

**Bills Committee on
Interception of Communications and Surveillance (“IOCS”) Bill**

Purpose

In response to the Bills Committee’s request relayed to the Judiciary Administration by the Security Bureau on 31 July 2006, this paper (i) sets out the Judiciary Administration’s proposed arrangements for recording of oral applications made to Panel Judges in relation to judge’s authorization under the IOCS Bill; and (ii) attaches the previous paper provided by the Judiciary Administration to the Bills Committee.

Proposed Arrangements for Recording of Oral Applications Made to Panel Judges

2. Without prejudice to the detailed arrangements to be determined by the Panel Judges in relation to oral applications made to them, the Judiciary Administration’s proposal is that oral applications for judge’s authorization would be audio-taped as far as practicable. In cases where recording is not practicable, the Panel Judges would make a written record. In accordance with section 26 of the Bill, the applicant would need to submit a written application within 48 hours, with the supporting affidavit / affirmation and documents setting out the facts presented to the Panel Judge at the time of the oral application, for application for confirmation of authorization granted.

Previous Paper Provided to the Bills Committee

3. According to the Judiciary Administration’s record, a paper was issued to the Bills Committee in June 2006, setting out the system to be put in place by the Judiciary to deal with documents and records relating to the applications for judge’s authorization. A copy of the paper is attached for easy reference.

Judiciary Administration
July 2006

Bills Committee on Interception of Communications and Surveillance (“IOCS”) Bill

Purpose

In response to the Bills Committee’s request, this paper sets out the system to be put in place by the Judiciary to deal with documents and records relating to applications made to Panel Judges for the issue / renewal of authorisations for interception of communications or Type I surveillance (hereafter referred to as “judge’s authorisations¹”) under the IOCS Bill.

Legislative Requirements

2. In accordance with the legislative provisions for documents and records compiled by or made available to panel judge as set out in Schedule 2 to the IOCS Bill, it is expected that the system to be put in place by the Judiciary to deal with documents and records relating to judge’s authorisations will have the following major features -

- (a) Seal on packets of documents – The documents and records compiled by, or made available to, a panel judge will be kept in a packet sealed by his order, as soon as they are no longer immediately required for the purpose of performing any of the panel judge’s functions under the Ordinance (*paragraph 3(1) of Schedule 2*);
- (b) A seal for Panel Judge - a panel judge shall cause a copy each of the documents or records made available to him to be certified by affixing his seal to it and signing on it; and the copy so certified will be made available to the department making the application (*paragraph 3(2) of Schedule 2*);
- (c) A designated room within the Judiciary’s premises with appropriate security measures – This is to serve as the secure place for the keeping of the sealed packet in item (a) above. (*paragraph 3(3)(a) of Schedule 2*);

¹ It is understood that at the Bills Committee scrutinizing the IOCS Bill, the Administration has agreed to move Committee Stage Amendments to change the term “judicial authorization” to “judge’s authorization”.

- (d) Guideline on access control – It is expected that a guideline on access control of the documents kept in the designated room in (c) above will be devised, so as to provide instructions to the assistants to Panel Judges regarding the necessary measures to assist the Panel Judges in respect of the following requirements –
- (i) the sealed packets kept in the designated room in (c) above may not be opened, and the documents therein may not be removed, except pursuant to an order of a panel judge made for the purpose of performing any of his functions under the Ordinance (*paragraph 3(3)(b) of Schedule 2*);
 - (ii) if any documents or records have been removed from the packet, the panel judge shall cause the documents or records to be put back into the packet and resealed, as soon as they are no longer immediately required for the purpose of performing any of his functions under the Ordinance (*paragraph 4(a) of Schedule 2*); and
 - (iii) the panel judge shall cause the packet to be sealed by his order, as soon as access to the documents or records kept in it is no longer immediately required for the purpose of performing any of his functions under the Ordinance (*paragraph 4(b) of Schedule 2*); and
- (e) Guideline on destruction of records – It is expected that a guideline on destruction of records will be drawn up, so as to provide instructions to the assistants to Panel Judges that the documents or records in the sealed packet may not be destroyed except pursuant to an order of a Panel Judge (*paragraph 3(3)(c) of Schedule 2*).

Other Security Measures

3. Apart from complying with the relevant legislative requirements set out in paragraph 2 above, the Judiciary has made reference to the relevant provisions in the Government Security Regulations, and considers it appropriate to adopt the relevant requirements set out therein in respect of the (i) classification, (ii) access

control, and (iii) storage of records and documents relating to judge's authorisations.

Way Forward

4. The Judiciary is pressing ahead with the above matters, with a view to putting in place the necessary system to deal with documents and records relating to applications for judge's authorizations to tie in with the commencement of the new regime under the IOCS Bill.

Judiciary Administration
June 2006