

LCQ12: Personal data of arrested person

Following is a question by the Hon Chan Chi-chuen and a written reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (February 26):

Question:

It is learnt that while being arrested by police officers during the social conflicts over the past six months, quite a number of members of the public have tried to scream their names, so as to facilitate bystanders or people watching live broadcast in helping them obtain legal assistance expeditiously, but the police officers at the scene have, by various means, stopped them from doing so. Some of such police officers even claimed that such people did not have the right to scream their names and such act was an "invasion of privacy". In this connection, will the Government inform this Council:

(1) whether it has assessed if people's act of screaming their names on their own initiative while being arrested is an invasion of their own privacy; if it has assessed and the outcome is in the affirmative, of the reasons for that; and

(2) whether there is any legal basis for police officers stopping people from screaming their names on their own initiative while they are being arrested; if so, of the details; if not, whether it will immediately prohibit police officers from doing so again, so as to ensure arrestees' right of facilitating their expeditious access to legal assistance through screaming their names while being arrested?

Reply:

President,

Members of the public enjoy the freedoms of expression, speech and assembly but they must exercise such freedoms peacefully and lawfully. When unlawful acts occur, the Police have a statutory duty to handle them so as to maintain public safety and public order. Since June last year up till now, more than 1 300 demonstrations, public assemblies and processions have been staged in Hong Kong, and many of them ended up as violent illegal activities. Rioters repeatedly committed serious unlawful acts including wantonly blocking roads, paralysing the traffic, hurling petrol bombs and setting fire at different locations, throwing bricks, and vandalising and burning shops and MTR and Light Rail facilities with intent. These acts have seriously threatened personal safety, as well as public order and public safety.

Section 50(1) of the Police Force Ordinance (Cap 232) empowers a police

officer to apprehend any person whom 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 Police always strive to protect the privacy and rights of detained persons, including the rights to seek legal assistance, communicate with a relative or friend, receive copies of written record under caution, be provided with food and drink, seek medical attention, etc. The rights of a detainee are clearly stated in the notice issued by the Police to every detainee in police custody or involve in police enquiries.

During the protests and unrest in the past eight months or so, we noticed that some arrested persons shouted their personal data such as their names, ID numbers, and telephone numbers after being subdued by police officers. Anyone (including those arrested by the Police) has the right to choose how to use his or her personal data, including the situation described in the question. We will not speculate on whether the arrested person shouted his or her name and personal data for the purpose of obtaining legal assistance as soon as possible, notifying his or her partners to evade legal liability or destroying evidence.

During criminal investigations, if the arrested person has taken the initiative to shout his or her name or personal data at the scene, the relevant information coupled with other evidence collected by the Police (such as CCTV footage, statements from other witnesses, etc.) may be used as evidence in court to support that the arrested person was at the scene of the crime concerned.

When police officers take action, they will consider the actual situation and purpose at the time. As each situation is different, they cannot be generalised. Anyone who is dissatisfied with the enforcement actions of the Police can lodge a complaint with the Complaints Against Police Office (CAPO). CAPO will investigate, find out the actual situation of the incident and the purpose of the actions taken at that time, and handle the complaint in a fair and just manner.