

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

**Bills Committee on
Interception of Communications and Surveillance Bill**

**Minutes of meeting
held on Thursday, 22 June 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon LAU Kong-wah, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC

Members : Hon LEE Cheuk-yan

absent
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Bernard CHAN, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, JP
Hon Daniel LAM Wai-keung, BBS, JP
Hon Patrick LAU Sau-shing, SBS, JP

Public Officers : Mr Stanley YING
attending Permanent Secretary for Security

Miss S H CHEUNG
Deputy Secretary for Security

Mr Ian WINGFIELD
Law Officer (International Law)
Department of Justice

Ms Sherman CHAN
Senior Assistant Law Draftsman

Mr Ian MCWALTERS
Senior Assistant Director of Public Prosecutions

Ms Frances HUI
Senior Government Counsel

Clerk in : Mrs Sharon TONG
attendance Chief Council Secretary (2)1

Staff in : Mr LEE Yu-sung
attendance Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2)5

Mr Ken WONG
Legislative Assistant (2) 8

Ms Sandy HAU
Clerical Assistant (2)1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration -

Clauses 42 to 46

- (a) to consider providing a mechanism for notifying the subjects of "wrongful" interception of communications or covert surveillance;

Clause 54

- (b) to clarify whether clause 54 covered reviews on the issuance of emergency authorisations;
- (c) to consider providing that "mistaken" cases discovered during reviews conducted under clause 54 should be reported to the Commissioner on Interception of Communications and Surveillance (the Commissioner);
- (d) to consider whether the use of the term "review" in the clause was appropriate, given that it was also used to describe one of the functions of the Commissioner;
- (e) to advise on the frequency of regular reviews under clause 54(1);

Clause 55

- (f) to consider providing in clause 55(1) that the reviewing officer might discontinue an operation at any time, and not only in the course of or further to a review;
- (g) to consider adding more grounds under clause 55(6) for the discontinuance of a prescribed authorisation, such as whether there had been material procedural impropriety in obtaining the authorisation, non-provision of information that would affect the determination, provision of wrong information, occurrence of new events or developments such as arrest of the subject or the information sought had already been obtained;
- (h) to consider allowing the reviewing officer to overturn a decision to issue an executive authorisation any time after it had been issued;
- (i) to consider including in the code of practice the requirement that an officer must be designated to be in charge of a covert operation for the purpose of clause 55(2), and that he should be made aware of the relevant information and developments that might constitute grounds for discontinuance;

Clauses 56 and 57

- (j) to consider providing for the retention of covert surveillance products for a certain period, such as one year, after the completion of all legal proceedings, and to amend clauses 56(2)(b) and 57(2)(a)(ii)(B) accordingly;

Clause 58

- (k) to consider amending clause 58(4) to require the prosecution to disclose all relevant information to the court and the defence;
- (l) to provide the judgment in *Preston v United Kingdom*;
- (m) to provide relevant precedents on the prosecution's duty of disclosure;
- (n) to advise how long telecommunications intercepts were kept under the current regime;

Clause 59

- (o) to consider providing panel judges with a copy of the code of practice;
- (p) to inform the Legislative Council when the code of practice was amended;
- (q) to consider amending the term "have regard to" under clause 59(4) to "comply with"; and
- (r) to consider the suggestion that the code of practice for the Independent Commission Against Corruption should be issued by the Secretary for Justice, rather than the Secretary for Security.

II. Date of next meeting

3. The Bills Committee noted that the next meeting had been scheduled for 23 June 2006 at 8:30 am to continue discussion with the Administration.

4. The meeting ended at 1:40 pm.

**Proceedings of meeting of the
Bills Committee on
Interception of Communications and Surveillance Bill
on Thursday, 22 June 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000441	Chairman	Opening remarks	
000442 - 000533	Admin	Briefing on clauses 54 and 55	
000534 - 001125	Hon LAU Kong-wah Admin Chairman	Whether all cases were reviewed under clause 54; interpretation of clause 54(2); interpretation of clause 55(1)	
001126 - 001934	Hon James TO Chairman Admin	Difference between clause 54(1) and 54(2)	
001935 - 002856	Hon Ronny TONG Admin Chairman	Whether procedures were covered in a review; whether the safeguards under clause 51 and 54 were adequate; providing a mechanism for notifying the subjects of "wrongful" interception or covert surveillance; timing for provision of the Administration's proposed Committee Stage amendments	Admin to consider providing a mechanism for notifying the subjects of "wrongful" interception of communication or covert surveillance
002857 - 003551	Hon LAU Kong-wah Admin Chairman	Whether clause 54 covered reviews on the issuance of emergency authorisations	Admin to clarify whether clause 54 covered reviews on the issuance of emergency authorisations
003552 - 004258	Hon James TO Admin	Discontinuance of wrongful interception of communications or covert surveillance	
004259 - 005046	Hon Emily LAU Chairman Hon James TO Admin	Effect of clause 55	

Time marker	Speaker	Subject(s)	Action Required
005047 - 010545	Hon Albert HO Chairman Admin Hon Ronny TONG Hon LAU Kong-wah Hon Emily LAU	Adding more grounds under clause 55(6) for the discontinuance of a prescribed authorisation, such as whether there had been material procedural impropriety in obtaining the authorisation, non-provision of information that would affect the determination, provision of wrong information, occurrence of new events or developments such as arrest of the subject or the information sought had already been obtained; providing that "mistaken" cases discovered during reviews conducted under clause 54 should be reported to the Commissioner on Interception of Communications and Surveillance (the Commissioner); whether the use of the term "review" in clause 54 was appropriate, given that it was also used to describe one of the functions of the Commissioner; frequency of regular reviews under clause 54(1)	Admin to consider adding more grounds under clause 55(6) for the discontinuance of a prescribed authorisation, such as whether there had been material procedural impropriety in obtaining the authorisation, non-provision of information that would affect the determination, provision of wrong information, occurrence of new events or developments such as arrest of the subject or the information sought had already been obtained; to consider providing that "mistaken" cases discovered during reviews conducted under clause 54 should be reported to the Commissioner; to consider whether the use of the term "review" in clause 54 was appropriate, given that it was also used to describe one of the functions of the Commissioner; to advise on the frequency of regular reviews under clause 54(1)

Time marker	Speaker	Subject(s)	Action Required
010546 - 013019	Hon James TO Admin Chairman Hon LAU Kong-wah Hon Albert HO	Allowing the reviewing officer to overturn a decision to issue an executive authorisation any time after it had been issued; providing in clause 55(1) that the reviewing officer might discontinue an operation at any time, and not only in the course of or further to a review	Admin to consider allowing the reviewing officer to overturn a decision to issue an executive authorisation any time after it had been issued; to provide in clause 55(1) that the reviewing officer might discontinue an operation at any time, and not only in the course of or further to a review
013020 - 013705	Hon James TO Admin Chairman	Including in the code of practice the requirement that an officer must be designated to be in charge of a covert operation for the purpose of clause 55(2), and that he should be made aware of the relevant information and developments that might constitute grounds for discontinuance	Admin to consider including in the code of practice the requirement that an officer must be designated to be in charge of a covert operation for the purpose of clause 55(2), and that he should be made aware of the relevant information and developments that might constitute grounds for discontinuance
013706 - 013901	Admin Chairman	Briefing on clauses 56 and 57	
013902 - 014244	Hon LAU Kong-wah Admin Chairman	Reasons for the exclusion in clause 56(2)(b); whether oral applications had to be recorded under clause 57; why a retention period of at least two years was provided in clause 57(2)(a)(i)	
014245 - 014809	Hon James TO Chairman Admin	Details of the records referred to in clause 57	

Time marker	Speaker	Subject(s)	Action Required
014810 - 015536	Hon James TO Admin Chairman	Providing for the retention of covert surveillance products for a certain period, such as one year, after the completion of all legal proceedings, and amending clauses 56(2)(b) and 57(2)(a)(ii)(B) accordingly	Admin to consider providing for the retention of covert surveillance products for a certain period, such as one year, after the completion of all legal proceedings, and to amend clauses 56(2)(b) and 57(2)(a)(ii)(B) accordingly
015537 - 015836	Hon Emily LAU Chairman Admin	Record keeping by the Judiciary	
Break			
021516 - 022122	Admin Chairman	Briefing on clause 58	
022123 - 025423	Chairman Hon James TO Hon Albert HO SALA1 Admin	Whether reference could be made to a recent court case when examining provisions in the Bill, mechanism for the retention of telecommunications interception product and information derived from the product; drafting of clause 58	
025424 - 030138	Hon Albert HO Chairman Admin	Amending clause 58(4) to require the prosecution to disclose all relevant information to the court and the defence	Admin to consider amending clause 58(4) to require the prosecution to disclose all relevant information to the court and the defence
030139 - 034320	Hon Audrey EU Admin Hon James TO Hon Albert HO Chairman	Difference between the arrangements proposed in clause 58 and the existing practice; whether the legal profession had been consulted on the proposals in clause 58; how long telecommunications intercepts were kept under the current regime; provision of the judgment in <i>Preston v United Kingdom</i>	Admin to advise how long telecommunications intercepts were kept under the current regime; to provide the judgment in <i>Preston v United Kingdom</i>

Time marker	Speaker	Subject(s)	Action Required
034321 - 034739	Hon James TO Admin	Interpretation of the term "necessary" in clause 56	
034740 - 040421	Chairman Hon James TO Hon LAU Kong-wah Hon Mrs Selina CHOW Admin	Whether a mechanism should be provided for the submission of an application for retention of evidence to the court; relevant precedents on the prosecution's duty of disclosure	Admin to provide relevant precedents on the prosecution's duty of disclosure
040422 - 041127	Chairman Hon LAU Kong-wah Admin	Examination of clause 59; providing panel judges with a copy of the code of practice; informing the Legislative Council when the code of practice was amended; amending the term "have regard to" under clause 59(4) to "comply with"	Admin to consider providing panel judges with a copy of the code of practice; to inform the Legislative Council when the code of practice was amended; to consider amending the term "have regard to" under clause 59(4) to "comply with"
041128 - 041257	Hon Howard YOUNG Chairman Admin	Whether there would be any code of practice for panel judges	
041258 - 042017	Hon James TO Admin SALA1	Whether the code of practice for the Independent Commission Against Corruption should be issued by the Secretary for Justice rather than the Secretary for Security; interpretation of clause 59(5)	Admin to consider the suggestion that the code of practice for the Independent Commission Against Corruption should be issued by the Secretary for Justice, rather than the Secretary for Security
042018 - 043115	Hon LAU Kong-wah Admin Chairman SALA1	Consequences of failure to comply with the code of practice.	
Break			

Time marker	Speaker	Subject(s)	Action Required
044137 - 044915	Hon Margaret NG Admin Chairman	Whether the code of practice should be made subsidiary legislation; effect of clause 58 on the existing disclosure requirements in legal proceedings	
044916 - 045804	Hon Emily LAU Chairman Admin SALA1	Timing for the provision of the draft code of practice to the Bills Committee	
045805 - 050415	Admin	Briefing on clause 60 to clause 65 and Schedule 5	
050416 - 050513	Hon Emily LAU Chairman Admin	Whether regulations made under clause 62 would be subject to positive vetting by the Legislative Council	
050514 - 051022	Hon Howard YOUNG Chairman Admin	Scope of clause 60	

Council Business Division 2
Legislative Council Secretariat
16 November 2006