

LCQ16: Incident of collision of vessels near waters of Lamma Island

Following is a question by the Hon James To and a written reply by the Acting Secretary for Transport and Housing, Dr Raymond So Wai-man, in the Legislative Council today (November 4):

Question:

In response to the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on October 1, 2012, the Transport and Housing Bureau set up an Internal Investigation Team (the Team) in June 2013 to investigate whether there were maladministration and negligence of duty on the part of Marine Department (MD) officers in carrying out their duties in relation to Lamma IV. The Team submitted its investigation report to the Civil Service Bureau and the Police in 2014 to facilitate the conduct of disciplinary procedures and criminal investigations respectively. In addition, it has been reported that the Police have submitted the relevant investigation report(s) to the Coroner's Court (CC) and the Department of Justice (DoJ). In this connection, will the Government inform this Council:

- (1) as the Team held the view that 17 MD officers were involved in misconduct while discharging duties in respect of Lamma IV in the past, of the following information of such officers: (i) the rank at the time of the incident, (ii) details of the misconduct, (iii) disciplinary actions faced, and (iv) whether they have now left the service or retired (set out one by one in a table);
- (2) whether it will consider afresh making public the investigation report;
- (3) of the to-date number of investigation report(s) submitted by the Police to DoJ, as well as the date of submission and the number of pages of each report; whether the Police have received legal advice from DoJ after submitting the report(s); if so, whether the Police have submitted such legal advice to CC; if so, of the dates concerned;
- (4) whether DoJ has finished considering the investigation report(s) submitted by the Police; if not, how much longer it will take; if so, whether and when it will institute prosecutions against the persons involved in the incident;
- (5) of the to-date number of investigation report(s) submitted by the Police to CC, as well as the date of submission and the number of pages of each report;
- (6) whether it knows if the Coroner has finished considering the investigation report(s) submitted by the Police; if the Coroner has, whether he has given further instructions to the Police, and of the expected time when he will make a decision on whether or not to conduct a death inquest; and

(7) whether it knows if the Coroner has received legal advice from DoJ; if the Coroner has, whether he has finished considering the relevant advice?

Reply:

President,

In response to the Hon James To's question, in consultation with the Civil Service Bureau (CSB), the Security Bureau, the Department of Justice (DoJ) and the Judiciary, our reply is as follows:

(1) In relation to the vessel collision incident near Lamma Island, the Transport and Housing Bureau (THB) completed its internal investigation work on the conduct of staff of the Marine Department (MD) in early 2014 and has subsequently forwarded the Investigation Report (the Report) to the CSB for follow-up action. Upon receipt of the Report from the THB, the CSB has followed up on each of the cases in accordance with the legal advice from the DoJ and the disciplinary procedures, including imposing disciplinary punishments on individual officers. According to the established mechanism, we will not discuss openly or disclose details of individual civil service disciplinary cases.

(2) The Report on internal disciplinary actions generally will not be disclosed to the public. The Government has to take into account and strike a balance among various considerations for public disclosure of any content of the Report. In particular, the Report contains substantial personal data of persons involved in the investigation and information provided to the Government in confidence. Since the intended use of the personal data collated during the course of the investigation is for the purpose of the investigation, with a view to protecting such personal data, the Government is bound by the mandatory requirements in the Personal Data (Privacy) Ordinance (Cap 486) (the PDPO), including not to use the personal data collated for the purpose of investigation for a new purpose, such as disclosure to the public. Apart from the mandatory restrictions under the PDPO, the Government, being the holder of the confidential information contained in the Report, has the duty of confidentiality and the legal obligation to guard against unauthorised disclosure of such information.

We are aware that there has been public expectation for the Report to be published. As a practical alternative, and having taken into account the Government's duty of confidentiality and the legal obligation to protect the personal data in the Report, a summary of the Report was published on April 28, 2014 to provide the gist of the facts and the overall findings and recommendations of the THB's Investigation Team. The summary of the Report has been uploaded for public information on www.legco.gov.hk/yr13-14/english/panels/edev/papers/edev0428cb1-1295-3-e.pdf.

The Government has endeavoured to strike a balance among various considerations, including public interest, requests for public disclosure of the Report, upholding the duty of confidentiality as well as the legal obligations to protect personal data privacy and confidential information.

(3) to (7) The Police submitted an investigation report concerning the two involved vessels to the DoJ in January 2013. The DoJ subsequently recommended to lay charges against the two coxswains, each with 39 counts of "Manslaughter" and two counts of "Endangering the safety of others at sea". The coxswain of "Lamma IV" was subsequently convicted of one count of "Endangering the safety of others at sea" and sentenced to nine months imprisonment in February 2015, whilst the coxswain of "Sea Smooth" was convicted of 39 counts of "Manslaughter" and one count of "Endangering the safety of others at sea" and sentenced to eight years imprisonment in February 2015.

In June 2014, the Police submitted an investigation report concerning the MD to the DoJ. The DoJ recommended to lay charges against two public officers of the MD. One officer was convicted of "Misconduct in Public Office" and sentenced to 16 months imprisonment. The Court of Appeal subsequently approved his appeal of sentence and the sentence was changed to 4.5 months. Another officer was convicted of "Perjury" while testifying at the Commission of Inquiry and sentenced to 15 months.

â€‹In addition, the Police submitted an investigation report regarding persons and organisations other than the MD to the DoJ in January 2015. The Police submitted further investigation results and the relevant evidence to the DoJ in April 2018 after meeting with a relevant shipbuilding engineer overseas for follow-up enquiries. In mid-October 2020, the Police was informed by the DoJ that upon examination of the relevant evidence, it was decided that no prosecution would be initiated against any person or company.

In deciding whether or not to prosecute in each case, 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 DoJ will commence a prosecution if there is a reasonable prospect of conviction and it is in the public interest to do so. In this case, the DoJ has already brought prosecutions against the relevant persons involved.

Since the submission of 39 death investigation reports to the Coroner's Court in April 2015, the Police has been reporting the investigation progress to the Coroner. In mid-October 2020, the Police informed the Coroner of all the investigation results together with the professional legal advice received from the DoJ.

As for the Judiciary, they have advised that they do not comment on individual court cases.