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Hon. Abraham Shek Lai-him, SBS, JP
Chairman
Public Accounts Committee
Legislative Council

Urgent by Fax (2840 0716)

Dear Mr. Shek,

Criminal investigation of former ICAC Commissioner

I understand that the Public Accounts Committee (PAC) is to conduct a meeting today at which Mr. Timothy Tong, the former Commissioner of the ICAC, has been requested to attend. The purpose of this letter is to bring to the attention of the PAC certain matters that may be relevant to the conduct of the meeting.

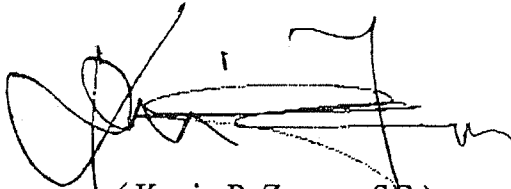
It is clear that the PAC has an important constitutional function in ensuring that public funds are properly expended and the use of such funds are appropriately accounted for.

As you are aware, there is a special investigation team under the direct supervision of the Commissioner of the ICAC, Mr. Simon Peh, currently conducting a criminal investigation into alleged offences under the Prevention of Bribery Ordinance (Cap. 201) and the common law offence of "Misconduct in Public Office" in relation to Mr. Tong.

As you can appreciate, the investigation is a fact finding and evidence gathering exercise with the view to determine whether or not any criminality has taken place, and if it has, what offences have been committed and by whom. The Department of Justice in this regard also has an important duty under law of ensuring that the criminal investigation is conducted thoroughly and properly and in a fair and impartial manner at all times. Article 63 of the Basic Law provides that the Department of Justice shall control criminal prosecutions, free from any interference. Given this responsibility, the Department is keen to ensure that the foregoing principles are appropriately borne in mind by the PAC in its dealings with Mr. Tong. I understand that a public hearing is to be held in this matter at which Mr. Tong is to attend and where questions might be asked of him in relation to matters pertaining to the investigation. This is something that should be carefully considered, bearing in mind the need to protect the integrity of the investigation and to ensure it is not prejudiced or jeopardized in any way.

I thank you in anticipation for your kind attention to this matter.

Yours sincerely,



(Kevin P. Zervos, SC)
Director of Public Prosecutions