

LCQ4: Law enforcement procedures of Police

Following is a question by the Hon Chan Chi-chuen and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 8):

Question:

Since June last year, thousands of members of the public have been granted bail by the Police after being arrested during public events, pending the Police's decisions on whether prosecutions will be instituted against them upon completion of investigations. It is learnt that when reporting to the police stations subsequently, quite a number of them refused to enter into further bail and they were released unconditionally. However, since the Police have so far not informed them whether investigations of the relevant cases have been completed and whether prosecutions will be instituted against them, they and their families are very worried day after day. In this connection, will the Government inform this Council:

(1) of the respective numbers of cases, in each of the past six months, of persons refusing to enter into further bail and their being released unconditionally after such refusal;

(2) of the number of persons in the past five years who were released unconditionally after refusing to enter into further bail and, among them, the number of those who were subsequently prosecuted, as well as the average duration between the dates of their unconditional release after refusal to enter into further bail and the dates on which they were prosecuted; and

(3) whether the Police will, upon deciding not to institute any prosecution against the persons released unconditionally after their refusal to enter into further bail, inform them of that decision expeditiously, so as to relieve them of the psychological burden; if so, of the details; if not, the reasons for that?

Reply:

President,

Members of the public enjoy the freedoms of expression, speech and assembly but they must exercise such freedoms peacefully and lawfully. Since early June last year, more than 1 200 protests, processions and public assemblies have been staged in Hong Kong and many of them ended up in serious violent illegal acts. In the past six months or so, there were rioters unlawfully blocking roads, paralysing traffic, hurling petrol bombs and setting fires at various locations, throwing bricks, wantonly assaulting people holding different opinions, wounding with intent, vandalising and

burning shops, railway facilities and traffic lights, etc., which severely endangered public order and public safety. Under section 10 of the Police Force Ordinance (PFO) (Cap 232), when illegal acts take place, the Police have a statutory duty to take all lawful actions to deal with them.

Under section 50 of PFO, a police officer has the power to apprehend any person who the officer reasonably believes will be charged with or whom the officer reasonably suspects of being guilty of an offence for which a person may (on a first conviction for that offence) be sentenced to imprisonment. When a police officer makes an arrest, the officer must act according to the law and in an appropriate manner.

When a person is arrested by the Police, the police officer will, as soon as possible, inform the person of the fact that he or she is under arrest, as well as the factual grounds and the reasons for the arrest. The arrestee will be brought before the Duty Officer as soon as possible to confirm the legality of the arrest and custody of the arrestee. The arrestee will then be handed over to an investigation team for investigation. Upon completion of preliminary investigation, the Police will, depending on the circumstances of the case, consider:

- (1) charging the arrestee, and detaining the arrestee until he or she is taken to appear before the court, or releasing the arrestee on bail pending his or her appearance before the court. The arrestee will generally not be detained for more than 48 hours;
- (2) in case the Police cannot complete the investigation into the case forthwith, releasing the arrestee on bail, and the arrestee shall appear at the police station at a specified time subsequently; or
- (3) releasing the arrestee unconditionally.

The legal basis and statutory authority for police bail are set out in section 52 of PFO. According to section 52(1) of PFO, an arrestee whom the Police have decided to prosecute may be released on bail, unless the offence appears to the Police to be of a serious nature, or the Police reasonably consider that the arrestee ought to be detained pending his or her appearance before a magistrate (for instance, the arrestee may abscond, repeat the offence, interfere with witnesses, impede the investigation or attempt to obstruct the course of justice). The arrestee shall normally appear before a magistrate at such time and place as is named in the recognisance. Where the arrestee is detained, he shall be brought to appear before a magistrate as soon as practicable.

In addition, according to section 52(3) of PFO, if the Police consider that the investigation into a case cannot be completed forthwith, the arrestee may be released on bail and shall subsequently appear at the police station at such time as is named in the recognisance. When the arrestee appears at the police station, the Police will, based on the progress of investigation for the case, decide to charge the arrestee, grant further bail or release the arrestee unconditionally. Such bail arrangement is necessary

and reasonable because the Police may, on the one hand, maintain contact with arrestees while cases are still under investigation, and on the other carry out further investigations in view of the nature, seriousness and complexity of different cases, such as collecting and handling evidence as well as seeking legal advice, so as to ensure that any decision by the Police to lay charge against any person is made with prudence.

If an arrestee refuses police bail or, having first entered into bail, refuses to be bailed further upon appearing at a police station, and the investigation concerned has not yet been completed, the Police will consider releasing this arrestee. However, releasing the arrestee does not mean that the Police will not charge him or her. If the Police decide to charge the person concerned after conducting investigation, the Police will make an arrest again.

My reply to various parts of the question is as follows:

(1) and (2) From June 9 last year to January 2 this year, the Police had arrested a total of 6 943 persons in major public order events. Various offences were involved, including "taking part in a riot", "unlawful assembly", "arson", "wounding", "assault occasioning actual bodily harm", "criminal damage" , "assaulting police officer", "obstructing a police officer in the execution of the officer's duty", "in possession of offensive weapons", etc. Among the 6 943 arrestees, 1 082 persons already entered into or were in the course of legal proceedings, 338 persons had been released unconditionally, and the cases of 5 523 persons were still under investigation (including those released on bail pending further investigation and those released pending further investigation after refusing to be bailed). The relevant figures with breakdown by month is at Annex. The Police do not maintain other detailed statistics as requested in the question.

(3) The Police will keep the investigation details of individual cases confidential so as not to affect investigation work and collection of evidence, not to mention disclosing the details to the suspects. An arrestee who has entered into police bail shall appear at the police station at a specified time. For an arrestee who has been released pending further investigation after refusing to be bailed, the Police, in accordance with the principle of confidentiality as aforesaid, will not inform the person of the investigation progress of the case concerned. If there is sufficient evidence to prosecute the person for the relevant offence in future, the Police will arrest this person again and charge him or her with the offence.

Thank you, President.

LCQ1: Weapons seized by Police in recent months and law and order situation in Hong Kong

Following is a question by the Hon Wong Ting-kwong and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 8):

Question:

In recent months, the Police seized a large quantity of weapons (including pistols, an AR15 long-range rifle and several hundred bullets), and suspected that some people had planned to use such weapons in public events for causing casualties so as to frame the Police. The Police also seized large quantities of petrol bombs, incendiary bombs, explosives and chemicals which may be used for making weapons. It has been reported that last month some members of a foreign extremist organisation came to Hong Kong to participate in demonstrations. The aforesaid incidents have caused quite a number of members of the public to worry that the law and order situation in Hong Kong is deteriorating. In this connection, will the Government inform this Council:

(1) of the lethality of the various types of firearms, as well as the respective quantities of the various types of weapons and chemicals that may be used for making weapons, which were seized by the Police since June last year;

(2) whether the Police have investigated the origins of the firearms and other weapons seized and if there is any connection with foreign terrorist organisations, and of the follow-up actions taken; and

(3) of the authorities' assessment of the current law and order situation in Hong Kong, as well as their strategies for stopping violence and curbing disorder and for preventing foreign terrorists from engaging in illegal activities in Hong Kong?

Reply:

President,

There have been more than 1 200 public order events since June last year, with many of them ended in violence. The continuous escalation of violence, as well as the increasingly frequent demonstrations and conflicts and their extensive impact, have caused grave threat to people's lives and properties, resulting in a very worrying situation. The Hong Kong Special Administrative Region (HKSAR) Government strongly condemns the escalating violent acts and adopts zero tolerance to any persons who resort to violence for their own purpose. It is the responsibility of the HKSAR Government to

stop violence and curb disorder and to restore public peace by taking resolute measures.

My reply to the three parts of Hon Wong's question is as follows:

(1) and (2) The continuous escalation of violent acts of rioters in just six months or so has caused grave concern. The types of weapons and dangerous goods seized by the Police at different places and premises were of a great variety and were extremely alarming in terms of both destructive power and quantity. Major examples of serious cases are as follows:

(i) On July 20 last year at an industrial unit in Tsuen Wan, the Police found self-produced powerful explosive of TATP, 10 completed incendiary bombs, nitric acid, slingshots, pellets, knives, iron rods, etc. The power of the explosive could cause severe injuries.

(ii) On August 1 last year at an industrial unit in Fo Tan, the Police found a batch of weapons, including two bows, six arrows, petrol bomb and a large quantity of raw materials for making petrol bombs, and seized a considerable amount of essential oils containing cannabis; at a flat in Tin Shui Wai, the Police also seized 30 smoke bombs, 27 half-finished smoke bombs and raw materials for making smoke bombs including potassium nitrate, magnesium, fuses for explosives, etc.

(iii) On November 2 last year at a flat in Wan Chai, the Police seized 59 petrol bombs and nearly 20 litres of inflammable chemicals including turpentine, petrol and ethanol.

(iv) In mid-November and early December last year at the Chinese University of Hong Kong and the Hong Kong Polytechnic University, the Police seized a total of about 8 000 petrol bombs, about 800 bottled liquefied petroleum gas, about 1 000 bottles of petrol and nearly 700 bottles of inflammable chemicals (including acetone, acetonitrile, aniline, methanol, dichloromethane, silane, etc.), and about 600 weapons including hammers, arrows, knives and air pistols.

(v) On December 8 last year at a flat in North Point, the Police seized a 9mm Glock semi-automatic handgun, 105 bullets, five magazines, as well as three items of dagger, sabre and katana. Three of the five magazines seized were fully loaded and ready for use.

(vi) On the same day, in the vicinity of Wah Yan College in Wan Chai, the Police found two radio-controlled improvised explosive devices weighing about 10 kilograms in total. Such devices were found to be composed of aluminium nitrate and hexamethylene triperoxide diamine (HMTD), a highly explosive organic compound. Ignition of the devices would pose lethal damage to the surrounding 50-to 100-metre range and lead to collapse of buildings. These devices also contained many sharp nails to create greater lethality.

(vii) On December 14 last year at Siu Lang Shui Road in Tuen Mun, the Police seized a radio control for explosives and about 27 grams of suspected explosive powders, and arrested three men who were allegedly conducting tests

on explosives. There were signs of explosion at the scene.

(viii) On December 20 last year at a public place in Tai Po, the Police arrested a man and seized a gun. The suspect fired a shot during the arrest. Fortunately, the incident caused no injury. An AR-15 long-range rifle, 200 bullets and a circular speedloader were subsequently seized at his relevant flat.

(ix) On December 24 last year at a mini-storage in Kwun Tong, the Police seized 500 grams of smoke cake, 15 grams of explosives and dozens of bottled chemicals (including nitrocellulose and sodium chloride).

The Police do not maintain relevant statistics on all the types of weapons and chemicals that may be used for making weapons for articles seized during operations. I must solemnly point out that illegal possession or use of weapons, firearms and ammunition, explosives, dangerous goods and the like constitute very serious crimes in contravention of many criminal offences, the maximum penalty of which is life imprisonment.

The Police will make full investigation into each case to track the source of weapons, firearms, explosives and chemicals seized and the motive for committing crimes. As far, there is no evidence linking the cases to overseas terrorist organisations. Nonetheless, the Government will closely monitor and cautiously examine the cases to identify any possible risk of involving local terrorism.

(3) As for the law and order situation, crime figures in the first half of last year showed a downward trend but since June, there have been many processions and demonstrations and rioters have been wantonly hurling petrol bombs and bricks, setting fires, vandalising and burning shops and public transport facilities, assaulting people with different views, etc., causing deterioration in the law and order situation in Hong Kong. From January to November 2019, 52 250 crimes were recorded, representing an increase of 4.2 per cent over 50 122 crimes recorded during the same period in 2018. The overall crime detection rate in the first 11 months of 2019 was 36.1 per cent, which was lower than the overall crime detection rate of 42.9 per cent during the same period in 2018. In the past six months or so, the Police devoted considerable manpower to handle over 1 200 public order events and the violent acts of rioters. Routine policing work, such as crime prevention and patrols, was unquestionably affected as a result. Maintaining good public order relies not only on police officers' efforts but also citizens' abiding by the law. If members of the public turn a blind eye to violent acts of rioters and refuse to co-operate or even obstruct the Police's law enforcement operations, or condone even further assaulting against police officers, deterioration in public order is the price we have to pay.

The Security Bureau has been co-ordinating the work among disciplined services for making collaborative efforts to stop violence and curb disorder. For example, the Immigration Department exercises effective immigration control to prevent the entry of suspected criminals, terrorists, etc. into Hong Kong. The Customs and Excise Department monitors and checks imported goods to ensure that illegal goods do not enter Hong Kong. The Fire Services

Department conducts inspections to ensure that no dangerous or controlled goods are unlawfully sold or possessed in the market. Various disciplined services also fully assist and facilitate the Police's work in terms of intelligence and support. In addition, the Chief Secretary for Administration personally chairs a high-level Inter-departmental Action Task Force to oversee the work of different bureaux and departments in monitoring, response, follow-up, dissemination of information, etc., with a view to ensuring that all work is well-coordinated and handled in an effective and expeditious manner.

As regards counter-terrorism (CT), in April 2018, the HKSAR Government set up the Inter-departmental Counter Terrorism Unit (ICTU) comprising members from six disciplined services. ICTU is tasked with monitoring the global terrorism trend and CT measures, reviewing and improving CT strategies in Hong Kong, developing CT training, optimising various contingency plans, etc. Apart from fostering closer liaison and smoother collaboration among relevant departments, ICTU can also achieve synergy in various aspects such as CT intelligence, training and emergency response education with a view to enhancing the overall CT deployment and safeguarding the risk of terrorist activities.

Thank you, President.

LCQ6: Complaints about teachers' professional conduct

Following is a question by the Dr Hon Helena Wong and a reply by the Secretary for Education, Mr Kevin Yeung, in the Legislative Council today (January 8):

Question:

From June to November last year, the Education Bureau (EDB) received more than 100 complaints about teachers' professional conduct. Such complaints involved allegations against the teachers concerned for having disseminated hate remarks on social media, committed provocative acts, used inappropriate teaching materials, allegedly broken the law, etc. The follow-up actions taken by the EDB for those cases included issuing advisory letters, warning letters and reprimand letters, taking the disciplinary action of interdiction, and reviewing the teachers' registration status. In this connection, will the Government inform this Council:

(1) whether it has assessed if the EDB's pursuit of liability of individual teachers for making remarks on social media has infringed the freedom of speech and freedom of expression that the teachers enjoy under Article 27 of

the Basic Law and Article 16 of the Hong Kong Bill of Rights Ordinance; if it has assessed and the outcome is in the affirmative, of the legal basis for the EDB's interference with the teachers' making remarks during non-office hours and outside school;

(2) of the EDB's justifications for requesting schools to review whether the teaching staff members who have been arrested but have not yet been prosecuted are still suitable for taking up teaching posts or other duties in their schools; whether the EDB has assessed if such move has deprived the teachers concerned of their rights to be treated fairly in the disciplinary mechanism (including the opportunities to make representations and lodge appeals), thus giving rise to the effect of "punishment before conviction", which violates the common law principle of presumption of innocence; and

(3) how the EDB defines "hate remarks", "provocative acts" and "inappropriate teaching materials", and whether the EDB will make public those teaching materials which are judged to be inappropriate so that members of the public may make their own judgement as to whether the follow-up actions concerned amount to political suppression; if the EDB will not, of the reasons for that?

Reply:

President,

Teachers play a vital role in passing on knowledge and nurturing students' character and their every word and deed have a far-reaching impact on students' growth. Parents and the community at large thus have great expectations of our teachers regarding their solid professional knowledge and high standards of morality. It is therefore of the utmost importance that their words and deeds must adhere to the standards of professional conduct and morality generally accepted by the community. As set out in the Code for the Education Profession of Hong Kong, a professional educator should show respect for the law and the behavioural norms acceptable to society, do his/her best to maintain a healthy social environment and should not discriminate against any student on the basis of political belief, family background, etc.

The Education Bureau (EDB) strictly maintains a teaching profession of high quality and with professional conduct to ensure the quality of education in Hong Kong and safeguard students' well-being. The Education Ordinance empowers the Permanent Secretary to cancel the teacher registration of a person in specific circumstances, including the person is not a fit and proper person to be a teacher, or it appears to the Permanent Secretary that the teacher is incompetent. The EDB has all along seriously followed up suspected cases of professional misconduct in accordance with established procedures and in a professional manner.

Schools also play an important role in promoting teachers' professional conduct. Schools, as organisations providing formal education and as employers of teachers, have to be responsible for the quality of education, and monitor their teachers and remind them of the behaviours and role

expected of them from time to time. Schools should also take the initiative to follow up substantiated cases of misconduct involving their staff, and take appropriate disciplinary actions against them pursuant to the Employment Ordinance, the Code of Aid, and the terms of their employment contracts. All along, the school management in general has dealt with complaints of suspected professional misconduct professionally based on evidence.

Regarding the Dr Hon Helena Wong's question, our reply is as follows:

(1) Since June 2019, the EDB has received and handled many complaints about teachers' professional misconduct, most of which involve inappropriate messages posted on social media, such as hate, malicious or abusive messages and messages that promote violence. These messages, regardless of their form of delivery and the deeds or values reflected therein, failed to meet the professional conduct of teachers and social expectations, let alone serving as role models for their students. The Code for the Education Profession of Hong Kong and the Education Ordinance are not only applicable within schools. The moral values displayed by teachers in private forum is also part of their professional conduct. I must stress that this is neither limiting teachers' right to express their views on social issues and political beliefs nor infringing upon/reducing the freedom of speech enjoyed by teachers. Furthermore, the exercise of the freedom of speech, whether in Western countries or Hong Kong, is not without restrictions. It should be exercised in a rational and lawful manner. The rights or reputations of others should be respected, and national security and public order should also be protected. It is absolutely not acceptable to the community when teachers' words and deeds show that their standards of morality and values fail to meet public expectation. The EDB has the obligation to take appropriate actions based on the facts and seriousness of individual cases. The actions to be taken include issuing advisory, warning, reprimand letters, as well as cancellation of the registration of them, to uphold teachers' professional conduct.

(2) The Code of Aid clearly stipulates that subject to the provisions of the Employment Ordinance, a school may suspend a teacher from his/her normal duties if he/she has been involved or is likely to be involved in criminal proceedings of a serious nature or in serious misconduct.

The EDB also explained related issues to schools in detail on December 20, 2019. Schools, when considering whether teachers should be suspended from duties, should take into account students' well-being, including the impact on their personal safety, moral development and quality of learning, as a primary consideration. If a teacher is suspected of having committed a serious crime, the school should assess the risk involved should the teacher continue to contact with the students even if the case or the incident is not yet concluded. Specifically, if a teacher is involved in a serious offence related to personal safety (such as arson, serious wounding, riot, possession of dangerous goods/prohibited weapons, etc.), or an offence generally considered by the public to be seriously violating moral standards (such as a sexual offence, trafficking or possession of drugs, possession of child pornography, etc.), taking into account students' personal safety and well-being, schools should handle the case prudently, and suspend the duties of

the teacher concerned. As for teachers under arrest but not charged with any offences, schools should examine carefully the nature and seriousness of the cases involved and consider whether it is appropriate to allow them to continue to take up their teaching or other duties in schools. Likewise, for cases of professional misconduct, if schools find that the cases are of a serious nature after investigation, they should assess whether it is still proper for the teachers to perform teaching duties. It is believed that parents and the public will worry and find it unacceptable if teachers involving in serious misconduct may continue to take up teaching duties or to have contact with students.

(3) Our society has its moral bottom lines and consensus on how "hate remarks" and "provocative acts" are defined and they are recognised and observed across different sectors such as the education, media and legal professions, and by the community at large as well. There are, however, some educational principles on the development and selection of teaching materials: teaching materials must meet the curriculum aims and objectives set by the Curriculum Development Council; teachers should consider whether the content of teaching materials is accurate and appropriate to the cognitive development of students at different learning stages, and should adopt objective and impartial information in accordance with the recommendations set forth in the relevant curriculum and assessment guides, so that students can construct knowledge and skills as well as develop positive values and attitudes, thereby becoming informed and responsible citizens. The content of teaching materials should be free of bias, sweeping generalisation of a certain political stance, malicious remarks or offensive language, and incitement to negativity or troublemaking on some flimsy pretext. In the classroom, teachers should also adopt appropriate learning and teaching strategies that match the lesson objectives. "Inappropriate teaching materials" refer to those selected or developed school-based teaching materials that do not align with the above principles. For instance, teaching materials that contain messages deviating from the standards of morality or irrational discussions, or cite the use of violence as a means of resolving disputes are considered inappropriate because they fail to guide students to analyse problems rationally and resolve them in a peaceful and lawful manner. For example, when discussing how young people can face difficulties and challenges as they grow up, if the teaching materials suggest a passive approach to solving problems, they will fail to appropriately guide students to develop a positive outlook on life, and fail to meet the aims and objectives of education. School should improve on that.

School-based teaching materials should be developed professionally in accordance with the learning goals and objectives of the curriculum without overstepping moral bottom lines for which a consensus has been long-established in our society. The appropriateness of teaching materials is a matter of education professionalism. The EDB believes that teachers in general can uphold professionalism in developing and selecting suitable school-based teaching materials. The school management also understands and monitors the content and quality of school teaching materials, and together with teachers guides students to examine issues from multiple perspectives and show respect for different opinions.

To conclude, I would like to reiterate that the EDB will continue to play a gate-keeping role in promoting and upholding teacher's professional conduct for protecting the well-being of our students effectively.

Thank you, President.

Lunar New Year auction of vehicle registration marks to be held on February 8

The Transport Department today (January 8) announced that the Lunar New Year auction of vehicle registration marks will be held on February 8 (Saturday) at Meeting Room S221, L2, Hong Kong Convention and Exhibition Centre, Wan Chai.

"A total of 45 vehicle registration marks will be put up for public auction. Forty-four of them are traditional vehicle registration marks (TVRMs) and one of them is a personalised vehicle registration mark (PVRM). The list of marks has been uploaded to the department's website, www.td.gov.hk," a department spokesman said.

People who wish to participate in the bidding at the auction should take note of the following points:

(a) Successful bidders are required to produce the following documents for completion of registration and payment procedures immediately after the successful bidding:

(i) the identity document of the successful bidder;
(ii) the identity document of the purchaser if it is different from the successful bidder;
(iii) a copy of the certificate of incorporation if the purchaser is a body corporate; and
(iv) a crossed cheque made payable to "The Government of the Hong Kong Special Administrative Region" or "The Government of the HKSAR". Any bidder who wishes to bid for both TVRMs and the PVRM should bring at least two crossed cheques for payment of auction prices. (For an auctioned mark paid for by cheque, the first three working days after the date of auction will be required for cheque clearance confirmation before processing of the application for mark assignment can be completed.) Successful bidders may also pay through the Easy Pay System (EPS), but are reminded to note the maximum transfer amount in the same day of the payment card. Payment by post-dated cheque, cash, credit card or other methods will not be accepted.

(b) Purchasers must make payment of the purchase price through EPS or by

crossed cheque and complete the Memorandum of Sale of Registration Mark or the Memorandum of Sale of Personalised Vehicle Registration Mark immediately after the bidding. Subsequent alteration of the particulars in the Memorandum will not be permitted.

(c) A registration mark can only be assigned to a motor vehicle which is registered in the name of the purchaser. The Certificate of Incorporation must be produced immediately by the purchaser if a vehicle registration mark purchased is to be registered under the name of a body corporate.

(d) The display of a vehicle registration mark on a motor vehicle should be in compliance with the requirements stipulated in Schedule 4 to the Road Traffic (Registration and Licensing of Vehicles) Regulations.

(e) There is no two-row display format for the PVRM in this auction. The mark can only be displayed in one row.

(f) Special vehicle registration marks are non-transferable. Where the ownership of a motor vehicle with a special vehicle registration mark is transferred, the allocation of the special vehicle registration mark shall be cancelled.

(g) The purchaser shall, within 12 months after the date of auction, apply to the Commissioner for Transport for the vehicle registration mark to be assigned to a motor vehicle registered in the name of the purchaser. If the purchaser fails to assign the registration mark within 12 months, allocation of the registration mark will be cancelled and arranged for re-allocation in accordance with the statutory provision without prior notice to the purchaser.

For other auction details, please refer to the "Guidance Notes – Auction of Vehicle Registration Marks" and "Guidance Notes – Auction of PVRMs", which can be downloaded from the department's website, www.td.gov.hk.

LCQ5: Access to communications information by law enforcement agencies

Following is a question by the Hon Charles Peter Mok and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 8):

Question:

Article 30 of the Basic Law protects the enjoyment of freedom and privacy of communication by Hong Kong residents. Article 14 in Part II (The Hong Kong Bill of Rights) of the Hong Kong Bill of Rights Ordinance provides that no one shall be subjected to arbitrary or unlawful interference with his correspondence. The existing Interception of Communications and Surveillance Ordinance merely requires law enforcement agencies to seek authorisation from a panel judge before conducting postal interceptions and telecommunications interceptions, but it does not impose any regulation on the information (including communications content, metadata and personal data) in network communications (such as mobile phones and web servers). Moreover, a judgment handed down by the High Court on October 27, 2017 has pointed out that the Police must, unless in exigent circumstances, obtain a warrant from the Court before they may inspect the mobile phone of an arrestee. It has been reported that an arrestee recently indicated that some of the instant messaging records in his locked mobile phone had been admitted as part of the evidence by the prosecution, but he had never disclosed to the Police the password for unlocking his mobile phone since his arrest and he had not been informed before the court hearing of the Police having obtained a relevant warrant. In this connection, will the Government inform this Council:

(1) of the number of cases since June last year in which the Police seized and unlocked the mobile phones of arrestees and accessed the information therein and, among such cases, the number of those in which a warrant was obtained;

(2) since when the Police began to use hacking software or other cracking tool for unlocking mobile phones in order to access the instant messaging contents or other information therein; and

(3) whether the Government will (i) by drawing reference from the relevant legislation in Korea, Taiwan, Australia, the United Kingdom and the United States, introduce legislative amendments or enact legislation to regulate the work on the collection of electronic evidence by law enforcement agencies, and (ii) take the initiative to regularly publish details of the requests made by various law enforcement agencies to information and communication technology companies for disclosure of information, so as to enhance the transparency of law enforcement efforts and enable such transparency to reach international standards?

Reply:

President,

Under the laws of Hong Kong, law enforcement agencies (LEAs) have the responsibility to prevent and detect crimes, so as to protect citizens' lives and properties. In the course of carrying out their responsibilities, LEAs may exercise the search and seizure powers conferred by relevant legislation, and seize and examine various objects of the suspected offence, including mobile phones and other similar devices.

According to the judgment on a case handed down by the High Court on

October 27, 2017, Police officers may seize mobile phones found on an apprehended person or in or about the place at which they have been apprehended in accordance with section 50(6) of the Police Force Ordinance (Cap 232) (PFO), but may examine the content of these mobile phones without obtaining a warrant only in exigent circumstances. The judgment also points out that, in authorising a warrantless search of the digital content of mobile phones or other similar devices seized on arrest only in exigent circumstances, section 50(6) of PFO is constitutional and compliant with Article 14 of the Hong Kong Bill of Rights Ordinance (Cap 383) and Article 30 of the Basic Law. I understand that LEAs have all along adhered strictly to the principles as laid down in the judgment.

When conducting criminal investigations, if required, LEAs may apply to the Court in accordance with the relevant laws for a search warrant authorising the search of any premises and the seizure of objects, documents, and materials found in the premises. LEAs have to observe stringent requirements when applying for search warrants, swear an oath before the magistrate to confirm that there are reasons to suspect that items of value to an investigation are being kept in a search target, and set out clearly the justifications for as well as the scope of the search warrant being sought. LEAs also have to satisfactorily answer any questions raised by the magistrates, who may impose conditions when issuing a search warrant having regard to individual circumstances. If the magistrates do not consider the justification to be sufficient or applicable, they will refuse the issue of the search warrant.

Magistrates deal with applications for search warrants strictly in accordance with the law, having regard to the facts and particulars presented before them by LEA officers. We need to respect the authority, professionalism, independence, and credibility of the Court.

I must stress that applying to the Court for search warrants and applying for prescribed authorisations for covert operations under the Interception of Communications and Surveillance Ordinance (Cap 589) (ICSO) are two separate legal procedures for different purposes, and should not be mixed up. Search warrants are applied in accordance with the relevant legislation and have to be approved by the Court, the purpose of which are for collecting evidence as documentary exhibits in Court. The information which operations under ICSO seek to collect is mainly used for intelligence. Both are stringent sets of procedures, and are strictly regulated and restricted by law.

As to the case mentioned by Hon Mok in the question, Police have already publicly clarified that it was conducted under magistrate-issued search warrant. Since the case has already entered legal proceedings, it is not appropriate for me to comment further on the case details.

My reply to various parts of the question raised by Hon Charles Mok is as follows:

(1) From June to November 2019, Police processed 1 429 cases that involved

mobile phones as evidence. Among those cases, 3 721 mobile phones belonging to arrested persons or suspects were involved, and relevant cases were all processed with search warrants issued by the Court.

(2) Generally, Police would only conduct digital forensic examination on mobile phones after obtaining Court warrants. The examination and the evidence obtained would be adduced in the relevant open trials. As the critical technologies used for the examinations are confidential information, disclosing such information may reveal to criminals details of LEAs' operations, thus allowing criminals to take advantage by undermining LEAs' capabilities in combating serious crimes and maintaining public safety. As such, I cannot disclose the information.

I must stress that, regardless of the technology employed, and irrespective of whether the relevant operation was conducted under a search warrant issued by the Court or was conducted under ICSO, Police operations must be conducted legally strictly adhering to the relevant laws and regulations.

(3) The existing ICSO requires the disclosure of a host of prescribed information. The Commissioner on Interception of Communications and Surveillance (the Commissioner) is required by ICSO to provide an annual report setting out the information specified for disclosure. The reports are made public. They are tabled at the Legislative Council every year, and are discussed at the Panel on Security. The reports cover figures and types of operations, the results of the Commissioner's inspections, and whether there were cases of non-compliance and the relevant disciplinary actions, etc. This practice is similar to that in many overseas jurisdictions.

Requests for information relating to the detection of crime from network services providers are adequately regulated by laws, as LEAs must do so in compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) or under a search warrant. The Government considers the existing regime and practice suitable for the situation in Hong Kong and should continue to operate.

Thank you, President.