

LCQ10: Law enforcement actions by Police

Following is a question by the Hon Leung Yiu-chung and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (November 27):

Question:

It is learnt that on the afternoon of October 20 this year, anti-riot police officers stopped a male passer-by on Jordan Road, and arrested him for the offence of unlawful assembly. While he was being detained, his legal representative had enquired of the Police about the identity of the police officer who made the arrest. However, the Police gave different answers on three occasions. On the first occasion, the answer was that the police officer belonged to the Police Tactical Unit, but details of his identity could not be disclosed owing to the sensitivity of his identity; on the second occasion, the answer was that they had no idea; on the third occasion, the answer was that the police officer belonged to the Commercial Crime Bureau. Furthermore, the Police had continued to detain the man without instituting any prosecution. His legal representative has pointed out that the Police are not empowered to detain members of the public arbitrarily, and must expeditiously and, within 48 hours from the time of arrest, make the decision of either laying charges against or releasing the arrestees. Considering that the Police's actions of arresting and detaining his client were unlawful, that legal representative made an application to the High Court on October 21 for a writ of habeas corpus, demanding the Police to release his client. The representative of the Department of Justice indicated in the court that the man would not be prosecuted, and the man was then released. In this connection, will the Government inform this Council:

- (1) of the reasons why the Police gave three different answers to the enquiry about the identity of the police officer concerned;
- (2) whether it has assessed if the reasons mentioned in (1) are appropriate; if it has assessed and the outcome is in the affirmative, of the justifications for that;
- (3) of the meaning of the Police's claim that the identity of the aforesaid police officer was sensitive; whether there were similar cases in the past three years in which the Police refused to disclose the identities of police officers on the same grounds; if so, of the number and details of such cases;
- (4) whether the Police have reviewed if the police officer concerned had reasonable justifications for arresting the man; if they have reviewed and the outcome is in the affirmative, of the details and the reasons for not instituting any prosecution in the end; if the review outcome is in the negative, whether they have examined if the police officer concerned had

abused his power; if they have examined and the outcome is in the affirmative, whether the Police will follow up the matter and refer the case to the Independent Commission Against Corruption for follow-up; if so, of the details; if not, the reasons for that; and

(5) whether the police officer concerned, when stopping the man, forced him to kneel down with his hands laced behind his head; of the legislation based on which the Police may require suspected offenders to kneel down with their hands laced behind their heads, as well as the criteria for or guidelines on invoking the legal provisions concerned; the actions that may be taken by the police officers at the scene when the persons who are stopped refuse to kneel down with their hands laced behind their heads, and whether such persons may be prosecuted as a result; if so, of the charge to be laid against them?

Reply:

President,

On the afternoon of October 20 this year, there were protesters participating in an unauthorised assembly in the vicinity of Tsim Sha Tsui, Kowloon. Subsequently, shops and public utilities were wantonly vandalised by masked rioters in such areas as Mong Kok, Yau Ma Tei, Jordan and Tsim Sha Tsui. As a result, the Police had to disperse the crowd and make arrests, and more than 40 persons were arrested during the operation. One of the arrestees was the male person referred to in the question, and he was suspected to participate in an unlawful assembly. In the afternoon of the next day, the person's legal representative made an application to the High Court for a writ of habeas corpus. At around the same time, the Police completed preliminary investigation of the person and were about to release him on bail pending further enquiries. The application concerned was adjourned sine die until further notice by the applicant, after the Court had been informed that the relevant person would be released on bail. Since the case is now still under investigation and legal proceedings may be initiated in the future, it is not appropriate for us to make further comments on the details of the case.

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

(1) to (4) Under section 10 of the Police Force Ordinance (PFO) (Cap 232), the Police have statutory duties to take lawful measures for preserving public peace and public order, and preventing and detecting crimes and offences. When public order and public safety are severely threatened by illegal road blocking, paralysed traffic, unlawful assemblies, wounding, arson, criminal damages, violent charging of police cordon lines, etc., the Police must take action to maintain law and order and restore peace in the community.

Section 50(1) of PFO empowers a police officer 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 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 his custody and arrest. The arrestee will then be handed over to an investigation team for investigation. After completing preliminary investigation, the Police will decide whether it is necessary to detain the arrestee. The Police will, depending on the circumstances of individual cases, consider releasing the arrestee on own-recognition, on bail or unconditionally. An arrestee generally will not be detained over 48 hours.

Under the established mechanism, the Police are responsible for the investigations of criminal cases, while the Department of Justice (DoJ) is responsible for deciding whether or not to initiate prosecution. The DoJ will give legal guidance, including whether prosecution will be made, according to the evidence collected by the Police. Regarding the prosecutorial decision of each case, the DoJ must take into account the available evidence and applicable laws, and act in accordance with the Prosecution Code. In particular, under Chapter 19 of the Prosecution Code, for cases in relation to public order events, prosecutors have to strike a balance between the interest of society in maintaining public order and the right of a person to lawfully and peacefully exercise his or her rights.

During operations, uniformed police officers on duty would display their unique identification numbers or identifiable operational call signs. When plainclothes police officers exercise police powers, they would identify themselves and produce warrant cards, or display identifiable operational call signs, as long as doing so is not infeasible under the operational circumstances. If members of the public are not content with the Police, they may lodge complaints, and the complaints will be dealt with in a fair and impartial manner. During investigation, police officers could be identified with the information above. The Police would also identify the police officers concerned via various avenues, including manpower deployment, duty records, the time and location of the incident in relation to the complaint, etc. The Police do not maintain the figures requested in part (3) of the question.

(5) When the Police carry out law enforcement actions, they will conduct risk assessments and take appropriate measures according to the situation at the spot. To effectively control a large number of arrestees who engaged in violent acts, and prevent them from escaping or being snatched, and to protect the safety of the arrestees, police officers and other members of the public there, the police officers may, where necessary for the occasion, require some arrestees to crouch, sit, etc. Such arrangement is a general practice for controlling a large number of arrestees in view of the operational need at the scene. If an arrestee resists a police officer in the officer's performance of duties (including the exercise of control measures), the Police may use force to control the arrestee. Resisting arrest and lawful control measures by the Police is in contravention of the law and may breach

the Summary Offences Ordinance (Cap 228), with a maximum penalty of a fine of \$1,000 and six months of imprisonment, or the Offences against the Person Ordinance (Cap 212), with a maximum penalty of two years of imprisonment.