

Executive Summary of the Investigation Report on the Procedures for Handling Travellers Suspected of Using False or Otherwise Suspect Travel Documents

Background

In February 2000, the Office of The Ombudsman (this Office) noted prominent media coverage on the treatment of travellers entering or transiting through Hong Kong using false or otherwise suspect travel documents. This aroused serious public concern about the relevant procedures of Immigration Department (Imm D) in handling such cases.

2. In exercise of the authority vested in her under Section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap 397, The Ombudsman informed the Director of Immigration of her decision to conduct a direct investigation into the subject in mid-February 2000.

The Investigation

3. The purpose of the investigation was to examine, inter alia, the Imm D's procedures for handling travellers suspected of using false or otherwise suspect travel documents in breach of the Immigration Ordinance. This Office also looked into whether Imm D had mechanism for monitoring compliance with the departmental guidelines and procedures.

Guidelines and Procedures

4. In October 1992, the Secretary for Security promulgated the "Rules and Directions for the questioning of suspects and the taking of statements" (the Rules) for observance by law enforcement officers in Hong Kong. The Rules govern the manner in which law enforcement officers, including immigration staff, should behave when questioning suspects or when taking statements from them. The main object of the Rules is to ensure that oral replies and written statements provided by a suspect have been given voluntarily.

5. Imm D also has guidelines and procedures on -
- (a) handling / examination of forged travel documents;
 - (b) treatment of suspects;
 - (c) interviews and statement-taking;
 - (d) video-tape recording interviews;
 - (e) interpretation service; and
 - (f) treatment of minors and disabled persons.

Monitoring and Control

6. In dealing with suspected immigration offenders, Imm D has established monitoring and control measures, including -

- (a) investigation process monitored by section head and sub-section head;
- (b) interviews conducted in video-tape recording;
- (c) abuse of power prevented through the Custody Officer and Review Officer System; and
- (d) complaints against immigration staff monitored by the Management Audit Division and the Complaints Review Working Party.

Observations

7. As from February 2000, Imm D had introduced a number of measures to improve the investigation and prosecution of travellers suspected of using false or otherwise suspect travel documents.

8. The Ombudsman has made the following observations from this investigation -

Interview process

- (a) The presence of independent witness during interview has not been required except for some categories of persons listed in the Rules such as children or mentally handicapped persons.
- (b) Video-tape recording interviews would be an effective means to enhance the transparency and procedural fairness of the interview process.
- (c) There is a gap in the Rules about the treatment of teenagers between the ages of 16 and 18.

Interpretation service

- (d) There is no mention in divisional instruction/departamental circular about detailed guidelines and procedures to report on the performance or attendance of a registered interpreter to the Court Interpreters Office of the Judiciary.

Examination and verification of travel documents

- (e) Forensic examination does not help cases involving unlawfully obtained travel documents.

Monitoring mechanism and control measures

- (f) There are no independent persons in the Complaints Review Working Party to scrutinise all the investigated complaints.

- (g) There are no arrangements for surprise visits by Justices of Peace to the detention facilities at those control points where forgery cases are frequently detected.

Documentation review and update

- (h) It is important to ensure timely updating of the guidelines to reflect the changing modus operandi of offenders.

Conclusions

9. From the study of the relevant rules and directions and some forgery-related case files, this Office concludes that -

- (a) there have been cases of non-compliance of the guidelines and procedures by some immigration staff; and
- (b) Imm D should further improve its overall operation in handling travellers suspected of using false travel documents and the associated forgery-related matters.

Recommendations

10. On the basis of the above observations and conclusions, The Ombudsman has made ten recommendations to Imm D as follows -

Interview process

- (a) To ensure fairness and transparency in the interview process and to enhance admissibility of statements in court proceedings, Imm D should consider -
 - (i) extending the use of video-tape recording interviews to all cases, over and above the current practice of limiting such use to District Court cases and cases involving syndicated crime of serious and complicated nature; and
 - (ii) continuing to install video-tape recording facilities at relevant control points, with priority to those having a high volume of cases of forged travel documents.
- (b) To safeguard the rights of young persons, particularly those aged between 16 to 18 years old, Imm D should consider arranging for their interviews

to be conducted in the presence of an appropriate independent witness.

Interpretation service

- (c) To ensure quality interpretation service, Imm D should consider, in consultation with the Judiciary, formulating guidelines and procedures for effective reporting and feedback to the Court Interpreters Office on the unsatisfactory performance of registered interpreters.

Examination and verification of travel documents

- (d) To facilitate prosecution of forgery-related cases, Imm D should -
 - (i) continue sending suspected forged travel documents for forensic examination; and
 - (ii) strengthen liaison and co-operation with relevant issuing authorities/organisations including consulate offices in the Hong Kong Special Administrative Region on the examination and verification of travel documents obtained through unlawful means.

Monitoring mechanism and control measures

- (e) To enhance transparency and objectivity in handling complaints against abuse of power by immigration staff, Imm D should consider including independent persons in its Complaints Review Working Party to scrutinise all the investigated complaints.
- (f) To strengthen independent monitoring and control particularly in ensuring fair treatment to persons in custody, Imm D should consider the feasibility of arranging for surprise visits by Justices of Peace to the detention facilities at those control points with a high volume of forgery cases detected.
- (g) To improve monitoring and supervision of staff, Imm D should consider devising a comprehensive monitoring mechanism for compliance of guidelines and procedures by staff involved in handling forgery cases.

Training and documentation

- (h) To enhance the knowledge and skills of the staff concerned for the proper handling of forgery cases in compliance with guidelines and procedures, Imm D

should provide more training to its investigation and prosecution staff regularly; and organise workshops, seminars and briefings for them on new guidelines and procedures.

- (i) To remind staff of compliance with guidelines and procedures, Imm D should circulate and re-circulate relevant circulars and notices at regular intervals.
- (j) To ensure that guidelines and procedures are adequate and effective, Imm D should review and update regularly its guidelines and procedures, to take into account changes in illegal practices.

Comments from Imm D and Security Bureau

11. Imm D has accepted the ten recommendations and will implement them as soon as practicable to improve its overall operation. Security Bureau has agreed to consider the recommendation on arranging for interviews with young persons to be conducted in the presence of an appropriate independent witness.

Final Remarks

12. The Ombudsman appreciates Imm D's comments and asks to be informed of progress on implementation and on any major changes in the policy or practices on the subject. Lastly, The Ombudsman is grateful for the co-operation and assistance rendered by Imm D and other offices concerned throughout this investigation.

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