IPCC and Police Complaints Monitoring in Hong Kong

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Law Enforcement Agencies in Hong Kong

Chief Executive

Independent Police Complaints Council
Approx. 38 personnel

Government/Security Bureau

Independent Commission Against Corruption
Approx. 1,300 personnel

Hong Kong Police Force
Approx. 35,000 personnel

Custom and Excise Department
Approx. 5,500 personnel

Immigration Department
Approx. 6,600 personnel

Fire Services Department
Approx. 9,600 personnel
Civil Complaints - IPCC

Criminal matters –
- For corruption - ICAC
- For crimes other corruption – C&IIB of the Police Force
About the IPCC

- IPCC is an independent body established under the Independent Police Complaints Council Ordinance (IPCCO) (Cap. 604, Laws of Hong Kong)
- IPCCO codified the two-tier complaints system
- IPCC became a statutory body since 1 June 2009 with the enforcement of IPCCO
- Since then, it has its statutory power and function
- IPCC Chairman, Vice-Chairmen and Members are all appointed by the Chief Executive and are drawn from a wide spectrum of society
Functions of the IPCC – IPCCO s.8

1. To observe, monitor and review the handling and investigation of reportable complaints by the Commissioner of Police

2. To monitor actions taken or to be taken in respect of any police officer by the Commissioner of Police in connection with reportable complaints

3. To identify any fault or deficiency in police practices or procedures that has led to or might lead to a reportable complaint

4. To advise the Commissioner of Police and/or the Chief Executive of its opinion and/or recommendation in connection with reportable complaints

5. To promote public awareness of the role of the Council
The Police Complaints System in Hong Kong

- A two-tier system which ensures all complaints are handled in a thorough, efficient, fair and just manner
- All complaint investigations reports are reviewed and monitored by IPCC
- IPCC is the only independent organisation which monitors the handling of complaints against Police in Hong Kong
Missions of IPCC

- To enhance the Police’s professionalism
- To enhance public confidence of Police
- To reduce complaints against the Police
How the System Works

1st tier: CAPO handles and investigates the police complaint cases

- CAPO receives and investigates police complaints
- CAPO submits investigation reports to IPCC

2nd tier: IPCC reviews investigation reports

Agrees investigation results
- CAPO responds to complainant
- Police take appropriate action against Complainee
- IPCC may offer recommendations to the Police for refining police practices and procedures

Disagrees with investigation results
- IPCC seeks clarification or further information from CAPO
- Rejects investigation report

May request CAPO to reinvestigate the complaint cases
May interview witness to clarify uncertainties
May bring up the cases for discussion in working level meeting or Joint IPCC/CAPO meeting

IPCC Observers Scheme to observe CAPO’s complaint investigations
IPCC Observers Scheme

- IPCC Observers can observe any interviews with complainants, complainees, or witnesses, or any collection of evidence conducted in the course of a complaint investigation.
- Apart from prearranged observations, Observers can attend and observe investigations on a surprise basis.
Reportable Complaint / Notifiable Complaint

A complaint received by the Commissioner must be categorized as a reportable complaint if the complaint—

(a) relates to—

(i) the conduct of a member of the police force while on duty or in the execution or purported execution of his duties, whether or not he identified himself as such a member;
(ii) the conduct of a member of the police force who identified himself as such a member while off duty; or

(iii) any practice or procedure adopted by the police force; and

(b) is not vexatious or frivolous and is made in good faith;

(c) is made by or on behalf of a complainant directly affected by the police conduct.
Statutory duty to submit RC and NC Lists under S.9

The Commissioner must submit to the Council —

(a) a list of reportable complaints; and
(b) a list of notifiable complaints with
   (i) a brief description;
   (ii) the reasons for categorizing the complaints as NC or for belated complaints that is solely on the ground that the complaint is not of a serious nature, the reasons supporting that ground.
Statutory duty regarding NC/RC categorization under S.16

(1) If the Council considers that a complaint included in a list of notifiable complaints under section 9 should be categorized as a reportable complaint, it may advise the Commissioner of its opinion, and the Commissioner must—

(a) have regard to such opinion; and
(b) reconsider the categorization of the complaint.

(2) The Commissioner must, as soon as practicable after the completion of his reconsideration under subsection (1), inform the Council of the outcome of his reconsideration.
(3) The Council may require the Commissioner to provide—

(a) explanations to support the categorization of a complaint as a notifiable complaint;

(b) in relation to a belated complaint (as defined in section 12(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, explanations to support that ground; and

(c) information or material in support of the explanations.
Statutory duty to submit Investigation Reports under S. 17

The Commissioner must, as soon as practicable after completing the investigation of a reportable complaint, submit to the Council an investigation report with

(a) a summary of the investigation;
(b) a finding of facts;
(c) the classification of the complaint, and the reasons thereof;
(d) an account of the action taken or to be taken
Statutory duty to submit Interim Reports under S. 18

If the investigation of a reportable complaint is not completed within 6 months from the date of receipt of the complaint, then the Commissioner must submit to the Council an interim investigation report.
Statutory duty under S. 19 regarding recommendation on Investigation Reports

(1) The Council may advise the Commissioner of—

(a) its recommendation on the classification of the complaint;
(b) its recommendation on the Commissioner’s handling or investigation of the complaint;
(c) its recommendation on any fault or deficiency identified in any practice or procedure adopted by the police force;
(d) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with the complaint; or
(e) its recommendation on the report other than those mentioned in paragraphs (a), (b) and (c).
(2) If an investigation report is amended in response to the Council's recommendations, the Commissioner must submit the report as amended to the Council as soon as practicable.

(3) The Council may, if it considers appropriate, submit any part of its opinion or recommendation referred to in subsection (1) to the Chief Executive for consideration.
Council may require Commissioner to provide information under s. 22

The Council may require the Commissioner to provide any information or material relating to a reportable complaint; and to clarify any fact, discrepancy or findings relating to a reportable complaint.
Commissioner to comply with requirements of Council under S.29

The Commissioner must comply with any requirement made by the Council under this Ordinance unless the Secretary for Security certifies that compliance with the requirement would be likely to prejudice the security of Hong Kong; or the investigation of any crime.
Others

- Council may require explanation in relation to actions taken etc. in connection with reportable complaints under S.26
- Council may require Commissioner to submit statistics and reports under S.27
- Commissioner must consult Council on orders and manuals relating to handling or investigation of reportable complaints under S.28
Standard of Proof

The standard of proof is the civil standard of ‘Balance of Probabilities’.

Nevertheless, the more serious the allegation (for instance, allegations of Assault, Fabrication of Evidence, etc), the more cogent evidence needed to substantiate it.
Case study

Complaint Cases Arising from the Visit by the Vice Premier (Mr. LI Keqiang) of the Central People Government

( under the monitoring of Serious Complaints Committee of IPCC )

- Interim report released in May 2012
- Final report released in Dec 2012
Nature of the Complaints

- Footbridge Closure & Pedestrian Clearance
- Setting up of Designated Press Area (DPA)
- Setting up of Designated Public Activity Areas (DPAA)
- Setting up of Security Zone (SZ)
- Justification for Police actions
Pedestrian Clearance

- 2 Cases concerned pedestrian clearance.
- Pedestrian clearance appeared to be decision made by individual officers based on own judgment.
- IPCC was concerned if the Police had
  - provided clear instructions whether route lining had to be implemented, and
  - if clear guidelines were given to frontline officers on how to carry out pedestrian clearance.
- IPCC requests for examination of OO.
Closure of Footbridges

IPCC requested for examination of OO to ascertain if Police had given appropriate advice regarding:

- Partial closure of wide footbridges if possible
- Deploy officers to answer questions from members of public on the spot
- Advance notice to public (general information)
- Keep records of time and duration of closure
Setting up of DPAA

- Complaints stemmed from dissatisfaction with DPAAAs being too far away
- Fundamental issue: DPAA had to be outside SZ.
- Given “High Risk” assessment, IPCC agrees DPAA has to be outside SZ; but serves no purpose if DPAA are at locations with no chance of seeing VP’s motorcade
- IPCC recommends that the Police should make reasonable attempt to set up DPAA at a reasonable location to cater for the needs of the protestors
Removal of Individuals

- Legal basis of removal actions
- IPCC agreed to Police’s explanation and endorsed the classification of ‘No Fault’ to the ‘Unauthorized Use of Authority’ allegation.
- Removal of the protestors was justified as she ignored the warning of the Police and attempted to enter the Hotel for purpose other than visiting residents there during a “high risk” security operation.
Case study – Removal & Assault

- Video available but COM refused to come forth – ‘Not Pursuable’?
- IPCC interviews were conducted and OO examined
- IPCC recommends that notification of the police operation and residents might be subject to security checks should be put up at Laguna City
Setting up of DPA

- IPCC perceived complaints stemmed from reporter’s grievance that Police had unreasonably and excessively exercised their power to hinder reporters’ news reporting activities.

- IPCC believes that similar complaints could be avoided if:
  - DPA can be set up inside SZ
  - Set up DPA in consultation with reporters
  - Better communication between Police and Press
IPCC Monitoring

During examination of complaint cases, IPCC Issued queries requesting CAPO to:

- List a senior rank officer as COMEE
- Conduct full investigation
- Furnish legal justification for police actions
- Provide relevant Operational Orders for inspection
Inspection of Operational Order

To determine the propriety of the Security Zone demarcation

(DPA and DPAA locations)

Police refused to provide OO, for

- Highly sensitive materials -> jeopardize future operations
- Understanding between international law enforcement agencies on non-disclosure
- Other members of Association of Personal Protection Services may cast doubt on VIPPU
- Potential denial of future professional exchanges of information
The relevant extracts of the Operational Orders were examined eventually

- OO of one region stated that one of the missions was to ensure the events attended by VP were conducted in a “*smooth and dignified manner*”

- In the context of people submitting petition letters, OO of another region stated that “*Every action should be taken to pre-empt embarrassment or threat to CPG Leader*”

- No further elaboration in OO on these assertions

- Police explained these assertions carry no special meaning and no briefing given to officers on their meaning
The Operational Orders

- IPCC, however found “smooth and dignified manner” & “Every action should be taken to pre-empt embarrassment or threat to CPG Leader” ambiguous and might cause confusion to frontline officers and over-reaction by them against civilians in certain situations.
- Police took heed of IPCC observation.
- In subsequent OO, Police changed “smooth and dignified manner” to “smooth and orderly manner” and did not use the phrase “to pre-empt embarrassment …” anymore.
Sub-judice

A complaint is still under the Sub-judice mechanism – The COM, a protestors refused to go into the DPAA, was eventually and convicted charged with “Resisting Police” after trial and was B.O. in HK$1000 for 12 months. Pending appeal.
Disciplinary Actions

Disciplinary Review: 1 SGT & 1 SPC

Warn w/o DRF: 1 CIP, 1 SGT, 1 WPC, 1 PC

Advise w/o DRF entry: 1 SSP, 1 CIP, 3 PCs, 1 WPC
Improvements measures adopted by Police

- Better drafting of Operational Orders to minimize misinterpretation
- Enhanced liaison with stakeholders
- Establishment of Media Liaison Team
- Force-level briefing before operation to let officers raise their concerns and suggestions
- Enhanced footbridge closure management
  - Partial closure for footbridges wider than 3m
  - Notice displayed at both ends of closed footbridges
- Setting up of Forward Petition Areas
IPCC believes the above measures will help prevent similar complaints in the future.
IPCC, Shield or Sword?
IPCC as a shield to the Hong Kong Police Force’s integrity

- A fair monitoring system is utmost important in maintaining the professionalism of the Hong Kong Police Force
- IPCC serves to ensure and enhance the Police’s service quality
IPCC as a **sword** to the Hong Kong Police Force

- IPCC is an **independent body** appointed by the Chief Executive.

- IPCC Members represent the **wide spectrum of the society** who review and monitor how the Police are carrying out their duties.

- With **full autonomy**, IPCC maintains our neutrality and unbiased position in handling all complaints both fairly and justly and preserve the independence of the IPCC and its spirit of fairness and thoroughness.
Thank You

Q&A