

Immigration and Refugee Board of Canada

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> Responses to Information Requests

Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment please email Basesdedonnees.DatabaseUnit@irb-cisr.gc.ca.

20 October 2015

CHN105217.E

China: Regulations on summonses; information on the contents of summonses, including whether these indicate where a person must present his or herself, including street address (2014-October 2015)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Regulations on Summonses for Criminal and Administrative Cases

The Ministry of Public Security (MPS)'s Regulations Concerning the Handling of Criminal Cases by Public Security Authorities, which came into effect on 1 January 2013 (China 2012b), states the following regarding Coercive Measures under Chapter VI:

[translation]

Section 1 Coercive Summonses

Article 74: Where, in view of the circumstances of a case, the Public Security Authority needs to use a coercive summons on a criminal suspect or has already issued a summons but the suspect fails to appear for no legitimate reason, the Authority may serve a coercive summons to bring said suspect to a designated location within the city or county in which the suspect is located for the purpose of questioning.

Where a coercive summons is required, a coercive summons report shall be completed, with relevant documentation attached, and submitted to the responsible person for the public security authority at the county or higher level for approval.

Article 75: When the Public Security Authority uses a coercive summons on a criminal suspect, it shall show the Coercive Summons and instruct said suspect to affix his or her signature and fingerprint to said Summons.

Upon arrival at the place where the criminal suspect's appearance is required, said suspect shall be instructed to write the time of appearance. Upon completion of the coercive summons, the time of completion shall be written on the Coercive Summons by the suspect. Where the suspect refuses to write in the time, the investigator shall note the fact on the Coercive Summons.

Article 76: A coercive summons shall not exceed twelve hours in length. Where a case is especially important or complex and requires the use of detention or arrest measures, and the person in charge of the public security authority at the county or higher level has granted approval, a coercive summons may be extended to no more than twenty-four hours in length. A succession of coercive summonses shall not be used as a disguised means of detaining the criminal suspect.

When the period of the coercive summons expires and no decision is made to adopt any other coercive measure, the coercive summons shall end immediately. (ibid.)

The 2012 MPS Regulations Concerning the Handling of Administrative Cases by Public Security Authorities, which came into effect in January 2013 (China 2012a), states the following regarding the summoning of a suspect for questioning:

[translation]

Section 3 Questioning

Article 52: Persons suspected of a legal violation may be questioned at their home or workplace, or they may be summoned to a designated location within the city or county in which they are located for the purpose of questioning.

Article 53: Where persons suspected of a legal violation need to be investigated, they may be served with a Summons after approval has been granted by the person in charge at the local police station, at the case management department of the county or higher-level public security authority, or at the immigration inspection agency. Where a suspect is discovered on the scene, a people's police officer may issue an oral summons upon presentation of his or her identification, and in the record of questioning shall note the process of bringing in the suspect for questioning, the time of the suspect's appearance for questioning and the time of departure.

Where an organization is in violation of Public Security's administrative management regulations, and the directly responsible manager(s) or other directly responsible staff member(s) need to be summoned, the provisions of the foregoing paragraph shall apply.

Subject to the approval of the person in charge at the local police station, at the case management department of the county or higher-level public security authority, or at the immigration inspection agency, a coercive summons may be issued in the case of persons suspected of violating regulations pertaining to peace and order, fire safety and border crossing who refuse or evade a summons for no legitimate reason as well as those persons suspected of a legal violation who would be legally subject to a coercive summons. At the time of a coercive summons, handcuffs, police rope and other restraining police instruments may be used within the scope of the law.

The public security authority shall inform the person summoned of the reasons and legal basis for the summons and notify the person's family members. Item 5 of paragraph 1 of Article 43 of these Regulations shall apply to the notification of family members by the public security authority.

Article 54: Where a Summons is used to summon a person suspected of a legal violation, said person shall write the time of arrival and the time of departure and affix his or her signature on the Summons upon arrival at the place where the suspect's appearance is required and upon completion of questioning and verification of evidence. Where the person refuses to write in the information or sign his or her name, the people's police officer handling the case shall note the fact on the Summons.

Article 55: A person suspected of a legal violation who is summoned shall be questioned promptly, and the questioning and verification of evidence shall not exceed a period of eight hours. Where the circumstances of the case are complex and the punishment of administrative detention could apply under the law to the illegal act in question, the questioning and verification of evidence may be extended to no more than twenty-four hours in length.

A succession of summonses shall not be used as a disguised means of detaining a person suspected of a legal violation. (ibid.)

2. Samples of Summonses and Subpoenas

The website of the MPS provides a 2012 document titled [translation] Public Security Bureau Templates of Criminal Law Documents, excerpts of which have been translated and attached to this Response (Attachment 1), including templates for: Notice of Summons (Coercive Summons); Notice of Summons for Interrogation; Notice of Decision for Bail Pending Trial; and, Criminal Summons.

The MPS website also provides a 2012 document titled [translation] Public Security Templates of Administrative Legal Documents; an excerpted and translated copy of a summons taken from this document is attached to this Response (Attachment 2).

In correspondence with the Research Directorate, an official at the Embassy of the People's Republic of China in Ottawa indicated that according to officials in Beijing, there has been no update to the 2012 MPS templates mentioned in relation to the Criminal Procedure Law of 2014 (China 13 Oct. 2015).

For additional translated samples of summonses and a subpoena provided to the Research Directorate by an Associate Director of the Centre for Rights and Justice at the Chinese University of Hong Kong in June 2013, please refer to Response to Information Request CHN104458.

3. Instances of Oral Summonses

The website Huasheng Online, an integrated news service provider established by the *Hunan Daily*, the official newspaper of the Hunan Provincial Party Committee (Huasheng Online n.d.), published an article about the situation of an Internet blogger in Hefei City who had posted articles critical of the government (ibid. 25 Aug. 2011). According to the article, the plain clothes officers arrived at 8:00 p.m., did not show identification and asked the man to leave with them (ibid.). The man's lawyer told Huasheng Online that "after repeated requests [by the man] that they produce a 'written summons,' the officers very reluctantly wrote out a Summons on the spot," which indicated that the man was ordered to appear at the Hefei Public Security Bureau (PSB) within twenty minutes, at 8:20 p.m.; he was then put into a vehicle, driven away and detained (ibid.). A translated copy of the written summons issued to the man, as it appears in the article, is attached to this Response (Attachment 3).

In correspondence with the Research Directorate, a lawyer based in China who practices criminal law, stated that the enforcement of summonses by authorities in China "may be arbitrary in individual cases," giving an example from the lawyer's own experience when security forces refused to provide written legal documentation before and after being questioned (Lawyer 8 Oct. 2015).

Further and corroborating information about oral summonses could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Electronically Delivered Court Documents

A December 2013 Chinese language news article published on the website of the People's Court, Daqing, Heilongjiang province states that Ranghu Lu District Court would begin using email to deliver procedural documents, such as notices summoning defendants to give evidence and court subpoenas (Heilongjiang 2 Dec. 2013). According to the document, civil procedural law indicates that [translation] "with the agreement of the delivery recipient, the People's Court may use methods like facsimiles and emails whose receipt can be confirmed to deliver legal documents, but court verdicts, written verdicts and mediation decisions are excluded" (ibid.). The article states that all legal documents delivered by email will be in PDF format with an electronic seal, and will contain a QR [bar] code to prevent counterfeiting; the QR code will contain information such as case number, case summary, and undertaking judge, (ibid.). The 2013 article further states that by the end of June 2014, the court will have realized a 45 percent email delivery rate for civil and commercial cases, and "second trial subpoena deliveries" will have reached a rate of 80 percent (ibid.). A translated sample of an electronic subpoena issued by the Ranghu Lu District People's Court, which appears in the article, is attached to this Response (Attachment 4). Further and corroborating information on the issuance of electronic subpoenas could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5. Address Information on Summonses and Subpoenas

The official from the Embassy of China in Ottawa stated that, regarding whether a street address is given on subpoenas and summonses where a person must appear, "generally speaking the name of the court or police station will be given on the subpoena/summons" and that "sometimes the specific court number will appear on it" (China 15 Oct. 2015). In correspondence with the Research Directorate, a legal professor who specializes in criminal and constitutional law at the University of Hong Kong indicated that, to the best of his knowledge, summonses "mention the name of the PSB, but not a street address" (Legal professor 16 Sept. 2015). The source also stated that, to his understanding, no address would appear on summonses and subpoenas issued in rural areas (ibid.). Similarly, the lawyer based in China gave the view that it is possible that legal documents do not contain a specified address for the required location of the appearance, due to the "arbitrary nature of law enforcement" and because the street address system in China is different from Western addressing systems (Lawyer 8 Oct. 2015). The source gave examples of the way in which the location for appearance (for example at the PSB, or a court) can be written on a subpoena or a summons, as follows:

1. Without door number, mainly used in rural areas,
e.g.: "*** province ** city (county) ** township ** village"
2. With door number, mainly used in cities,
e.g.: "*** province ** city ** street (road) ** number"

3. Named after a building or residential community, mainly used in cities, e.g.: "*** province ** city ** the name of a building or residential community ** dong ("dong" or "?" is the equivalent of "building" in English) ** unit ** door" (Lawyer 8 October 2015).

Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

China. 13 October 2015. Embassy of the People's Republic of China, Ottawa. Correspondence from an official to the Research Directorate.

_____. 2012a. Ministry of Public Security (MPS). Regulations Concerning the Handling of Administrative Cases by Public Security Authorities. Excerpts translated by the Translation Bureau, Public Works and Government Services Canada. <<http://www.mps.gov.cn/n16/n1282/n3493/n3823/n442421/3486753.html>> [Accessed 7 Oct. 2015]

_____. 2012b. Ministry of Public Security (MPS). Regulations Concerning the Handling of Criminal Cases by Public Security Authorities. Excerpts translated by the Translation Bureau, Public Works and Government Services Canada. <<http://www.mps.gov.cn/n16/n1282/n3493/n3823/n442421/3486957.html>> [Accessed 6 Oct. 2015]

Heilongjiang Province. 2 December 2013. "Ranghu Lu Leads Province in Push for Email Delivery of Legal Documents." Translated by the Translation Bureau, Public Works and Government Services Canada. <<http://dqzy.hljcourt.gov.cn/public/detail.php?id=998>> [Accessed 7 Oct. 2015]

Huasheng Online. 25 August 2011. "Internet Blogger Detained for Ten Days After Writing About 'Forced Eviction for Demolition Purposes;' Family Questions Whether There Was Due Process." Translated by the Translation Bureau, Public Works and Government Services Canada. <<http://365.voc.com.cn/article/201108/201108251510256908.html>> [Accessed 7 Oct. 2015]

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Lawyer. 8 October 2015. Correspondence with the Research Directorate.

Legal Professor, University of Hong Kong. 16 September 2015. Correspondence with the Research Directorate.

Additional Sources Consulted

Oral sources: Associate Director, Asian Law Centre, University of Melbourne; Associate Professor of Law, China University of Political Science and Law; Canada – Embassy in Beijing; Centre for Rights and Justice at the Chinese University of Hong Kong; China – Consulate in Toronto, Embassy in Ottawa; Post-Doctoral Research Fellow, College of Asia and the Pacific, Australian National University; Professor, Faculty of Social Science and Humanities, University of Ontario Institute of Technology; Professor of Law, La Trobe University; Professor of Law, Seton Hall University; Professor of Political Science and Global Affairs, The City University of New York; Professor of Law, George Washington University Law School; Reader in Transnational Law, King's College London; Senior Lecturer, Faculty of Law, University of Technology Sydney; Visiting Professor, Yale University.

Internet sites, including: Amnesty International; Asia Times; China – Legislative Affairs Office of the State Council, Ministry of Commerce Global Law Research Engine, Ministry of Justice, Supreme Court; *China Daily*; China Law and Practice; Chinalawinfo; Chinalawinsight; China Laws; China.org.cn; Chinese Law Research, University of Washington; Committee to Protect Journalists; Dui Hua Foundation; ecoi.net; Factiva; *Global Times*; International Business Times; Ireland – Refugee Documentation Centre; Legal Language Services; Pkulaw.cn; Process Service Network; *South China Morning Post*; United Kingdom – Home Office; United Nations – Refworld; United States – Law Library of Congress; Xinhua News Agency.

Attachments

1. China. 2012. Ministry of Public Security (MPS). Public Security Bureau Templates of Criminal Law Documents. Excerpts translated by the Translation Bureau, Public Works and Government Services Canada. <<http://www.mps.gov.cn/n16/n1282/n3508/n2173912/n3935931.files/n3936036.doc>> [Accessed 7 Oct. 2015]
2. China. 2012. Ministry of Public Security (MPS). "Summons." Public Security Templates of Administrative Legal Documents. Translated by the Translation Bureau, Public Works and Government Services Canada. <<http://www.mps.gov.cn/n16/n1282/n3508/n2173912/n3936048.files/n3936049.doc>> [Accessed 7 Oct. 2015]
3. Huasheng Online. 25 August 2011. Image of a Summons, in "Internet Blogger Detained for Ten Days After Writing About 'Forced Eviction for Demolition Purposes;' Family Questions Whether There Was Due Process." Translated by the Translation Bureau, Public Works and Government Services Canada. <<http://365.voc.com.cn/article/201108/201108251510256908.html>> [Accessed 7 Oct. 2015]
4. Heilongjiang Province. 2 December 2013. Image of a Subpoena, in "Ranghu Lu Leads Province in Push for Email Delivery of Legal Documents." Translated by the Translation Bureau, Public Works and Government Services Canada. <<http://dqzy.hljcourt.gov.cn/public/detail.php?id=998>> [Accessed 7 Oct. 2015]

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