

DoJ response to ICAC referral

In response to media enquiries about the referral of a case concerning witness protection to the Independent Commission Against Corruption (ICAC), a spokesman of the Department of Justice said today (July 27):

"The current arrangement between the ICAC and the police is that the ICAC deal with complaints connected to corruption; non-corruption complaints received by the ICAC are referred to the police for investigation. However, if the ICAC receive a corruption complaint, which in turn leads to the disclosure of a non-corruption offence, they will retain and deal with the matter and see it through. This allows the information and evidence already collected by the ICAC to be used by it in respect of the non-corruption offence in an efficient manner.

"In the present case, the complaint of unauthorised disclosure arose from a corruption case. The ICAC were under a clear obligation to investigate the matter, given their statutory duties under the Witness Protection Ordinance and their obligations under the Memorandum of Understanding signed by a witness who places herself under ICAC's protection. The investigation of the current complaint by the ICAC is therefore entirely proper.

"As the ICAC have already made clear, the Department of Justice never directed the investigation to be conducted by the ICAC. There was a clear obligation on the part of ICAC to investigate the matter. The Department of Justice is in charge of prosecutions and does not conduct investigations, which are the responsibility of law enforcement agencies. Upon receipt of the letter from the Registrar, it was our obligation to bring the matter to the notice of the ICAC, so they could decide whether or not to investigate. Indeed, section 5 of the Independent Commission Against Corruption Ordinance, Cap 204, provides that the Commissioner shall not be subject to the direction or control of any person other than the Chief Executive.

"Whether the ICAC should apply to the court for a production order under section 84 of the Interpretation and General Clauses Ordinance, Cap 1, or for a warrant to seize journalistic material under section 85 of the Ordinance is a matter of professional judgment to be decided by the ICAC. If the latter approach is adopted, it is for the court to decide whether or not a warrant for seizure should be granted. Unless a production order has

previously been granted and not complied with, the ICAC must satisfy the court, not only that all the requisite conditions prescribed by section 84(3)(a), (c) and (d)(i) are fulfilled, but also that one of the additional conditions in section 85(5) is fulfilled. Moreover, if journalists feel aggrieved by the seizure, they may avail themselves of the remedy under section 87. They may also lay a complaint to the Complaints Committee of the ICAC if they feel that its power had been abused."

Ends/July 27, 2004 (Tuesday)

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