

ICAC to conduct criminal investigation against its former Commissioner

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A number of complaints have been lodged with the Independent Commission Against Corruption (ICAC) against its former Commissioner, Mr Timothy Tong. After careful consideration, the Department of Justice (DoJ) takes the view that it is appropriate for the ICAC to conduct the criminal investigation into the complaints.

It is the general policy of the DoJ not to comment on individual cases unless the public interest warrants otherwise. However, in view of the nature of this case and the public concerns that have been expressed about it, it is appropriate that the DoJ outlines the key reasons behind its decision.

On the materials made available, the DoJ considered there is sufficient basis to warrant a criminal investigation into allegations of possible offences under the Prevention of Bribery Ordinance (Chapter 201) and the common law offence of "Misconduct in Public Office". However, for the avoidance of any doubt, the DoJ has not come to any view on the question of whether or not any prosecution should be commenced against any person in this case. Such a decision will be made at the conclusion of the criminal investigation, after all relevant material and information has been gathered, and in accordance with "The Statement of Prosecution Policy and Practice".

As regards to whether the complaints should be investigated by the ICAC or the Police, it is appreciated that there are arguments in favour of both options. However, having carefully considered all relevant factors, the DoJ is of the view that it is appropriate for the case to be investigated by the ICAC for the following key reasons:

First, even though the Police have the expertise to investigate criminal offences, the ICAC is the specialist body established and equipped with investigatory powers to deal with complaints of this type, and has over the years accumulated vast knowledge and experience in handling such complaints and/or investigations.

Second, the ICAC has an established and proven internal investigatory team to investigate allegations of wrongdoing or abuse by its officers.

Third, the incumbent Commissioner of the ICAC is not involved in any of the alleged conduct which forms the subject matter of the complaints and therefore can properly head the investigation into them. In addition, the DoJ has put forward criteria for selecting the ICAC officers who will be responsible for conducting the criminal investigation in order to ensure fairness and impartiality, namely:

(a) The officer has not participated or been involved in any of the functions or events personally organised by Mr Tong.

(b) The officer has no direct or indirect association or connection with Mr Tong, other than in the normal course of his/her duties as an ICAC officer.

(c) The officer has no actual or perceived conflict of interest or professional difficulty in conducting an investigation into Mr Tong.

Fourth, from time to time, the conduct and progress of the criminal investigation will be scrutinised by the Operations Review Committee (ORC), which comprises respected persons from a wide spectrum of the community and is wholly independent of the ICAC. Over the years, the ORC has established itself as an effective check on ICAC investigations and will undoubtedly provide an equally effective check with respect to the investigation into these complaints.

Lastly, the DoJ, and especially the Director of Public Prosecutions, will be fully consulted by the ICAC and will give appropriate directions and legal advice in relation to the case.

Ends/Tuesday, May 14, 2013