



廉 政 公 署

INDEPENDENT COMMISSION AGAINST CORRUPTION

廉政專員 Commissioner, ICAC

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SC(4)(TI) Paper No.: ICAC1(C)

Our Ref: ICAC ADM CR 1-55/23 (C) Pt 1

Your Ref: CB4/SC/12

CONFIDENTIAL

By Hand

23 October 2013

Ms Anita SIT
Clerk to Select Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms SIT,

**Select Committee to Inquire into Matters Relating to
Mr Timothy TONG's Duty Visits, Entertainment, and
Bestowing and Receipt of Gifts during his Tenure as
Commissioner of the Independent Commission Against Corruption
(the Select Committee)**

I refer to your letter dated 11 October 2013. My letters dated 6 and 27 September 2013 are also relevant.

The criminal investigation in respect of Mr Timothy TONG is underway and efforts are being made to interview the persons involved. Provision of the information and documents sought under Part I (b) to (e) of the major areas of study (MAS) is likely to affect the evidence gathering process. It is because witnesses of the criminal investigation may come to know such information and contents of documents when they watch the Select Committee's inquiry through the media. There is a chance that their memory in respect of certain facts and documents may be affected by the inquiry, in particular when they hear the evidence of other persons who are questioned about the same facts or documents in the inquiry.

It is not uncommon for parties in criminal proceedings to challenge a witness's creditability by using the inconsistent statements that the witness had previously made. According to paragraph 34 of the Practice and Procedure of the Select Committee, for hearings held in closed meetings, no transcript will be provided to any person including the witnesses concerned. Such arrangement may create difficulty for the prosecution to fulfil its duty of disclosure if there is a trial.

The criminal investigation has been conducted in parallel to inquiries of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits (**IRC**) established by the Chief Executive and the Public Accounts Committee (**PAC**) as well as the Select Committee of the Legislative Council. The scope of the Select Committee's inquiry is widest amongst the committees and overlaps with that of the criminal investigation to a great extent. Based on the relevant experience of other select committees in the past, it is believed that the Select Committee will summon a substantial number of persons to give evidence. Most, if not all, of them are likely witnesses of the criminal investigation and hence my concerns are not speculative but a pragmatic assessment of the situation.

It also appears incorrect to say that the ICAC had provided information to the PAC and the IRC on similar areas of study now requested by the Select Committee. We observe that the Select Committee has asked for information more than the PAC, such as details of the duty visits, official entertainment and gifts bestowed by the three predecessors of Mr TONG, to name a few. According to our records, the PAC did ask for some information similar to that being requested by the Select Committee (e.g. the official entertainment activities attended by Mr TONG's personal guests and procurement records of gifts bestowed by Mr TONG), which was, however, declined for similar reasons as explained in my previous letters mentioned above.

While I am thankful to your provision of the Practice and Procedure of the Select Committee, I must point out that there are clearly fundamental differences in the mandate between the Select Committee and the IRC, including the latter reporting directly to the Chief Executive under strict confidence. Against this background, I hope the Select Committee would appreciate my decision not to accede to its request for information and records covered by Part I (b) to (e) of the MAS.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Simon Y L PEH', written in a cursive style.

(Simon Y L PEH)

Commissioner

Independent Commission Against Corruption