

Bills Committee on Interception of Communications and Surveillance Bill

Issues undertaken by the Administration to be incorporated in the Code of Practice to be issued by the Secretary for Security under the Bill
(as at 24 July 2006)

Issue undertaken by the Administration to be incorporated in the Code of Practice to be issued by the Secretary for Security under the Bill	Relevant paragraph number in the Administration's draft Code of Practice (SB Ref : ICSB 22/06 and LC Paper No. CB(2) 2772/05-06(01))
1. To spell out the consequences of breach of the Ordinance.	2
2. To explain what constitutes a "public place".	13
3. To provide guidance on the difference between Type 1 and Type 2 surveillance.	15
4. To provide that the level of approving authority for executive authorisation would be equivalent to the rank of Chief Superintendent of Police or above in the case of the Police, Customs and Excise Department and Immigration, and, in the case of the Independent Commission Against Corruption, Principal Investigator or above.	20(b)
5. To provide that the approving officer in an executive authorisation should not be directly involved in the investigation of the case concerned.	21(a)
6. To provide that the authorising officer should not be the same person as the applying officer in an executive authorisation.	21(b)
7. To remind law enforcement agencies (LEAs) of the need to take into account the Basic Law, in particular Chapter III, in considering applications for prescribed authorisations.	25

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8. To set out the minimum rank of the officer who may apply for authorisations.	27
9. To provide that a refused application should not be re-submitted unless there are new circumstances or additional information.	29
10. To remind LEAs that the period specified in a judge's authorisation under clause 10(b) may not include only time but also a specified event.	30
11. To include examples of what constitutes more intrusive Type 2 surveillance that LEAs should take care in planning their operations.	47
12. To provide that the consent of the participating party in Type 2 surveillance should be obtained prior to an operation and the consent should be indicated when making the application.	49
13. To provide that written records should be made on any additional information provided to the authorising officer in respect of an application for executive authorisation.	50
14. To set out the procedures for applications for the issue of emergency authorisation.	59
15. To provide that, as far as possible, applications for emergency authorisation should not be made.	60
16. To provide that an emergency authorisation takes effect at the date and hours specified by the head of department concerned when issuing the emergency authorisation.	63
17. To provide that an approving authority should keep a written record of oral applications.	77

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18. To set out the procedures for the addition of phone numbers etc. for named persons authorisations, such as why the numbers are believed to be “likely to be used” by the subject of the covert operation.	89 – 91
19. To make it clear to law enforcement officers that persons on whom authorisations are served under clause 29 should be given reasonably sufficient time to read the authorisations, and detailed explanation should be given in case of any doubt so that they could have a clear idea of the requirement on them.	96
20. To provide examples, including interview rooms of prisons and courts, of “other relevant premises” referred to in new clause 30A in respect of legal professional privilege (LPP).	98
21. To spell out the following operational arrangements, which sought to minimise the extent of disclosure of any materials subject to LPP which are inadvertently obtained, for all interception and Type 1 covert surveillance operations – <ul style="list-style-type: none"> <li data-bbox="212 1310 1117 1388">(a) the actual monitoring is done by dedicated units of LEAs which are strictly separated from the investigators; <li data-bbox="212 1430 1117 1583">(b) these units are under instruction to screen out information protected by LPP, and to withhold such information from the investigators. Investigators would only be provided information with LPP information already screened out; <li data-bbox="212 1625 1117 1896">(c) the exception to the above arrangement is in operations involving immediate threats to the safety (or well-being) of a person, including the victims of crimes under investigation, informants, or undercover officers in a participant monitoring situation or in situations that may call for the taking of immediate arrest action. In such cases, there may be a need for the investigators to listen 	100

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<p>to the conversations in real time. If this is necessary, it would be specified in the application to the panel judges, and the panel judges would take this into account in deciding whether to grant an authorisation and, if so, whether any conditions should be imposed. After such an operation, investigators monitoring the operations would be required to hand over the recording to the dedicated units, which would screen out any LPP information before passing them to the investigators for their retention; and</p> <p>(d) for operations likely to involve LPP information, LEAs would be required to notify the Commissioner on Interception of Communications and Surveillance (the Commissioner). LEAs would also be required to notify the Commissioner in other cases if information involving LPP is obtained inadvertently.</p>	
<p>22. To require LEAs to assess the possible impact of a surveillance device on health before the device is first used.</p>	<p>106</p>
<p>23. To require LEAs to consider whether there is a high expectation of privacy than usual in the circumstances of a case and tailor their operations accordingly.</p>	<p>109</p>
<p>24. To spell out the Administration’s policy of making good any damage caused, and to require LEAs to report to the Commissioner the remedial action that they have taken to make good any damage to property during an interception of communication or covert surveillance operation and, if the damage could not be made good, the reasons.</p>	<p>111</p>
<p>25. To include a provision on how to deal with claims for damages from parties whose property has been interfered with in carrying out a prescribed authorisation.</p>	<p>111</p>

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26. To set out expressly that the Commissioner may make a report to the Chief Executive under clause 48 or make a recommendation to LEA under clause 50 in respect of failure to make good damage to property in carrying out a prescribed authorisation.	111
27. To spell out the Administration's policy to try and retrieve surveillance devices after use as soon as reasonably practicable, and to require LEAs to report to the Commissioner all instances where they have not applied for a device retrieval warrant for devices not yet retrieved and the reasons for not doing so.	112 – 113
28. To set out that the disciplinary action taken referred to in clause 46(2) includes the various stages of disciplinary actions.	122
29. To provide that the officer who approves the making of an application for judge's authorisation and the officer conducting the review under clause 54 should not be the same person.	–
30. To include 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 may constitute grounds for discontinuance.	133
31. To provide guidance on when conditions for the continuance of a prescribed authorisation for interception or covert surveillance are not met and hence when clause 55, in particular clause 55(6)(a) applies and to provide examples of ground for discontinuing a prescribed authorisation under clause 55(6).	136
32. To set out that LEAs should take appropriate steps to watch out for exculpatory material under clause 58(4).	144

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