

**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 4:30 pm  
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 James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Tommy CHEUNG Yu-yan, 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 Martin LEE Chu-ming, SC, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon Bernard CHAN, GBS, 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 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 Jenny HO  
Legislative Assistant (2) 9

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## **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 37 – Determination of application for authorisation by the panel judge

- (a) to ascertain the relevant arrangements for search warrants and consider whether the panel judge should give the applicant a certified copy of the determination rather than the original;
- (b) to consider requesting the applicant to submit his application in duplicate;

- (c) to consider improving the drafting of footnote 7 to paragraph 37 to set out explicitly that the panel judge would arrange for the hearing to be audio-taped as far as practicable, and where the hearing was not audio-taped, the panel judge would make a written record of the hearing;
- (d) to consider requiring the law enforcement officer to also make a record of the hearing if it was not audio-taped;
- (e) to relay to the Judiciary Administration the request of the Bills Committee for a written note on the arrangements for recording of oral applications made to panel judges and how documents and records relating to applications for judge's authorisations would be dealt with in general;

Paragraph 47 – Applying for Type 1 authorisation for Type 2 surveillance

- (f) to consider whether Type 1, rather than Type 2, surveillance authorisation should be obtained in the following situations –
  - (i) where there was a likelihood that contents of journalistic material might be obtained; and
  - (ii) where an electronic optical surveillance device was directed at a person inside premises from outside those premises in circumstances where the person had taken measures such that, were it not for the use of that device, he would not be observable by a person outside the premises;

Paragraph 49- Application for issue of executive authorisation

- (g) to consider stating in paragraph 49 that, if practicable, the consent of the participating party should be in written form; and

Paragraph 51- Determination of application for executive authorisation by the authorising officer

- (h) to consider providing more examples in paragraph 51 on the identity of the subject which might render an operation particularly intrusive.

4. The Administration was also requested to provide to the Bills Committee a full set of the Annexes to the Code of Practice when available.

## **II. Date of next meeting**

5. The Bills Committee noted that the next meeting had been scheduled for Friday, 28 July 2006 at 9:00 am to continue discussion with the Administration on the draft Code of Practice.

*(Post meeting note: The meeting scheduled for 28 July 2006 at 9:00 am was aborted due to a lack of quorum.)*

6. The meeting ended at 6:28 pm.

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 4:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000042	Chairman	Opening Remarks	
000043 - 000315	Admin Chairman	Briefing by the Administration on the subsections headed "Issue of Judge's Authorizations" (paragraphs 34-38) and "Renewal of Judge's Authorizations" (paragraphs 39-43)	
000316 - 001155	Hon James TO Admin Chairman Hon Emily LAU	Persons before whom the affidavit/affirmation of the applicant should be sworn/affirmed (paragraph 36); the rank of the two assistants to the panel judges before whom the affidavit/affirmation could be sworn/affirmed; resources to be provided to the Judiciary for creating these two new posts.	
001156 - 002344	Hon James TO Admin Chairman Hon LI Kwok-ying Hon Howard YOUNG Hon Emily LAU	Whether the panel judge should give the applicant the original or a certified copy of the determination (paragraph 37)	<b>Admin to ascertain the relevant arrangements for search warrants and consider whether the panel judge should give the applicant a certified copy, rather than the original, of the determination; to consider requesting the applicant to submit his application in duplicate</b>

Time marker	Speaker	Subject(s)	Action Required
002345 - 003146	Hon Emily LAU Admin Chairman Hon James TO	Arrangements for audio-taping a hearing held by a panel judge in respect of an application (footnote 7 to paragraph 37); whether the law enforcement officer should also make a record of the hearing if it was not audio-taped	<b>Admin to consider improving the drafting of footnote 7 to paragraph 37 to set out explicitly that the panel judge would arrange for the hearing to be audio-taped as far as practicable, and where the hearing was not audio-taped, the panel judge would make a written record of the hearing; to consider requiring law enforcement officers to also make a record of the hearing if it was not audio-taped; to relay to the Judiciary Administration the request of the Bills Committee for a written note on the arrangements for recording oral applications made to panel judges and how documents and records relating to applications for judge's authorisations would be dealt with in general</b>
003147- 003346	Chairman Admin	Briefing by the Administration on the subsection headed "Issue of Executive Authorizations" (paragraphs 44-52)	
003347 - 003741	Hon James TO Chairman Admin	Whether the consent of the participating party should be in written form (paragraph 49); situations where it would not be practicable to obtain written consent (e.g. undercover operations)	<b>Admin to consider stating in paragraph 49 that, if practicable, the consent of the participating party should be in written form</b>

Time marker	Speaker	Subject(s)	Action Required
003742 - 005712	Hon Emily LAU Admin Hon LEUNG Kwok-hung Chairman Hon James TO	<p>Definition of "journalistic material"; whether Type 1, rather than Type 2, surveillance authorisation should be obtained in the following situations (paragraph 47) -</p> <p>(a) where there was a likelihood that contents of journalistic material might be obtained; and</p> <p>(b) where an electronic optical surveillance device was directed at a person inside premises from outside those premises in circumstances where the person had taken measures such that, were it not for the use of that device, he would not be observable by a person outside the premises</p>	<p><b>Admin to consider whether Type 1, rather than Type 2, surveillance authorisation should be obtained in the following situations -</b></p> <p><b>(a) where there was a likelihood that contents of journalistic material might be obtained; and</b></p> <p><b>(b) where an electronic optical surveillance device was directed at a person inside premises from outside those premises in circumstances where the person had taken measures such that, were it not for the use of that device, he would not be observable by a person outside the premises</b></p>
005713 - 010120	Hon James TO Chairman Admin	Whether more examples should be provided on the identity of the subject which might render an operation particularly intrusive (paragraph 51)	<b>Admin to consider providing more examples in paragraph 51 on the identity of the subject which might render an operation particularly intrusive</b>
010121 - 010410	Chairman Admin Hon Emily LAU	Briefing by the Administration on the subsection headed "Renewal of Executive Authorization" (paragraphs 53-57); progress of the drafting of the Annexes to the Code of Practice	<b>Admin to provide a full set of Annexes to the Bills Committee when available</b>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
010411 - 010859	Chairman Admin	Briefing by the Administration on the subsection headed "Emergency Authorizations" (paragraphs 58-71)	
010900 - 011105	Chairman Hon James TO Admin	When emergency authorisations would take effect	
011106 - 013050	Hon Emily LAU Admin Chairman Hon Margaret NG Hon Patrick LAU Hon James TO	Concern about the lack of a clear objective definition of "substantial damage" to property (paragraph 59)	
013051 - 014530	Hon Emily LAU Chairman Admin Hon Margaret NG	Circumstances under which an emergency authorisation would be needed	
014531 - 014620	Chairman	Date of next meeting	