

LCQ6: Public safety and press freedom

Following is a question by the Hon Claudia Mo and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (December 4):

Question:

Hong Kong's ranking in the World Press Freedom Index has dropped from the 48th in 2009 to the 73rd this year, reflecting that the degree of press freedom in Hong Kong has declined significantly. In this connection, will the Government inform this Council:

(1) given that since June this year, quite a number of journalists have complained that police officers blocked their cameras, shined strong light at them, insulted and intimidated them, jostled them, tore off their gas masks, inflicted injuries on them with weapons such as batons, pepper spray and rubber bullets (even resulting in a journalist's loss of vision in her right eye), and that the situation has not improved despite repeated complaints by various journalism organisations, of the measures put in place by the Government to ensure that journalists, when covering news at the scenes of public events, will not be subject to police officers' unreasonable treatment directed against them, interference, arrests, attacks and obstruction to their work;

(2) given that in recent months, the Government has, on the grounds of protecting the privacy of police officers, suspended the public inspection of the Final Registers of Electors/Voters, stopped showing the names of some police officers on the Government Telephone Directory, and required persons who wish to search another person's marriage and birth records to produce the written consent of the data subject, whether the Government will abolish such measures and undertake that it will not implement again any measure that will undermine the right of public access to information; and

(3) given the inadequacies of the Code on Access to Information (including government departments determining on their own whether or not information should be kept confidential, untenable justifications given for refusal to disclose information, and public organisations not being covered by the Code), of the improvement measures put in place; given that the public consultation conducted by the authorities on the introduction of an archives law and an access to information regime was completed in March this year, of the consultation outcome, follow-up recommendations and legislative timetable?

Reply:

President,

Hong Kong enjoys freedom of the press, and government departments will

also endeavour to facilitate media reporting.

My reply to Hon Claudia Mo's question is as follows:

(1) Since early June this year, there have been over 900 demonstrations staged in Hong Kong, many of which ended up with illegal acts of serious violence, including criminal damage, arson, hurling of petrol bombs, etc. There had also been a case of a person embedding himself among reporters and the crowds to slit the neck of a police officer at close proximity, seriously injuring the officer. The personal safety of police officers on duty are under serious threat. During their operations, the Police have from time to time encountered instances of reporter "impersonations", including seizing fake reporter identification, self-proclaiming reporters not employed by the claimed media organisations, and cases of immediately departing upon being questioned about reporter credentials.

The Police have formulated guidelines for police officers to ascertain the identity of media practitioners with the credentials issued by media organisations. Media practitioners bringing along relevant credentials or wearing easily recognisable clothing or armbands would facilitate police officers in ascertaining their identity. The Police will deploy the Force Media Liaison Cadre to the scene to provide facilitation and assistance as needed. The Police will also disseminate timely messages to the public through media. Persons at the scene (including media practitioners) should pay attention to and follow the instructions given by police officers, and maintain appropriate distance. This will prevent obstruction of police enforcement operations, as well as avoid personal injury.

Complaints lodged by dissatisfied media practitioners will be handled by the Complaints Against Police Office and the Independent Police Complaints Council in a fair and just manner.

(2) Since this June, the personal information of police officers and their family members has been unlawfully disclosed and widely published online. They have been harassed and intimidated, even receiving letters threatening to hurt them brutally, causing them grievous mental distress. Up to November 20, the Office of the Privacy Commissioner for Personal Data had received 4 200 cases of "doxing" from police officers, Legislative Council Members and citizens holding various political views.

In view of this, the Junior Police Officers' Association of the Hong Kong Police Force has applied for an injunction order. The court granted in October an injunction order restraining the Registration and Electoral Office from arranging for public inspection of the 2019 Final Registers of Electors/Voters, which show the electors' names with their respective principal residential addresses, and from providing extracts of the Final Registers of Electors/Voters or relevant information to members of the public, until the disposal of the judicial proceedings.

Furthermore, the court granted in October and November an injunction order restraining any person from unlawfully and wilfully, while intending or

likely to intimidate, harass, threaten, or pester the relevant persons under the circumstances, using or disclosing the personal data of any police officer or their family members, to intimidate or harass any police officer or their family members; or from assisting or inciting others to commit any of these acts. The injunction order as varied by the court on November 8 does not prohibit any lawful act(s) done solely for the purpose of a "news activity".

Due to the harassing acts mentioned above, the Police have suspended displaying the information of some officers on the Government Telephone Directory. This arrangement will not affect citizens from communicating with or seeking assistance from the Police through existing channels, including the use of 999 or contacting police stations.

Regarding the search of marriage and birth record of a third party, pursuant to the Personal Data (Privacy) Ordinance, unless with the consent of the data subject, personal data could only be used for the purpose for which the data was originally collected or directly related purposes. To this end, applicants would have to explain to the Immigration Department the purpose and intended use of the requested information, as well as their relationship with the data subject, for consideration.

The Government will continue to monitor the situation on "doxing" and take appropriate measures, while balancing the public's access to information, the protection of personal information, and the needs of maintaining public safety.

(3) According to the Code on Access to Information, Government departments should work on the basis that information requested will be released when handling requests for information. In the past three years, over 97 per cent of the requests for information were met in full (94.4 per cent) or in part (2.9 per cent), and only about 2.7 per cent of the requests were refused. Unless there are valid reasons to withhold the disclosure of information under the Code (e.g. the information concerned relates to defence and security, law enforcement, legal proceedings and public safety, etc), bureaux and departments should provide the requested information. If requests are refused, the reasons for refusal must be provided quoting the relevant paragraph(s) in the Code, with appropriate elaboration. If any member of the public does not agree, they may ask for a review. The review should be considered by a directorate officer at least one rank senior. If the requestor is not satisfied with the subsequent response, they may lodge a complaint to the independent Ombudsman.

Concerning the consultation on the access to information regime, the Access to Information Sub-committee of the Law Reform Commission (LRC) had published a consultation paper on the access to information regime. The consultation period ended in March this year. The Sub-committee is analysing the views collected to finalise the reform proposals. After the LRC publishes its final report, the Government will deliberate in detail the recommendations put forward by the LRC, and consider how to improve the access to information regime. As to the archives law, the LRC had completed

the public consultation on archives law in March this year, and is analysing the responses received. The Government will actively follow-up on the matter after the LRC submits its report.

Thank you, President.

LCQ9: Ensuring the impartiality of prosecutors

Following is a question by the Dr Hon Priscilla Leung and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (December 4):

Question:

Since the eruption of the movement of opposition to the proposed legislative amendments (the movement) in June this year, there have been persons, one after another, being charged with various offences. It has been reported that some persons, claiming to be "a group of prosecutors" within the Department of Justice (DoJ), issued an anonymous open letter on July 31 this year using the DoJ's letterhead, criticising the ways in which senior personnel of the DoJ dealt with the cases involving large-scale public events. Besides, in a case mentioned at the Eastern Magistrates' Courts on November 4 this year, as the name of one of the five defendants stated in the DoJ's consent to prosecution was wrong and discrepancies were found between the Chinese and English versions of an offence, all of the five defendants had the charges against them withdrawn by the prosecution and were released at the Court. In this connection, will the Government inform this Council:

- (1) whether the DoJ has conducted an internal investigation into the aforesaid open letter, including the identity of the senders of the letter; if so, of the details; if not, the reasons for that;
- (2) whether the DoJ has compiled statistics on the number of prosecutions relating to the movement so far where errors have been found in the relevant internal procedure or prosecution documents; if so, of the details; and
- (3) of the DoJ's measures to ensure that prosecutors uphold the principles of impartiality, probity and care in dealing with prosecutions relating to the movement?

Reply:

President,

As the Secretary for the Civil Service (SCS) has recently reiterated to the public, the Government has always attached great importance to the conduct of civil servants. According to the Civil Service Code (the Code) issued by the Civil Service Bureau (CSB), civil servants are required to uphold the core values of commitment to the rule of law, honesty and integrity, objectivity and impartiality, political neutrality, etc. The Government has an established mechanism for handling the civil service disciplinary matters. Generally speaking, where there is any act, conduct or behaviour of an officer which contravenes the Code or government regulations, their respective department will take appropriate follow-up actions in accordance with established procedures. If there is evidence that a civil servant has misconducted himself upon investigation, or a civil servant has been convicted of criminal offence by the Court, the management will take appropriate disciplinary action, including imposing disciplinary punishment of verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal, etc.

The above mechanism is applicable to civil servants of different grades and ranks including prosecutors of the Department of Justice (DoJ).

In relation to the Dr Hon Priscilla Leung's question, the DoJ's reply after consulting the CSB is as follows:

(1) According to the Code, all civil servants should uphold the rule of law and the administration of justice, and always observe due process. Civil servants shall also ensure that no actual, perceived or potential conflict of interest shall arise between their official duties and private interests. They shall also ensure that their personal views expressed would not impede their performance of official duties in a professional and fair manner. Prosecutors of the DoJ, as civil servants, should also comply with these rules. In view of recent social events, SCS issued letters to all civil servants twice in August and November this year respectively, reminding that they must remain politically neutral. The DoJ has also separately reminded all staff of the Department the above principles.

Insofar as the Prosecutions Division of the DoJ is concerned, according to paragraph 1.2 of the publicised Prosecution Code, a prosecutor must not be influenced by any investigatory, political, media, community or individual interest or representation. As prosecutors of the DoJ, they shall ensure that their duties are discharged in a professional and impartial manner without being affected by their political assertion and personal views expressed. They shall remain independent and impartial. Therefore, prosecutors shall, before expressing their views in public, first consider whether such views would affect public perception towards the independence of the prosecutors of the DoJ, especially when there is a likelihood of handling relevant cases in future.

On the other hand, following the guidelines issued by the Administration Wing, each department has established clear and comprehensive procedures for handling complaints against the department. All complaints, whether signed or anonymous, will be duly processed by the receiving department. For anonymous

complaints, if the complaint itself does not contain sufficient information and where the complainant cannot be reached to provide further details, it might be difficult for the department concerned to conduct effective investigation or follow up.

The DoJ has been handling each complaint, including the open letter referred to in the question, in accordance with the above guidelines. We note the open letter was issued by persons claiming to be "a group of prosecutors" within the DoJ using a letterhead appearing to be the DoJ's. However, expressing views in such anonymous way makes it difficult to trace the real identities of persons concerned for follow up with them and impossible to verify the allegations in the letter. After comprehending the overall situation, I and the Director of Public Prosecutions (DPP) have earlier made a bold statement to dismiss such completely groundless allegations.

(2) The DoJ does not maintain the relevant figures.

Generally, when conducting prosecutions, including handling prosecution documents, prosecutors of the DoJ are required to act prudently in strict accordance with the law and the Prosecution Code. They are obliged to apply the highest of standard in their handling of all criminal cases. Regarding the handling of the case mentioned at the Eastern Magistrates' Courts on November 4 this year, the DoJ had made submissions to the Court, which were accepted by the Court. As the defendants concerned have been immediately arrested and charged, and the relevant legal proceedings remain ongoing, it is not appropriate for the DoJ to comment further.

(3) As pointed out in the preamble and part (1) of the reply above, civil servants are required to comply with the relevant Code and regulations, as well as additional regulations issued by their respective departments. When civil servants express their views, they should also ensure that their views would not give rise to any conflict of interest with their official duties or might not be seen to be biased when discharging their duties.

Civil servants' performance is assessed in an honest, objective and comprehensive manner in their appraisal reports. The Government will take appropriate actions on any misconduct committed by civil servants in accordance with the established procedures, including imposing disciplinary punishment on the officers concerned. If the case reveals that an officer is suspected of committing a criminal offence, the case will be referred to the relevant law enforcement agency to follow up. All civil servants of the DoJ, including prosecutors, are also subject to the same mechanism.

I must emphasise that prosecutors of the DoJ always abide by Article 63 of the Basic Law and shoulder the constitutional duty enshrined therein, and handle all prosecution work in a fair, impartial and highly transparent manner. Article 63 of the Basic Law provides that "the DoJ of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference".

All investigations of criminal cases are conducted by law enforcement

agencies which will, when necessary, refer to the DoJ for independent decisions on whether to prosecute. The Prosecution Code provides reference points and guidance for prosecutors. They should at all times exercise integrity and care. The independence, role and duties of prosecutors are set out in the Prosecution Code. One of the basic principles set out in paragraph 3.1 of the Code is:

"A prosecutor is required to comply with and promote the rule of law. A prosecutor acts on behalf of the community in an impartial manner and as a 'minister of justice'. To this end, a prosecutor must fairly and objectively assist the court to arrive at the truth and to do justice between the community and the accused according to law."

In deciding whether or not to prosecute, the DoJ must make an objective and professional assessment of the available evidence and applicable law, and act in accordance with the Prosecution Code.

The Secretary for Justice, the DPP and the prosecution team have all along been discharging their prosecutorial duties fairly and without prejudice or favour in accordance with the above principles so as to safeguard criminal justice.

LCQ1: Tear gas affecting welfare service units

Following is a question by the Dr Hon Fernando Cheung and a reply by the Secretary for Labour and Welfare, Dr Law Chi-kiang, in the Legislative Council today (December 4):

Question:

It has been reported that during the Police's operations to disperse demonstrators since June this year, there have been a number of cases in which persons in elderly and rehabilitation service units felt unwell due to inhalation of tear gas, including the following two cases: on August 5, at least 13 rounds of tear gas were fired into the precincts of Caritas Jockey Club Tsuen Wan Social Service Building, which housed a care and attention home for the elderly and a day care centre for the elderly; and on October 28, tear gas billowed into a hostel for severely mentally handicapped persons and a long stay care home located in the vicinity of the Police's Tai Hing Operational Base. In this connection, will the Government inform this Council:

(1) Whether, upon completion of each dispersal operation involving the firing of tear gas rounds, it conducted any assessment and survey on the number of

persons in the nearby elderly and rehabilitation service units who had been affected by tear gas and the extent of the impacts, took follow-up actions and offered support to such service units; if so, of the details; if not, the reasons for that;

(2) Whether it has, since June this year, issued guidelines to the various elderly and rehabilitation service units to advise them on the measures that they should take to prevent the persons in their units from being affected by tear gas, as well as the ways for handling the situation when their units have been affected by tear gas (including the removal of tear gas residue); if so, of the details; if not, the reasons for that; and

(3) Of the composition of the tear gas rounds fired by the Police since June this year, and whether such composition has fatal or harmful long-term health impacts on the persons in the aforesaid units; whether the Government has assessed the health impacts of tear gas on different types of infirm persons (e.g. users of respiratory assistive devices) and persons with disabilities; if so, of the details; if not, the reasons for that?

Reply:

President,

The Social Welfare Department (SWD) maintains regular contacts with elderly and rehabilitation service units operated by subsidised and non-subsidised organisations to keep tabs of their operations and provide them with appropriate reminders and assistance when necessary. Before commencement of foreseeable major public events (including the recent demonstrations), SWD will issue special reminders to the persons-in-charge of relevant service units to adopt appropriate contingency measures to safeguard the elderly and persons with disabilities. Furthermore, the District Social Welfare Offices of SWD will keep in contact with the police stations in their respective districts to inform them of the location of social welfare units, including in particular residential care homes for the elderly (RCHEs) and residential care homes for persons with disabilities (RCHDs). In consultation with the Food and Health Bureau, the Security Bureau and SWD, my consolidated reply to the Member's question is as follows:

(1) When SWD learns that tear gas has been released in the vicinity of RCHEs or RCHDs, SWD will proactively contact the concerned homes to enquire about the conditions of their residents and staff, and remind the persons-in-charge to pay particular attention to health conditions of persons with respiratory difficulty and of frail health. According to information provided by the Food and Health Bureau and the Hospital Authority, those who were exposed to tear gas generally experienced mild respiratory and skin irritation, and there was also no serious health impact reported. Starting from last year, SWD has implemented the Visiting Medical Practitioner Service for Residential Care Homes for all RCHEs and RCHDs in the territory. If necessary, residential care homes may contact the concerned service providers to arrange the visit of medical practitioners and provide treatments to their residents.

SWD does not have statistics on the number of service users and staff in

subsidised or non-subsidised elderly and rehabilitation service units affected by tear gas.

(2) The Department of Health has released health information on tear gas to the public, including the general post-exposure symptoms to tear gas and what to do after such exposure, how to handle the situation when staying in an indoor environment with tear gas released in the vicinity, and advice on cleaning tear gas residual materials at living places, etc. Besides, the Centre for Food Safety has issued advice to the public on contaminants and food safety. SWD has reminded the persons-in-charge of all RCHEs and RCHDs to refer to the above information.

(3) Members of the public have the right to expression, speech and assembly, but they must do so in a peaceful and lawful manner. When illegal acts occur, the Police have a statutory duty to maintain public safety and public order.

On the procurement of equipment and ammunitions, the Police have been sourcing globally for safe and suitable equipment and ammunitions in accordance with the established policies and procedures to meet their operational needs. As the details of the equipment used by the Police involve operational deployment, it would be inappropriate to disclose such details as it would affect the Police's operational capability. The Police will continue the safe use of tear gas in accordance with the supplier's guidelines as well as their internal ones.

The Government must reiterate that it is not for the Police to choose the location required for the use of tear gas against violence or illegal acts. Rather, it depends on the persons who have committed violence or illegal acts and where they chose to commit such acts. The Police understand the community's concerns about the use of tear gas near residential areas, and will take into account the safety and interests of the affected people as far as possible when using tear gas. Before operations, the Police will, as far as possible, maintain close contact with the nearby building management offices, commercial tenants and elderly homes through various channels to remind them of Police's possible actions in relation to the demonstrations so that they can make arrangements accordingly. During operations, the Police will also appeal to residents in the vicinity to pay attention to the situation through social media and press releases, and to close the windows and stay in a safe place indoors if necessary.

As regards the impact of tear gas on health, as I have mentioned in part one of the question, according to information provided by the Food and Health Bureau and the Hospital Authority, those who were exposed to tear gas generally experienced mild respiratory and skin irritation, and there was also no serious health impact reported.

Licence of employment agency revoked

A spokesman for the Labour Department (LD) today (December 4) reminded operators of employment agencies (EAs) to conduct their business in compliance with the law and the requirements of the Code of Practice for EAs at all times.

The LD has revoked the EA licence of MVC International Manpower Services located in Hung Hom. The EA failed to meet the requirements as set out in the Code, including failing to draw up service agreements with foreign domestic helpers (FDHs) and with employers; failing to include all required items in the receipt of payments issued to employers; failing to provide FDHs and employers with copies of all documents that they had signed; failing to arrange for FDHs and employers to sign to acknowledge receipt of publications, sample forms and signed standard employment contracts; and failing to arrange for FDHs and employers to confirm in writing that they have been fully briefed about their rights and obligations.

Under section 53(1)(c)(iva) of the Employment Ordinance (EO), the Commissioner for Labour may revoke the licence of an EA if he is satisfied that the licensee concerned has not complied with the Code.

"The Code sets out the salient legal requirements that EA operators must observe in operating their business, as well as the minimum standards which the Commissioner expects from EAs. The Employment (Amendment) Ordinance 2018, which came into effect on February 9, 2018, stipulates that the Commissioner may refuse to issue or renew a licence, or may revoke a licence, if he is satisfied on reasonable grounds that the licensee or the person intending to be the licensee of an EA, or a related person of or an individual employed by the licensee or the person intending to be the licensee has contravened any provision of Part XII or any regulation made under section 62 of the EO, such as overcharging job seekers or operating an EA without a license, or has not complied with the Code issued under section 62A(1) of the EO," the spokesman said.

This is the eighth revocation of or refusal to renew an EA licence in 2019. In 2018, there were eight cases of revocation of or refusal to renew EA licences.

For enquiries about matters related to EAs or complaints about their malpractices, please call the Employment Agencies Administration of the LD at 2115 3667, or visit its office at Unit 906, 9/F, One Mong Kok Road Commercial Centre, 1 Mong Kok Road, Kowloon.

Effective Exchange Rate Index

The effective exchange rate index for the Hong Kong dollar on Wednesday, December 4, 2019 is 106.6 (up 0.2 against yesterday's index).