

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, 27 July 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
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon LI Kwok-ying, MH, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon LEE Cheuk-yan
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Bernard CHAN, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, 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

Dr Hon Joseph LEE Kok-long, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC

Public Officers : Mr Stanley YING
attending Permanent Secretary for Security

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

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

Staff in : Ms Amy YU
attendance Senior Council Secretary (2)3

Miss Helen DIN
Legislative Assistant (2) 1

I. Meeting with the Administration

The Bills Committee continued discussion with the Administration on the draft Code of Practice.

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee requested the Administration -

Paragraph 11 - Reasonable expectation of privacy

- (a) to consider providing more examples to illustrate how the test of "reasonable expectation of privacy" would operate;

Paragraphs 14 to 18 - Two types of covert surveillance

- (b) to consider putting paragraphs 14-18 under the section headed "Prescribed Authorizations" or adding a sub-heading to these

paragraphs;

Paragraphs 22-26 – Conditions for issue, renewal or continuance of prescribed authorisation

- (c) to consider elaborating in these paragraphs the conditions for authorisation set out in clause 3 of the Bill, such as the necessity test and the proportionality test;
- (d) to consider adding a note to remind law enforcement officers to take into account the protection of legal professional privilege when considering whether the proposed operation would be proportionate;
- (e) to consider setting out the definition of "serious crime" in paragraph 23, and elaborating, with examples, the meaning and scope of "direct and indirect" impact of the threat on the public security of Hong Kong in paragraph 24;
- (f) to consider elaborating the meaning of "particular" in the terms "particular serious crime" and "particular threat to public security" in paragraphs 23 and 24;
- (g) to consider setting out explicitly in the Code of Practice the Secretary for Security's assurance, to be stated in his speech during the resumption of the Second Reading debate on the Bill, that the Bill would not be used for investigation of criminal offences that had yet to be created under Article 23 of the Basic Law;

Paragraphs 27-33 – Application procedures

- (h) to consider setting out in paragraph 28 that as an application for authorisation was *ex parte*, the applicant had the duty to make a full disclosure of all information relevant to the determination of the application, including information which might undermine his application, and to exercise due diligence to ensure the accuracy of the information he provided;
- (i) to consider adding to paragraph 28 that officers must not wilfully provide misleading information in making an application;
- (j) to consider setting out in paragraph 32 that details of any collateral intrusion into the privacy of persons other than the subject(s) should be included in the application for authorisation;
- (k) to consider adding the words "or targeted" to the end of paragraph 32;

and

- (l) to consider stating explicitly in paragraph 33 that for an application covering more than one subject, the case of each of the subjects should be assessed individually as to whether the conditions for authorisation were met.

II. Date of next meeting

4. The Bills Committee noted that the next meeting had been scheduled for the same afternoon at 4:30 pm to continue discussion with the Administration on the draft Code of Practice.
5. The meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
29 December 2006

**Proceedings of meeting of the
Bills Committee on
Interception of Communications and Surveillance Bill
on Thursday, 27 July 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000808 - 000825	Chairman	Opening remarks	
000826 - 001307	Hon Emily LAU Admin Chairman	Scheduling of an additional meeting on 1 August 2006 to consider the Administration's revisions to the first draft Code of Practice	
001308 - 004450	Hon Margaret NG Admin Chairman Hon Emily LAU Hon James TO	Definition of "reasonable expectation of privacy" (paragraphs 11-12); whether to provide more examples to illustrate how the test of "reasonable expectation of privacy" would operate; whether to put paragraphs 14-18 under the section headed "Prescribed Authorizations"	Admin to consider providing more examples to illustrate how the test of "reasonable expectation of privacy" would operate; to consider putting paragraphs 14-18 under the section headed "Prescribed Authorizations" or adding a sub-heading to these paragraphs
004451 - 004909	Chairman Admin	Briefing by the Administration on the section headed "Prescribed Authorizations" (paragraphs 19-26)	

Time marker	Speaker	Subject(s)	Action Required
004910 - 013213	Chairman Admin Hon James TO Hon Margaret NG Hon Emily LAU	Elaborating on the conditions for authorisation set out in clause 3 of the Bill; reminding law enforcement officers to take into account the protection of legal professional privilege when considering whether the proposed operation would be proportionate; setting out the definition of "serious crime" in paragraph 23 and elaborating, with examples, the meaning and scope of "direct and indirect" impact in paragraph 24; elaborating the meaning of "particular" in the terms "particular serious crime" and "particular threat to public security" in paragraphs 23 and 24; setting out explicitly in the Code of Practice the Secretary for Security's assurance, to be stated in his speech during the resumption of the Second Reading debate on the Bill, that the Bill would not be used for investigation of criminal offences that had yet to be created under Article 23 of the Basic Law	Admin to consider elaborating in paragraphs 22-26 the conditions for authorisation set out in clause 3 of the Bill (such as the necessity test and the proportionality test); to consider adding a note to this section to remind law enforcement officers to take into account the protection of legal professional privilege when considering whether the proposed operation would be proportionate; to consider setting out the definition of "serious crime" in paragraph 23 and elaborating, with examples, the meaning and scope of "direct and indirect" impact of the threat on the public security of Hong Kong in paragraph 24; to consider elaborating the meaning of "particular" in the terms "particular serious crime" and "particular threat to public security" in paragraphs 23 and 24; to consider setting out explicitly in the Code of Practice the Secretary for Security's assurance, to be stated in his speech during the resumption of the Second Reading debate on the Bill, that the Bill would not be used for investigation of criminal offences that had yet to be created under Article 23 of the Basic Law

Time marker	Speaker	Subject(s)	Action Required
013214 - 013517	Chairman Admin	Briefing by the Administration on the subsection headed "Application Procedures - General Rules"(paragraphs 27-33)	
013518 - 015559	Hon Howard YOUNG Admin Hon James TO Hon Margaret NG	Setting out in paragraph 28 that the applicant had the duty to make a full disclosure of all information relevant to the determination of the application (including information which might undermine his application), and to exercise due diligence to ensure the accuracy of the information he provided; adding to paragraph 28 that officers must not wilfully provide misleading information in making an application; the specific details to be provided by the applicant in applying for authorisation (paragraph 32); stating explicitly in paragraph 33 that for an application covering more than one subject, the case of each of the subjects should be assessed individually as to whether the conditions for authorisation were met	Admin to consider setting out in paragraph 28 that as an application for authorisation was ex parte, the applicant had the duty to make a full disclosure of all information relevant to the determination of the application (including information which might undermine his application), and to exercise due diligence to ensure the accuracy of the information he provided; to consider adding to paragraph 28 that officers must not wilfully provide misleading information in making an application; to consider stating in paragraph 32 that details of any collateral intrusion into the privacy of persons other than the subject(s) should be included in the application for authorisation; to consider adding the words "or targeted" to the end of paragraph 32; to consider stating explicitly in paragraph 33 that for an application covering more than one subject, the case of each of the subjects should be assessed individually as to whether the conditions for authorisation were

Time marker	Speaker	Subject(s)	Action Required
			met
015600 - 015610	Chairman	Date of next meeting	

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