disciplinary proceedings is involved is **not** an exceptional circumstance to justify extension. The principle set out in *Hung Chan Wa* and the application in *Clarence Chan* were affirmed by the

CFA at its judgment in *Chau Cheuk Yiu v Poon Kit Sang & Others* (FACV 7/2011) handed down on 24 May 2012.

4. From the angle of practical and effective management, the reinstatement of ex-police officers who have left the service for a long time would present a series of practical problems for the Police Force, including integrity clearance, retraining and reintegration programme to ensure that a reinstated officer could meet the high standard required of a professional Police Force for the public interest as well as the officer's own interest. For obvious reasons, owing to the lapse of time, the re-opening of disciplinary proceedings will be rendered extremely difficult by possible loss of witness's memory or evidence, destruction of exhibits, files and records, etc.

5. Having taken into consideration the important principle and factors including the finality of the decisions made in disciplinary proceedings, the good administration of the Police Force, the possibility of opening a flood gate and the practical difficulties of rehearing such disciplinary cases, the Commissioner has no plan to initiate review of past disciplinary cases where ex-police officers claim to have been prejudiced by denial of legal representation before the CFA's judgment in *Lam Siu Po*.

6. The above notwithstanding, where ex-police officers write to request a review of their disciplinary cases, as a matter of caution and good administrative practice, the Commissioner will continue to examine the justifications provided in each request on a case-by-case basis.

7. Since the CFA's judgment in *Lam Siu Po*, the Police Force has received and examined 55 requests for review of the results of past disciplinary cases from 54 ex-police officers and one serving officer. The Police Force rejected 54 of these requests. The remaining request made by an ex-police officer was overtaken by event after the court had allowed the judicial review initiated in parallel by the officer.

8. The Civil Service Bureau concurs that it is important to uphold the principle of finality from the legal and good administration points of view. It is also noted that the Commissioner will continue to examine any requests for a review of completed disciplinary cases from ex-police officers on a case-by-case basis.

Civil Service Bureau and
Hong Kong Police Force
29 May 2012