

政府總部
香港下亞厘畢道



LC Paper No. CB(2)1619/05-06(01)

GOVERNMENT SECRETARIAT

LOWER ALBERT ROAD
HONG KONG

本函檔號 OUR REF.: SBCR 3/2/3231/94
來函檔號 YOUR REF.:
電話號碼 TEL. NO.: 2810 2666
傳真號碼 FAX. NO.: 2537 1345
來函傳真 YOUR FAX.:

1 April 2006

Mr Philip Dykes, SC
Chairman
The Hong Kong Bar Association
LG2 Floor
High Court
38 Queensway
Hong Kong

Phil;
Dear Mr Dykes,

Interception of Communications and Surveillance Bill

I refer to the Bar Association's letter of 24 March 2006 enclosing the Bar's comments on the Interception of Communications and Surveillance Bill (the Bill). We are most grateful for the very detailed comments, which we will study carefully and take into account as we discuss the Bill with the Bills Committee. At this point, I would like to make a few general points.

The Bar Association has suggested that the Administration explain the rationale for various proposals of the Bill, such as the duration of authorizations, the differences between Types 1 and 2 covert surveillance, and matters that may be subject to legal professional privilege. We have explained our thoughts on these and other issues to the Panel on Security and the Bills Committee in our papers to the Panel and the Committee and at the relevant meetings. Such discussions will no doubt continue at the Bills Committee.

We would like to clarify our intention behind certain issues of the Bill, such as –

- “Exclusion” of persons acting on behalf of public officers. Clauses 4 and 5 of the Bill clearly stipulate that no public officer shall, directly or through any other person, carry out any

interception or covert surveillance. The Bill clearly reflects that intention.

- Tracking device “doubling up” as listening devices requiring lower level authorization. Tracking device is defined as “any electronic device used to determine or monitor the location of any person or any object or the status of any object”. There is a separate definition of “listening device”. If a device has multiple functions, it would be the actual function to which the device is put that would determine the authorization required. The scenario that the Bar has depicted would not arise.
- Reasonable expectation of privacy in public places. Clause 2(2) of the Bill provides that a person is not regarded as being entitled to a reasonable expectation of privacy in relation to any activity carried out by him in a public place. The term “activity” has been chosen to be clearly distinct from that of “words spoken” in the context of the Bill – with the latter used in the definition of “listening device” and the former used in the definition of “optical surveillance device” and further with both used as distinct references in paragraph (a) of the definition of “Type 2 surveillance”. In the context of the whole Bill, the Bar Association’s examples which concern conversations in a public place would not be caught by clause 2(2) and would be regulated under the general provisions of the Bill.

We will clarify these and other issues regarding the Bar Association’s interpretation of some of the clauses as the Bills Committee proceeds with its discussion.

The Bar Association has made some comments on the specific scope and wording of some clauses. We will take them into account when we finalise the clauses in discussion with the Bills Committee.

We are grateful to the Bar Association for taking the trouble to comment on the Bill, and look forward to further exchanges with the Association.

Yours sincerely,



(Stanley YING)
for Secretary for Security