

**立法會**  
**Legislative Council**

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by the Administration)

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**Panel on Security**

**Minutes of special meeting  
held on Thursday, 6 December 2007, at 11:00 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LAU Kong-wah, JP (Chairman)  
Hon James TO Kun-sun (Deputy Chairman)  
Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, SBS, JP  
Hon Margaret NG  
Hon CHEUNG Man-kwong  
Hon Howard YOUNG, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon LEUNG Kwok-hung  
Hon CHIM Pui-chung
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, SBS, JP  
Hon Daniel LAM Wai-keung, SBS, JP
- Public Officers attending** : Item I  
Mr Ambrose LEE, IDSM, JP  
Secretary for Security

Ms CHANG King-yiu, JP  
Permanent Secretary for Security

Mrs Jessie TING, JP  
Deputy Secretary for Security

Ms CHAN Kit-ling, Maisie  
Administrative Assistant to Secretary for Security

Mrs Apollonia LIU  
Principal Assistant Secretary for Security

Mr Ian WINGFIELD  
Solicitor General

Mr Godfrey KAN  
Senior Government Counsel

**Clerk in attendance** : Mrs Sharon TONG  
Chief Council Secretary (2)1

**Staff in attendance** : Mr Raymond LAM  
Senior Council Secretary (2) 5

Miss Helen DIN  
Legislative Assistant (2) 1

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Action

- I. Results of study of matters raised in the Annual Report 2006 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance**  
(LC Paper Nos. CB(2)462/07-08(01), CB(2)181/07-08(03) and CB(2)313/07-08(01))

Secretary for Security (S for S) briefed Members on the Administration's response to issues raised by members at the meeting on 30 October 2007 on the Annual Report 2006 (the Report) of the Commissioner on Interception of Communications and Surveillance (the Commissioner).

2. The Deputy Chairman said that the analysis of statistics on interception of communications or surveillance on the ground of public security could facilitate one to better understand whether law enforcement officers had abused

Action

the Interception of Communications and Surveillance Ordinance (Cap. 589) (ICSO) for political monitoring. He asked whether ICSO could be amended to require the Commissioner or the Administration to disclose such information.

Admin

3. S for S responded that he did not have the same access to the information that the Commissioner had under ICSO. The scope of information to be included in the Report was a matter for the Commissioner. Nevertheless, he would convey the views of the Deputy Chairman to the Commissioner. He stressed that law enforcement officers had always conducted interception and covert surveillance operations strictly in accordance with the law and only for the purpose of prevention or detection of crime or protection of public security. There was no question of conducting covert operations under ICSO for political monitoring.

4. Referring to paragraph 10.13 of the Report, Ms Audrey EU and Ms Emily LAU asked why the interception of a wrong telephone line was not reported to the Commissioner until two weeks later. Ms EU also asked whether the Administration had reviewed the case and taken steps to prevent the recurrence of similar incidents.

5. Permanent Secretary for Security (PS for S) responded that the interception of a wrong telephone line had taken place for seven days before it was discovered by law enforcement officers. According to the Report, the Commissioner had tried to identify the wrongly intercepted line and its subscriber. Despite efforts made by law enforcement agencies and all concerned, the Commissioner was satisfied that the identities of the wrongly intercepted line, its subscriber or user could not be ascertained.

6. Deputy Secretary for Security (DS for S) added that there was no delay in reporting the matter to the Commissioner. In the case concerned, law enforcement officers suspected but could not confirm immediately until the seventh day that a wrong telephone line had been intercepted. At the same time, the law enforcement officers had been considering whether interception of the originally approved line was needed as there might be no further value to do so. She said that it might take some time for law enforcement officers to discover and confirm a wrong interception due to a number of reasons, e.g. the telephone line was not frequently used and the interception product would reach the investigation team only after any information protected by legal professional privilege had been screened out. The preparation of a detailed report on the case, which was required under section 54 of ICSO, to the Commissioner also took time. She informed Members that to improve the procedures, the Code of Practice had been revised on 29 October 2007 to require law enforcement officers to notify the Commissioner of any non-compliance in the first instance, with a full report under section 54 of ICSO to follow.

Action

7. In response to Ms Audrey EU's further question on the case referred to in paragraphs 10.13 and 10.14 of the Report, DS for S said that the interception of a wrong telephone line was discovered seven days after interception commenced. The interception was immediately ceased and the case was reported to the Commissioner about 14 days from the commencement of the interception.

8. Ms Emily LAU asked whether there was any deadline for law enforcement officers to notify the Commissioner of any non-compliance.

9. DS for S responded that as the complexity of each case varied and it would take longer time for law enforcement officers to gather sufficient details on complicated cases, it would not be practicable to set a deadline to require law enforcement officers to notify the Commissioner of non-compliance with sufficient details. That said, under paragraph 152 of the Code of Practice, law enforcement officers were required to notify the Commissioner of any non-compliance in the first instance. At the request of Members, DS for S agreed to consider amending the phrase "首先通知" in paragraph 152 of the Chinese version of the Code of Practice along the line of "立即通知" when the Code of Practice was next amended.

Admin

10. Ms Emily LAU asked whether law enforcement officers were required to submit a full report on non-compliance to the Commissioner within a specified period.

11. PS for S said that it would be difficult to impose a deadline for submission of a full report as it would take time to collate the required information, including the facts of the non-compliance, how the incident was handled and how similar incidents could be prevented in the future. However, as the Commissioner would be informed of any irregularity in the first instance, the Commissioner would also take interest in ensuring timely submission of the full report by the law enforcement agency concerned.

12. Regarding the procedures for the amendment of the Code of Practice, Mr Albert HO asked whether the Panel would be consulted on all amendments to the Code of Practice before they were made.

13. S for S responded that amendments to the Code of Practice were made taking into account the recommendations of the Commissioner and the comments of law enforcement agencies. The Administration did not see a need to consult Legislative Council on the amendments before they took effect. PS for S added that all amendments to the Code of Practice were published in the Gazette. Such amendments included those arising from issues raised in the annual report of the Commissioner to the Chief Executive and other amendments previously undertaken by the Administration. In the interim, any need for amendment of the Code of Practice would be addressed through the

Action

issuance of guidelines for law enforcement officers before the Code of Practice was next amended. She added that it would not be appropriate for some of the amendments to the Code of Practice to be discussed by the Panel, as such discussions might involve disclosure of operational details.

14. Mr Albert HO asked about the standard conditions referred to in paragraph 4(c) of the Administration's paper.

15. PS for S responded that the standard conditions were conditions imposed by heads of the law enforcement agencies when issuing emergency authorisations, which were similar to those that would have been imposed by panel judges when issuing judge's authorisations. The conditions were set out in footnote 3 on page 5 of Annex A to the Administration's paper. She pointed out that an emergency authorisation would cease to have effect 48 hours after the time of issuance and confirmation would need to be sought within that timeframe. If a panel judge refused to confirm the emergency authorisation, the law enforcement agency concerned would have to submit a fresh application for a judge's authorisation, in which a panel judge could impose conditions as he considered appropriate.

16. Referring to Table 1(a) of Chapter 12 of the Report, Ms Margaret NG queried why the number of cases of interception of communications in the reporting period was substantially higher than that for the three-month period up to 19 May 2006. Referring to Table 1(b) of Chapter 12 of the Report, she queried why the number of executive authorisations for surveillance in the reporting period was substantially lower than that for the three-month period up to 19 May 2006. She expressed concern that such a change might reflect that an application for authorisation had not been made in a number of cases where the law enforcement agencies should have done so.

17. DS for S responded that the number of cases of interception of communications and surveillance were dependent upon operational needs and thus varied from one time to another.

18. PS for S said that panel judges, law enforcement agencies and communications service providers (CSPs) were required to provide regular reports to the Commissioner, who examined whether the numbers tally with each other. The Commissioner had also required law enforcement agencies to prepare inventories of surveillance devices stored and registers of withdrawal and return of such devices so as to enable him to check if any of such devices had been drawn out and made use of by officers for authorised surveillance purposes or otherwise. These all served as effective checks and balances to confirm that the cases undertaken by the law enforcement agencies were all covered by approved authorisations under ICSO.

Admin

19. At the request of Ms Margaret NG and Mr LEUNG Kwok-hung,

Action

PS for S agreed to provide a paper to address the possible considerations, if any, giving rise to the difference in the number of applications for interception of communications and covert surveillance before and after ICSO came into operation.

20. Referring to paragraph 4.9 of the Report, the Deputy Chairman asked about the role of the dedicated team in relation to the investigation teams. He expressed concern whether members of the dedicated team were accessible to more information obtained from interception than necessary that such persons could be deployed for political monitoring.

21. S for S responded that he was not in a position to disclose further details, which might prejudice the investigation and detection of crime. He stressed that the whole process of interception of communications was monitored by the Commissioner.

22. Referring to paragraph 10.16 of the Report, the Deputy Chairman asked about the areas where there was room for improvement. Referring to paragraph 10.19(d) of the Report, he also asked about the working procedures and security measures that should be improved and whether improvements had been made.

23. PS for S responded that the improvement measures suggested in the Report involved the incorporation of more checks and balances. Such improvements to procedures and security measures that were considered practicable had already been implemented. However, she was not in a position to disclose further details.

24. Referring to item 5 of Annex A to the Administration's paper, Ms Audrey EU asked whether the Administration had any views on the Commissioner's power under section 53 of ICSO. She also asked whether the issue had brought about much inconvenience to the daily work of the Commissioner and when the issue would be addressed.

25. PS for S responded that the Commissioner was empowered under section 53 of ICSO to access, for the purpose of performing his functions, any document or records kept under section 3 of Schedule 2 to ICSO by panel judges. The issue in question was that panel judges had doubts about whether they were permitted under ICSO to provide photocopies of certain types of these documents to the Commissioner on a routine basis. Having regard to the fact that these documents contained a large amount of personal or sensitive information, the Administration considered that the matter had to be studied prudently in the course of the comprehensive review of ICSO in 2009, taking into account the views of the Commissioner and panel judges, the need to protect the integrity of operations by the law enforcement agencies and the privacy of the persons concerned. She added that the fact that panel judges did

Action

not provide photocopies to the Commissioner did not have any material impact on the oversight function of the Commissioner, who had access to the original copy of the documents held by panel judges, although the availability of a set of photocopies would be more convenient from the Commissioner's point of view.

26. Ms Emily LAU asked whether and how the work of CSPs was monitored by the Commissioner. She also asked whether the work of CSPs was subject to regulation under ICSO.

27. PS for S responded that under section 29(5) of ICSO, a prescribed authorisation might contain terms that required a person specified in the authorisation to provide to the law enforcement officers concerned such reasonable assistance for the execution of the authorisation as was specified in the authorisation. No CSP had so far presented any problem in providing assistance under ICSO. Solicitor General (SG) added that besides section 29(5) of ICSO, CSPs were generally regulated under the Telecommunications Ordinance (Cap. 106).

Admin

28. Ms Emily LAU requested the Administration to provide a paper explaining the relationship between the Commissioner and CSPs and how the work of CSPs was regulated. S for S responded that the Commissioner had pointed out in paragraph 4.9 of the Report that he considered it not prudent, for security reasons, to divulge any details of the procedures of how interception requests were made to CSPs, how the requested interceptions were effected and how his checking exercises were conducted. It would not be appropriate to divulge more information than what was set out in the report. At the request of the Chairman, S for S agreed to consider, having regard to the Commissioner's views in paragraph 4.9 of his report, whether further information could be provided in this regard.

29. Referring to paragraph 4.9 of the Report, Ms Emily LAU asked whether CSPs could be required to furnish returns to the Commissioner at shorter intervals such as on a weekly basis so that any errors could be detected early.

Admin

30. PS for S responded that the requirement for CSPs to provide returns to the Commissioner at four-week intervals was already a heavy onus though essential to enhance the checks and balances arrangements. Nevertheless, she would convey the views of Ms Emily LAU to the Commissioner.

31. Referring to paragraph 4.9 of the Report, the Deputy Chairman requested the Administration to provide information on whether there had been any interception of communications conducted without the involvement of CSPs and, if so, the number of such cases.

32. S for S responded that he did not have such information, as he did not

Action

Admin

have access to information that the Commissioner had under ICSO. The Deputy Chairman requested the Administration to obtain such information from the Commissioner.

33. Mr Albert HO said that the amendment of the Code of Practice to address the concerns raised in the Report was pragmatic but undesirable. He expressed doubt about whether differences in the interpretation of provisions in ICSO could always be addressed through amendment of the Code of Practice. He considered that a panel judge's interpretation of provisions in ICSO was authoritative.

34. Referring to Annex B to the Administration's paper, Ms Margaret NG queried why panel judges would in practice be unlikely to seek judicial interpretation of a provision of ICSO when there were differences between panel judges and law enforcement agencies in the interpretation of the provision, given that the role of panel judges in the regime was an executive one.

35. SG responded that he shared the Commissioner's view that a panel judge could seek judicial interpretation of a provision of ICSO. He considered that panel judges would in practice be unlikely to seek such a judicial interpretation, as steps were being taken by the Secretary for Security to address as far as possible the concerns raised by the Commissioner and panel judges.

36. Ms Margaret NG said that the Commissioner seemed to take the view that a panel judge could only seek the court's interpretation of a provision in law only when the panel judge was aggrieved by the decision concerned. She considered that as no adversarial procedures were involved, there should not be a need for a panel judge to be an aggrieved party before he could seek the court's interpretation. She maintained the view that when there were differences between a panel judge and a law enforcement agency in the interpretation of a provision in ICSO, the panel judge should consider seeking the court's interpretation of the provision. She requested the Administration to convey her views to the Commissioner for reconsideration.

Admin

37. Mr Ronny TONG asked how the Administration would tackle the differences in interpretation between panel judges and law enforcement officers on a number of provisions in ICSO. He expressed concern that the issue could not be resolved through judicial review, as there was not any aggrieved party. He considered that the Administration should address the problem as soon as possible.

38. PS for S responded that how the concerns raised in the Report were addressed through amendment of the Code of Practice or other means were set out in Annex A to the Administration's paper. Notwithstanding the differences in interpretation of the ICSO provisions in question, with these measures in



Action

place, the operation of the oversight regime under the law was not affected. The Commissioner had in fact stated in his report that the compliance of law enforcement agencies with the requirements in ICSO was in general satisfactory.

39. Referring to item 1 of Annex A to the Administration's paper, Mr Ronny TONG asked how the Administration would address the difference in interpretation between panel judges and law enforcement agencies on whether panel judges had the power to partially revoke an authorisation for the interception of more than one communication service.

40. PS for S responded that as panel judges would be notified when law enforcement officers dropped part of the communication services covered under an authorisation, the difference in interpretation did not have any material impact on panel judges or the Commissioner in the performance of their functions under ICSO.

41. The Deputy Chairman and Mr LEUNG Kwok-hung said that if the authorisation was not partially revoked, the law enforcement agency concerned could resume operation at any time it wished where the interception of a communication service had already been dropped.

42. PS for S responded that under the spirit of ICSO, an application for interception of communications or surveillance should be submitted only where necessary. Law enforcement agencies had to cease any interception of communications or surveillance once it was no longer necessary and to notify panel judges accordingly. Paragraph 159 of the Code of Practice required, where interception of a facility authorised by a panel judge should cease but interception of the other facilities under the same prescribed authorisation should nevertheless continue, the cancellation of that facility to be reported to the panel judges. It was the practice of law enforcement agencies that after the cancellation of interception of a facility had been reported to panel judges, they would make a fresh application to a panel judge for an authorisation to intercept that facility, if they subsequently saw a need to intercept the same facility again.

43. Ms Margaret NG said that there should be transparency in the interpretation of law. She considered that even if the differences in interpretation did not affect the parties concerned in the performance of their functions under ICSO, the difference in interpretation should still be addressed. She asked how the differences in interpretation between panel judges and law enforcement agencies would be tackled by the Administration.

44. SG responded that amendments to ICSO would be considered in the comprehensive review of ICSO in 2009. In the interim, the Administration was addressing issues raised by the Commissioner and panel judges in a pragmatic

Action

way, such as revising the Code of Practice to address the issues raised in the Report as far as possible. He said that not every difference in opinion in the interpretation of a provision in law had to be resolved by the court.

Admin

45. Ms Margaret NG said that the interpretation of law was a matter for the court and the rule of law required an open interpretation of the law. She requested the Secretary for Justice to consider the impact of the lack of a channel for seeking judicial interpretation on provisions in ICSO on the transparency of the law.

46. Ms Emily LAU commended the Commissioner for his efforts in monitoring the interception of communications and surveillance conducted by law enforcement agencies and in the protection of privacy. She asked whether the Administration agreed to the Commissioner's view referred to in paragraph 1.5 of the Report that his post should be renamed as the Commissioner on Protection against Unlawful Interception of Communications or Surveillance.

47. S for S responded that the view would be considered in the context of comprehensive review of ICSO.

48. Mr Ronny TONG asked why the Commissioner was not attending the meeting so that issues raised in the Report could be clarified, where necessary. The Chairman pointed that the Commissioner had not been invited to attend the meeting because no member had requested so.

49. The Deputy Chairman and Ms Emily LAU considered that the Commissioner should be invited to attend the Panel's discussions on the Report. The Deputy Chairman said that there were precedents where judges had attended Legislative Council Panels' meetings in other capacities. Members agreed that a special meeting would be held on 18 January 2008 at 10:45 am to continue discussion on the matters raised in the Report. Members also agreed that the Commissioner would be invited to the meeting.

## **II. Any other business**

50. Members agreed that the item "Review Report on the Use of Handguns in the Hong Kong Police Force" deferred from the meeting on 4 December 2007 would be discussed at the meeting on 8 January 2008 and the meeting time would be extended to end at 1:30 pm. Regarding the item "Replacement of a Crash Fire Tender in the Airport Fire Contingent" proposed by the Administration for discussion at the meeting on 8 January 2008, members agreed that the Administration should be requested to provide an information paper on the item before a decision was made on whether the item should be discussed by the Panel.

Action

51. Members also agreed that a visit would be made in the following week to better understand the Police's searches of detainees.
52. The meeting ended at 1:00 pm.

Council Business Division 2  
Legislative Council Secretariat  
3 April 2008