

LCQ17: Urgent applications for search warrants

Following is a question by the Hon Mrs Regina Ip and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (November 6):

Question:

Since June this year, scenes of members of the public taking to the street to demonstrate have been occurred time and again. During the demonstrations, some masked demonstrators committed serious crimes, including arson, vandalising public facilities and shops, and hurling petrol bombs at police officers. In order to restore public order, the Government announced on October 4 this year the introduction of the Prohibition on Face Covering Regulation to ban the use of facial covering that is likely to prevent identification in unlawful or unauthorised assemblies, public meetings and public processions. On the other hand, it has been reported that earlier on, the Police called, one after another, several duty magistrates outside office hours for making an urgent application for a warrant to search the residence of a demonstrator who had been shot and arrested. However, the magistrates did not answer the calls, hung up the phone, and even rejected the application on grounds of "no urgency". In this connection, will the Government inform this Council:

(1) whether it knows if the Chief Magistrate has issued guidelines to the duty magistrates setting out the criteria, evidential requirement and considerations in respect of vetting and approval of urgent applications for search warrants; if the Chief Magistrate has, of the details; if not, whether he will expeditiously formulate such guidelines;

(2) given that although the Police may seek judicial review on a magistrate's decision of rejecting the issuance of a search warrant, the relevant procedure is time-consuming and resource-draining, whether the authorities will discuss with the Judiciary the establishment of a more convenient and expeditious review mechanism; if so, of the details; if not, the reasons for that;

(3) whether it knows if the Judiciary has put in place a mechanism to ensure that the magistrates will vet and approve urgent applications for search warrants in a professional and impartial manner; if the Judiciary has, of the details; if not, the reasons for that, and whether the Judiciary will consider establishing such a mechanism; and

(4) of the respective numbers of urgent applications (i) made by the Police and (ii) granted during the period from October 4 to 13 this year, for search warrants for investigation into offences related to demonstrations?

Reply:

President,

The Government has consulted the Judiciary on the questions raised. According to the information provided by the Judiciary, the Government's reply is as follows:

(1) The Judiciary should like to stress that all magistrates deal with applications for search warrants from the Police strictly in accordance with the law, having regard to the facts and particulars presented before them by the applicants who are individual Police officers. While each case would have to be considered on its own merits, considerations usually relevant to the magistrates' consideration in processing the applications include whether the applicant Police officer is able to provide full particulars of the application; whether he/she has personal knowledge of the facts of the application and is in a position to swear to the truth of the matters stated in support of the application and provide satisfactory answers to questions raised by the magistrates on such matters; whether, for application made outside office hours, he/she is able to provide reasons to support the urgency of such application; and whether the information disclosed would give rise to an offence, etc.

The Judiciary attaches great importance to the proper and efficient administration of justice. It will continue to review from time to time the administrative arrangements for the handling of applications for search warrants by magistrates, with a view to making improvements where required. Where matters relating to the administration of justice are drawn to the Judiciary's attention, these will always be treated seriously and dealt with appropriately.

(2) When handling applications for search warrants, the magistrates are discharging their statutory functions under the law. Under the established legal framework, their decisions are subject to judicial review. As such, the Judiciary does not consider it appropriate to have any separate mechanism outside the existing legal framework to handle any dissatisfaction over the outcome of applications for search warrants.

(3) and (4) At present, four magistrates are put on a two-week duty roster for handling applications for search warrants outside office hours. The Judiciary currently only captures the number of search warrants granted, but not rejected, by the duty magistrates outside office hours for all types of cases, including those relating to the recent protests. During the duty period from September 23 to October 7, 2019 (including six non-working days during a 15-day period), the number of search warrants granted was 52. During the period from October 8 to 20, 2019 (including four non-working days during a 13-day period), the number of search warrants granted was 18.

The Chief Magistrate will from time to time review the arrangement for handling applications for search warrant made outside office hours, and may,

where appropriate, consult the law enforcement agencies. The Judiciary will consider collating statistics and related matters on rejected applications.