

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 Friday, 28 July 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Jasper TSANG Yok-sing, GBS, 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 WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon LAU Kong-wah, JP (Deputy Chairman)
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Bernard CHAN, GBS, JP
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
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 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

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 -
 - (a) to liaise with the Judiciary Administration to put together previous paper(s) provided to the Committee on the system to be put in place by the Judiciary to deal with documents and records relating to applications for judge's authorisation;

Paragraphs 73 and 74 – Oral application for prescribed authorisations

- (b) to consider elaborating on the example of "very adverse weather conditions or bad road conditions" in paragraph 73 to reflect the urgency

required for making an oral application;

- (c) to consider redrafting paragraph 74 to reflect the intention that oral applications should only be resorted to in urgent and exceptional cases;

Paragraph 79 – Application for confirmation of prescribed authorisation or renewal issued or granted upon oral application

- (d) to consider setting out explicitly in paragraph 79 that in case of any discrepancy in the records made by the relevant authority and the applicant in relation to the application for determination, the relevant authority would decide which version to adopt;

Paragraph 82 – Determination of application for confirmation of oral application

- (e) to consider amending the phrase "the relevant conditions provisions of the Ordinance" in paragraph 82 along the lines of "the relevant conditions provisions as defined under clause 27 of the Ordinance";

Paragraph 100 – Information protected by legal professional privilege

- (f) to advise the rank(s) of staff responsible for ensuring that the dedicated units had screened out information protected by legal professional privilege;

Paragraph 106 – Care in implementation

- (g) to consider providing in paragraph 106 that where practicable the prior consent for implanting surveillance devices in or administering them to a person should be in written form;

Paragraph 125 – Examinations by the Commissioner

- (h) to consider adding to paragraph 125 that an officer who failed to comply with the requirement made by the Commissioner would be subject to disciplinary action;

Paragraphs 130 and 131 – Regular reviews by departments

- (i) to consider adding to paragraphs 130 and 131 that if the head of department had, during the regular reviews, identified any case of failure by the department or its officers to comply with any relevant requirement under the Ordinance, he had to submit to the Commissioner a report with details of the case in accordance with clause 52; and

Paragraph 148 – Ensuring Compliance

- (j) to consider inviting Legislative Council Members to speak at the refresher briefings on the Code of Practice for law enforcement officers.

II. Date of next meeting

4. The Bills Committee noted that the next meeting to be held on 29 July 2006 was originally scheduled for continuing the discussion with the Administration on the first draft of the Code of Practice. As the Bills Committee had already completed its scrutiny of the first draft of the Code of Practice, members agreed that the meeting scheduled for 29 July 2006 be cancelled.

5. The Bills Committee noted that the next meeting would be held on Tuesday, 1 August 2006 at 8:30 am to discuss the updated draft Code of Practice with the Administration.

6. The meeting ended at 6:38 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 Friday, 28 July 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000120 - 000218	Chairman	Opening Remarks	
000219 - 000604	Admin	Briefing by the Administration on the subsection headed "Oral Applications" (paragraphs 72-86)	
000605 - 000807	Hon Emily LAU Chairman Admin	Information to be destroyed if confirmation of an emergency authorisation was not made within 48 hours (paragraph 66)	
000808 - 000934	Hon Emily LAU Admin	Whether law enforcement officers who failed to apply for confirmation of emergency authorisation might be subject to disciplinary action (paragraph 68)	
000935 - 001415	Hon Emily LAU Admin Chairman	Documentation on the system to be put in place by the Judiciary to deal with documents and records relating to applications for judge's authorisation	Admin to liaise with the Judiciary Administration to put together previous paper(s) provided to the Committee on the system to be put in place by the Judiciary to deal with documents and records relating to applications for judge's authorisation

Time marker	Speaker	Subject(s)	Action Required
001416 - 002222	Hon LI Kwok-ying Admin Hon Emily LAU Chairman	Circumstances under which oral applications might be made (paragraphs 73 and 74)	Admin to consider elaborating on the example of "very adverse weather conditions or bad road conditions" in paragraph 73 to reflect the urgency required for making an oral application; to consider redrafting paragraph 74 to reflect the intention that oral applications should only be resorted to in urgent and exceptional cases
002223 - 003500	Hon Emily LAU Admin Chairman Hon LEUNG Kwok-hung Hon Howard YOUNG	Written documents to be submitted by applicants for confirmation of oral applications (paragraph 79) Availability of the Chinese version of the draft Code of Practice	Admin to consider setting out explicitly in paragraph 79 that in case of any discrepancy in the records made by the relevant authority and the applicant in relation to the application for determination, the relevant authority would decide which version to adopt
003501 - 003845	Hon LEUNG Kwok-hung Chairman Hon Emily LAU Admin	Arrangements for recording the proceedings of oral applications (paragraph 77)	
003846 - 004236	Hon LI Kwok-ying Admin Chairman Hon Emily LAU	Meaning of "relevant conditions provisions" in paragraph 82	Admin to consider amending the phrase "the relevant conditions provisions of the Ordinance" along the lines of "the relevant conditions provisions as defined under clause 27 of the Ordinance"

Time marker	Speaker	Subject(s)	Action Required
004237 - 005505	Hon Emily LAU Admin Chairman	Situations where the head of department should cause the immediate destruction of any information obtained by carrying out the interception or surveillance	
005506 - 010231	Chairman Admin	Briefing by the Administration on the subsection headed "Implementation Aspects" (paragraphs 87-97)	
010232 - 010709	Hon Emily LAU Admin Chairman Hon Jeffrey LAM	Meaning of the terms "address-based", "service-based" and "subject-based" (paragraph 87)	
010710 - 013803	Hon LI Kwok-ying Admin Chairman Hon Emily LAU Hon LEUNG Kwok-hung	Arrangement and criteria for approving inclusion of new telephone number, email address, postal address etc. for subject-based authorisations for interceptions; meaning of the word "incidentally" in paragraph 90	
013804 - 013920	Hon Emily LAU Admin Chairman	The importance of obtaining assistance from any person specified in the prescribed authorisation through cooperation and understanding (paragraph 96)	
013921 - 014351	Hon Emily LAU Admin Chairman	Matters considered to be essentially incidental to a prescribed authorisation (paragraph 97)	
014352 - 014805	Chairman Admin	Briefing by the Administration on the subsection headed "Protection of legal professional privilege (LPP) information" (paragraphs 98-105)	

Time marker	Speaker	Subject(s)	Action Required
014806 - 015049	Chairman Hon Emily LAU Admin	The rank(s) of staff responsible for ensuring that the dedicated units had screened out information protected by LPP (paragraph 100)	Admin to advise the rank(s) of staff responsible for ensuring that the dedicated units had screened out information protected by LPP
015050 - 020254	Hon Emily LAU Admin Chairman Hon LI Kwok-ying	Examples of relevant premises where the carrying out of interception or covert surveillance was prohibited for the protection of LPP information; meaning of "knowingly seek to obtain information subject to LPP" (paragraph 98)	
020255 - 021654	Break		
021655 - 022621	Chairman Hon Emily LAU Admin	The two exceptional circumstances under which an application might be made for an authorisation targeting premises and/or telecommunications services used by a lawyer (paragraph 99); the viability and desirability of putting in place a system for registering lawyers' telephone numbers (including mobile phone numbers) used for giving legal advice to clients	
022622 - 022801	Chairman Hon Emily LAU Admin	Whether information subject to LPP obtained during interception or covert surveillance would be used as intelligence	
022802 - 023319	Admin	Briefing by the Administration on the subsection headed "Care in implementation" (paragraphs 106-111)	

Time marker	Speaker	Subject(s)	Action Required
023320 - 023452	Hon Howard YOUNG Hon Emily LAU Admin Chairman	Whether to provide in paragraph 106 that where practicable the prior consent for implanting surveillance devices in or administering them to a person should be in written form	Admin to consider providing in paragraph 106 that where practicable the prior consent for implanting surveillance devices in or administering them to a person should be in written form
023453 - 024822	Hon LI Kwok-ying Chairman Admin Hon Emily LAU Hon Howard YOUNG	Operations involving sensitive premises, such as bathrooms or toilets, where a higher level of privacy might be expected; drafting of paragraph 109	
024823 - 025212	Hon Emily LAU Admin Chairman	Making good the damage in the event that any unavoidable damage was caused to property (paragraph 111)	
025213 - 025654	Chairman Admin	Briefing by the Administration on the subsection headed "Device Retrieval Warrant" (paragraphs 112-118)	
025655 - 030110	Hon Emily LAU Admin Chairman	Approving authority for applications for device retrieval warrants; possible reasons for not applying for a device retrieval warrant where the device had not been retrieved after the expiry of an authorisation	
030111 - 030219	Chairman Admin	Briefing by the Administration on the subsection headed "Functions of the Commissioner" (paragraph 119)	

Time marker	Speaker	Subject(s)	Action Required
030220 - 030358	Chairman Admin	Briefing by the Administration on the subsection headed "Reviews by the Commissioner" (paragraphs 120-122)	
030359 - 030702	Hon Emily LAU Admin Chairman	Whether reports submitted by law enforcement agencies, heads of department etc. to the Commissioner would be open for public inspection (paragraphs 120-122); purpose of including information on the functions and powers of the Commissioner in the Code of Practice	
030703 - 031150	Chairman Admin	Briefing by the Administration on the subsection headed "Examinations by the Commissioner" (paragraphs 123-128)	
031151 - 031607	Hon Emily LAU Hon LEUNG Kwok-hung Admin Chairman	Whether to add to paragraph 125 that an officer who failed to comply with the requirement made by the Commissioner would be subject to disciplinary action	Admin to consider adding to paragraph 125 that an officer who failed to comply with the requirement made by the Commissioner would be subject to disciplinary action
031608 - 033305	Hon Emily LAU Admin Chairman Hon LEUNG Kwok-hung	Circumstances under which the Commissioner would not give notification to the applicant in respect of his application for an examination under clause 42 of the Bill; information to be included in the annual report to the Chief Executive by the Commissioner	

Time marker	Speaker	Subject(s)	Action Required
033306 - 033451	Admin Hon Emily LAU Chairman	Briefing by the Administration on the subsection headed "Notification by the Commissioner" (paragraph 129)	
033452 - 034144	Chairman Admin Hon LEUNG Kwok-hung	Whether information on the number of prescribed authorisations relating to public security issued during the report period should be included in the annual report to the Chief Executive by the Commissioner	
034145 - 034359	Chairman Admin	Briefing by the Administration on the subsection headed "Regular Reviews By Departments" (paragraph 130-131)	
034400 - 034716	Hon Emily LAU Admin Chairman	Whether head of department had to submit to the Commissioner a report on the regular reviews undertaken by the department on compliance by officers of the department with the relevant requirements under the Ordinance (paragraphs 130-131)	Admin to consider adding to paragraphs 130 and 131 that if the head of department had, during the regular reviews, identified any case of failure by the department or its officers to comply with any relevant requirement under the Ordinance, he had to submit to the Commissioner a report with details of the case in accordance with clause 52
034717 - 035048	Chairman Admin	Briefing by the Administration on the subsection headed "Discontinuance of Interception or Covert Surveillance" (paragraphs 132-138)	

Time marker	Speaker	Subject(s)	Action Required
035049 - 035350	Chairman Admin	Briefing by the Administration on the subsection headed "Safeguards for Protected Products" (paragraphs 139-144)	
035351 - 035501	Chairman Admin	Briefing by the Administration on the section headed "Retention of Records" (paragraphs 145-147)	
035502 - 035931	Hon Emily LAU Admin Chairman	Meaning of "each department" in paragraph 145; whether any additional resources would be required for setting up a central registry in each department for keeping records on applications for prescribed authorisations	
035932 - 040141	Chairman Admin	Briefing by the Administration on the section headed "Ensuring Compliance" (paragraphs 148-150)	
040142 - 040305	Hon Howard YOUNG Admin	Whether there was any formal mechanism/channel for departments to forward suggestions on revising the Code of Practice to the Security Bureau (paragraph 149)	
040306 - 040530	Hon LI Kwok-ying Admin	In the event that civil liability arose from non-compliance with the Ordinance, whether the officer concerned would be personally liable or the Government would be vicariously liable	

Time marker	Speaker	Subject(s)	Action Required
040531 - 040752	Hon Emily LAU Admin Chairman	Suggestion that Legislative Council Members be invited to speak at the refresher briefings on the Code of Practice for law enforcement officers (paragraph 148)	Admin to consider inviting Legislative Council Members to speak at the refresher briefings on the Code of Practice for law enforcement officers
040753 - 040815	Chairman	Cancellation of the meeting scheduled to be held on 29 July 2006; date of next meeting	

Council Business Division 2
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29 December 2006