

## LCQ20: Handling of data access requests

Following is a question by the Hon Shiu Ka-chun and a written reply by the Secretary for Home Affairs, Mr Caspar Tsui, in the Legislative Council today (May 27):

Question:

Several street sleepers in Tung Chau Street Park have sought my assistance, alleging that some police officers damaged their properties and assaulted them while taking law enforcement actions there in February this year. Since March, I have been assisting such persons in making data access requests, under section 18 of the Personal Data (Privacy) Ordinance, (Cap. 486) to the Leisure and Cultural Services Department (LCSD), and requesting copies of the video footages captured by the closed-circuit television installed by LCSD in the aforesaid park. After consulting the Office of the Privacy Commissioner for Personal Data, Hong Kong, the Department of Justice (DoJ) and the Hong Kong Police Force (HKPF), LCSD made an appointment with the aforesaid persons for a meeting on April 29 to watch the relevant video footages. However, on that day before the meeting, HKPF requested LCSD to postpone the above meeting on the grounds that legal advice had to be sought. LCSD explained that, under paragraph 1.15.4 of the Code on Access to Information (the Code), it had to consult the government departments that were related to the data (i.e. HKPF); and given that HKPF was seeking legal advice, LCSD was for the time being unable to handle the data access requests concerned. In this connection, will the Government inform this Council:

(1) whether it has assessed if the Code overrides Cap. 486; if it has assessed and the outcome is in the negative, whether LCSD may, on the grounds of having to act in accordance with the Code, suspend the handling of the aforesaid data access requests pursuant to the requirements under section 18 of Cap. 486;

(2) as LCSD has already consulted DoJ before making an appointment with the aforesaid persons for a meeting, of HKPF's justifications for requesting LCSD to postpone the meeting with the aforesaid persons on the grounds that legal advice had to be sought; and

(3) as it is stipulated in section 19 of Cap. 486 that a data user must, within 40 days after receiving a data access request, supply a copy of the data to the data subject, whether the Government has assessed if LCSD has contravened the provision; if it has assessed and the outcome is in the affirmative, of the follow-up actions?

Reply:

President,

Closed-circuit televisions (CCTVs) installed in Tung Chau Street Park by the Leisure and Cultural Services Department (LCSD) serve the purpose of enhancing management and maintaining order. My reply to the question raised by the Hon Shiu Ka-chun is as follows:

(1) and (2) In this case, LCSD has processed the request for a copy of the CCTV footage taken at Tung Chau Street Park in compliance with both the Personal Data (Privacy) Ordinance and the Code on Access to Information. According to Section 18 and data protection principle 6 of the Personal Data (Privacy) Ordinance, a data subject is entitled to the right of data access request. Upon receipt of the three street sleepers' request made via the Hon Shiu Ka-chun for access to a copy of the CCTV footage taken at Tung Chau Street Park in early March 2020, follow-up action was immediately taken by LCSD, including retaining the CCTV footage and consulting departments concerned such as the Office of the Privacy Commissioner for Personal Data, Hong Kong, the Department of Justice (DoJ) and the Hong Kong Police Force (the Police) in processing the request. As the CCTV footage is related to criminal investigation of the Police, the data user may refuse to comply with the data access request subject to the exemptions provided under Part 8 of the Personal Data (Privacy) Ordinance or other cases where Part 8 of the Personal Data (Privacy) Ordinance is applicable. Hence, LCSD is required to consult the Police on the exemptions or other requirements under Part 8 of the Personal Data (Privacy) Ordinance.

Paragraph 1.15.4 of the Code on Access to Information stipulates that if the requested record is also related to other department(s), the receiving department should, where necessary, consult all parties concerned before making a decision on whether or to what extent a particular request should be met. As the CCTV footage is related to criminal investigation, LCSD consulted the Police as required by the above-mentioned Code.

The Police may seek legal advice from DoJ on legal issues in the course of handling criminal cases. The time that DoJ takes to provide legal advice on each case would depend on a range of factors, including the nature and complexity of the case. Since the CCTV footage mentioned in the question is related to an ongoing criminal investigation of the Police, provision of the CCTV footage to the data subject at this stage may affect the Police's investigation. Hence, the Police are seeking advice from DoJ on the issue concerned.

(3) Upon receipt of the Data Access Request Form from the Hon Shiu Ka-chun on March 9, 2020 requesting access to a copy of the CCTV footage taken at Tung Chau Street Park, follow-up action was immediately taken by LCSD. These included retaining the footage and consulting departments concerned. LCSD issued a written reply to the Hon Shiu Ka-chun on April 14, 2020 (i.e. within 36 days after receiving the Data Access Request Form), indicating that arrangement could be made for him to watch the footage. A meeting with the Shiu Ka Chun Legislative Councillor's Office was originally arranged on April 29. However, as the department was notified by the Police that it needed time to consult DoJ, the meeting had to be deferred as a result.

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## Illegal worker jailed

A Vietnamese illegal worker holding a recognisance form was jailed by Shatin Magistrates' Courts yesterday (May 26).

During operation "Breakthrough" conducted on May 24, Immigration Department (ImmD) investigators raided a restaurant in Mong Kok. A male Vietnamese, aged 39, was arrested while working as an odd-job worker. Upon identity checking, he produced for inspection a recognisance form issued by the ImmD, which prohibits him from taking employment. Further investigation revealed that he was a non-refoulement claimant. An employer suspected of employing the illegal worker was also arrested and the investigation is ongoing.

The illegal worker was charged at Shatin Magistrates' Courts yesterday with taking employment after landing in Hong Kong unlawfully and remaining in Hong Kong without the authority of the Director of Immigration or while being a person in respect of whom a removal order or deportation order was in force. He pleaded guilty to the charge and was sentenced to 15 months' imprisonment. Meanwhile, he was also charged with one count of using a forged Hong Kong identity card. He was sentenced to 12 months' imprisonment. All sentences are to run concurrently for a total of 15 months' imprisonment.

The ImmD spokesman warned that, as stipulated in section 38AA of the Immigration Ordinance, illegal immigrants or people who are the subject of a removal order or a deportation order are prohibited from taking any employment, whether paid or unpaid, or establishing or joining in any business. Offenders are liable upon conviction to a maximum fine of \$50,000 and up to three years' imprisonment. The Court of Appeal has issued a guideline ruling that a sentence of 15 months' imprisonment should be applied in such cases. Under the prevailing laws, it is an offence to use or possess a forged Hong Kong identity card or a Hong Kong identity card related to another person. Offenders are liable to prosecution and a maximum penalty of a \$100,000 fine and up to 10 years' imprisonment.

The spokesman reiterated that it is a serious offence to employ people who are not lawfully employable. The maximum penalty is imprisonment for three years and a fine of \$350,000. The High Court has laid down sentencing guidelines that the employer of an illegal worker should be given an immediate custodial sentence. According to the court sentencing, employers must take all practicable steps to determine whether a person is lawfully employable prior to employment. Apart from inspecting a prospective employee's identity card, the employer has the explicit duty to make enquiries regarding the person and ensure that the answers would not cast any reasonable doubt concerning the lawful employability of the person. The court will not accept failure to do so as a defence in proceedings. It is also an offence if an employer fails to inspect the job seeker's valid travel

document if the job seeker does not have a Hong Kong permanent identity card. The maximum penalty for failing to inspect such a document is imprisonment for one year and a fine of \$150,000.

Under the existing mechanism, the ImmD will, as a standard procedure, conduct initial screening of vulnerable persons, including illegal workers, illegal immigrants, sex workers and foreign domestic helpers, who are arrested during any operation with a view to ascertaining whether they are trafficking in persons (TIP) victims. When any TIP indicator is revealed in the initial screening, the officers will conduct a full debriefing and identification by using a standardised checklist to ascertain the presence of TIP elements, such as threats and coercion in the recruitment phase and the nature of exploitation. Identified TIP victims will be provided with various forms of support and assistance, including urgent intervention, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.

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## **MTR train doors obstructed**

Attention duty announcers, radio and TV stations:

Please broadcast the following message as soon as possible and repeat it at suitable intervals:

MTR train services were disrupted this morning (May 27) as some people intentionally placed hard objects at the train doors in North Point, Tin Hau, Nam Cheong and HKU MTR stations. Train services resumed normal after removal of such objects by MTR staff.

Police do not condone selfish acts of lawbreakers, which affect the daily lives of the public. Police have stepped up enforcement action in the concerned areas and will swiftly attend the scene to stop anyone from disrupting public peace.

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## **Slow-drive protest at Cross-Harbour Tunnel**

Attention duty announcers, radio and TV stations:

Please broadcast the following message as soon as possible and repeat it at suitable intervals:

At around 8.30am today (May 27), some drivers staged a slow-drive protest at the Hong Kong Island exit of the Cross-Harbour Tunnel, causing serious obstruction to traffic. Police officers swiftly attended the scene to intercept the vehicles concerned and diverted traffic in an effort to maintain road safety for commuters and students.

Police emphasise that driving slowly on purpose endangers road safety and obstructs other road users. It may constitute a criminal offence. The Police will take resolute action to enforce the law to ensure major transport routes remaining smooth and unaffected.

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## **Rioters place nails on roads and endanger traffic safety**

Attention duty announcers, radio and TV stations:

Please broadcast the following message as soon as possible and repeat it at suitable intervals:

Since around 5.30am today (May 27), rioters have blocked roads with rubbish in an attempt to paralyse traffic. The affected areas include:

- Tseung Kwan O: Po Lam Road (Kowloon bound) and Tsui Lam Road outside Tseung Kwan O Village
- Hung Hom: Nails were found on Wuhu Street

Such disturbances have posed a grave threat to road safety. Police warn the rioters to stop all unlawful acts or they will be arrested. Officers are clearing various affected locations to facilitate re-opening as soon as possible. Members of the public are urged to budget sufficient travelling time and pay attention to the latest traffic arrangement.