

LCQ17: Collision incident near Lamma Island in 2012

Following is a question by the Hon James To and a written reply by the Secretary for Transport and Housing, Mr Frank Chan Fan, in the Legislative Council today (January 16):

Question:

In response to the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012, the Transport and Housing Bureau set up an Internal Investigation Team (the Team) in June 2013 to investigate whether there were maladministration and negligence of duty on the part of Marine Department officers in carrying out their duties in relation to Lamma IV. The Team submitted its investigation report to the Civil Service Bureau and the Police in 2014 to facilitate the conduct of disciplinary actions and criminal investigations respectively. In addition, some family members of the deceased have told me that they have not yet been issued the death certificates for the persons who died in the collision incident. In this connection, will the Government inform this Council:

(1) given that the Government has so far refused to make public the investigation report but only made arrangements for Members of this Council who had signed a confidentiality undertaking to peruse a redacted version of the investigation report, whether the Government will (i) consider afresh making public the investigation report and (ii) return to Members of this Council the notes they took while perusing the investigation report;

(2) of the reasons why death inquests in respect of the 39 persons who died in the collision incident have not yet commenced and when they are expected to commence;

(3) of the reasons why the death certificates for the persons who died in the collision incident have not yet been issued and when they are expected to be issued; and

(4) given that the non-issuance of the death certificates has resulted in some insurance companies refusing to pay the deceased's family members the death benefits in respect of the life insurance policies taken out by the deceased and has rendered some properties jointly owned by the deceased and their family members not capable of being assigned, how the Government will assist the deceased's family members in dealing with such matters?

Reply:

President,

In consultation with the Security Bureau, the Department of Justice (DoJ) and the Judiciary, my responses to the question raised by the Hon James To are as follows:

(1) After the vessel collision incident near Lamma Island on October 1, 2012 and pursuant to some of the findings in the Report of the Commission of Inquiry (CoI) into the Collision of Vessels near Lamma Island on 1 October 2012, an Investigation Team (the Team) was set up in the Transport and Housing Bureau (THB) in June 2013 to conduct investigation into staff conduct in the Marine Department (MD). The Team was tasked to identify any shortfall or deficiency on the part of MD officers when carrying out their duties in respect of the Lamma IV in the past as revealed by the CoI. After the investigation was completed, the Team made recommendations to the Civil Service Bureau in April 2014 for consideration on disciplinary actions to be taken against the officers who were alleged to have misconducted themselves in respect of the Lamma IV. For matters involving suspected criminal offences, the Team had reported to law enforcement agencies for necessary follow-up investigation and actions.

The Government is aware that there has been public expectation for the Investigation Report (the Report) to be published. At the same time, the Government has to take into account of and strike a balance among various considerations for public disclosure of any content of the Report. In particular, the Government is mindful that the Report contains substantial personal data of persons involved in the investigation and information provided to the Government in confidence. The legal advice has confirmed that since the intended use of the personal data collated during the course of the investigation is for the purpose of the investigation, the Government is bound by the mandatory requirements in the Personal Data (Privacy) Ordinance (Cap 486) (the PDPO), including not to use the personal data collated for the purpose of investigation for a new purpose, such as disclosure to the public. Apart from the mandatory restrictions under the PDPO, the Government, being the holder of the confidential information contained in the Report, has the duty of confidentiality and the legal obligation to guard against unauthorised disclosure of such information. If the Government were to make public the Report, rather substantial parts of the Report (including but not limited to parts containing personal data and confidential information obtained during the investigation) would have to be redacted in order for the Government to fully comply with the aforesaid legal obligations. The excision of these materials will leave behind a Report which makes very little coherent sense, rendering it difficult to comprehend and/or giving rise to potential misunderstanding.

As a practical alternative, and having taken into account the Government's duty of confidentiality and the legal obligation to protect the personal data in the Report, a summary of the Report was published in 2014 to provide the gist of the facts and a lucid account of the work done by the Team as well as its overall findings and recommendations. The summary of the Report, submitted to the Legislative Council (LegCo) Panel on Economic Development (ED Panel) (vide Paper No. CB(1)1295/13-14(03)) and discussed by the ED Panel on April 28, 2014, is accessible by LegCo Members (Members) and the public at www.legco.gov.hk/yr13-14/english/panels/edev/papers/edev0428cb1-1295-3-e.pdf.

Furthermore, having regard to Members' role in monitoring the work of

the Government, in consultation with DoJ, the Government has made available a redacted version the Report for Members' perusal on the condition that they have signed a confidentiality undertaking. To this end, during the two periods from June to August 2015 and from April to May 2017, THB positively responded to the request of Members and made available the redacted version of the Report for perusal by Members who have signed the confidentiality undertaking (the Undertaking) at designated venues. The Undertaking is necessary to allow the Government to fulfil its legal obligations while at the same time to enable Members to discharge their duty in monitoring the work of the Government. Before perusing the Report, Members agreed to and signed the Undertaking, in which Members undertook and agreed to return the Report and all notes taken before departing the venue of perusal of the Report, as well as agreed that such notes be sealed and kept in the custody of THB. The arrangements above could already strike a suitable balance between facilitating Members' perusal and understanding of the redacted version of the Report, and the duty of confidentiality and other legal obligations the Government must adhere to.

The Government has endeavoured to strike a balance among various considerations, including public interest, requests for public disclosure of the Report as well as the legal obligations to protect data privacy and confidential information. Given that the contents of the Report remain as in 2014 with no further update, and that a summary of the Report is already accessible by the public to obtain an understanding of the overall findings, it is the Government's view that focusing the efforts on strengthening the Government's regulatory regime on local vessels is the appropriate approach to enhance safety at sea. This is in fact a view expressed by many members of the ED Panel before. The Government truly believes that such forward-looking approach is the most effective and productive way for us to work together towards enhancing the long-term marine safety in Hong Kong.

(2) to (4) Regarding the vessel collision incident near Lamma Island, the Births and Deaths General Register Office was notified by the Coroner that investigations would be required for the 39 cases of deaths in the incident. As the related procedures are still on-going, it is not appropriate to comment on the relevant cases at this stage.

As for the death certificates, the Births and Deaths General Register Office has to wait until the Coroner has completed the necessary investigation or inquest (if applicable) before the registration of a death could be processed. After the completion of the related procedures and upon notification by the Coroner, the Births and Deaths General Register Office will process the relevant registration of deaths as soon as practicable, and notify family members of the deceased to apply for a certified copy of the death entry (commonly known as "death certificate"). If for some particular reasons the family members of the deceased require a document to certify the fact of death of the deceased before the issuance of the death certificate, an application can be made to the Coroner's Court for a "Certificate of the Fact of Death" as an interim document certifying the fact of death.