

**For discussion
on 18 January 2008**

Legislative Council Panel on Security

**Annual Report 2006 to the Chief Executive by the
Commissioner on Interception of Communications and Surveillance**

**Response to issues raised at the Panel meeting
held on 6 December 2007**

PURPOSE

This paper sets out the response of the Administration to the issues raised by Members at the meeting of the Panel on Security held on 6 December 2007.

BACKGROUND

2. Members requested the following information :
 - (a) the respective numbers of applications for interception of communications and covert surveillance made by the relevant law enforcement agencies (LEAs) before and after the Interception of Communications and Surveillance Ordinance (ICSO) has come into operation, and to explain the factors, if any, giving rise to the change in number;
 - (b) to explain how the cooperation of communications service providers is governed under the ICSO; and
 - (c) to advise whether there has been any interception of communications conducted without the involvement of communications service providers, and, if so, the number of such cases.

THE CHANGE IN THE FIGURES FOR INTERCEPTION OF COMMUNICATIONS AND COVERT SURVEILLANCE AFTER ICSO HAS COME INTO OPERATION

3. In 2006, at the request of the Panel on Security, LEAs took stock of cases of interception of communications and covert surveillance conducted in the two periods from October to December 2005 and from February to May 2006 respectively, and based on these cases estimated the number of authorizations that may need to be granted under the more stringent authorization system proposed under the Interception of Communications and Surveillance Bill. The respective estimated numbers of cases for the two periods, as well as the actual number of authorizations granted during the first four months or so after the ICSO came into operation (i.e. from 9 August to 31 December 2006) as set out in the Commissioner on Interception of Communications and Surveillance's Annual Report 2006, are set out at the **Annex**.

4. The number of cases provided to the Panel on Security previously were estimated figures compiled before we had had any practical experience of the actual operation of the authorization regime under the ICSO. Whether or not an LEA makes an application for authorization depends entirely on need. Therefore, it would not be appropriate to compare the number of authorizations granted in different periods or assess whether the number of authorizations for a particular period is high or low.

5. We have, nevertheless, consulted the LEAs and have examined a number of possible factors that could have affected the estimated caseload before the implementation of the ICSO regime and the actual number of authorizations after the ICSO regime was implemented. These factors are set out below:

- (a) **The figures are counted on a different basis.** At Members' request, the estimated caseload figures before the implementation of the ICSO regime were counted on the basis of the number of "cases" (e.g. approval granted for interception of different facilities used by the same subject were counted as one case, approval granted for different targets involved in the same case were counted as one case, etc.). Under the ICSO regime, the figures are the actual numbers of authorizations and renewals. For instance, if several authorizations are needed in the same case (e.g. when a new telecommunication facility of the target is known but the existing authorization has not been

granted with a “using or reasonably expected to use” clause, or when a new target is known to the investigation), these are counted individually on the basis of actual authorizations granted. This could lead to an increase in the number of authorizations in some instances under the ICSO regime.

- (b) **Duration of authorizations granted shorter than the maximum allowed under the Ordinance.** The average duration of authorizations granted in August to December 2006 under the ICSO regime is 30 days for interception, 5 days for Type 1 surveillance and 11 days for Type 2 surveillance, which is much shorter than the maximum duration of 3 months provided for under the ICSO regime. This could have led to an increase in the number of renewals in some instances under the ICSO regime. Moreover, the LEA concerned may need to apply for a fresh authorization when there is a change in the circumstances of the case or the progress of the investigation.
- (c) **LEAs conduct covert operations on a need basis.** The changes in the figures could have arisen from changes in operational needs, which might result from the change in the circumstances of the cases or the progress of the investigation.

COOPERATION OF COMMUNICATIONS SERVICE PROVIDERS IN COVERT OPERATIONS UNDER THE ICSO

6. Under the ICSO, a prescribed authorization other than an executive authorization may contain terms that require a person specified in the authorization, on being shown a copy of the authorization, to provide to any of the officers of the LEA concerned such reasonable assistance for the execution of the authorization as is specified in the authorization (section 29 of the ICSO). As required by paragraph 116 of the Code of Practice issued by the Secretary for Security under section 63 of the ICSO, the person from whom such assistance is sought should be given reasonably sufficient time and explanation to understand the assistance that he has to provide, and be given a detailed explanation in case he has any doubt on being shown a copy of the prescribed authorization.

7. A prescribed authorization also authorizes the undertaking of any conduct that is necessary for and incidental to the carrying out of what is authorized under the prescribed authorization, including, inter alia, the provision of assistance for the execution of the prescribed authorization (section 30 of the ICSO).

8. The above provisions in the ICSO apply to any persons who may be required to render assistance to the LEAs in respect of operations carried out under the ICSO, including communication service providers.

INTERCEPTION OF COMMUNICATIONS CONDUCTED WITHOUT THE INVOLVEMENT OF COMMUNICATIONS SERVICE PROVIDERS

9. We had explained to the Bills Committee set up to scrutinize the Interception of Communications and Surveillance Bill that to disclose detailed information on how the LEAs carry out their interception operation would disclose the operational details and/or capabilities of the LEAs to the benefit of the criminals, enabling them to evade lawful investigation or justice. To avoid any prejudicial effect on the prevention or detection of crime or the protection of public security, the Administration is not in a position to provide further information on whether any interception of communications had been conducted without the involvement of communications service providers and, if so, the number of such cases.

Security Bureau
January 2008

Estimated caseload of Interception, Type 1 Surveillance and Type 2 Surveillance before the ICSO regime was implemented and actual number of authorizations and renewals after the ICSO regime was implemented

	Interception		Type 1 Surveillance		Type 2 Surveillance	
	New authorization/case ¹	Renewal	New authorization/case ¹	Renewal	New authorization/case ¹	Renewal
The period from 1 Oct to 31 Dec 2005 ²	178		28		114	
The period from 20 Feb to 19 May 2006 ³	151		44		194	
The period from 9 Aug to 31 Dec 2006 ⁴	301 (191)	148 (94)	29 (18)	1 (1)	39 (25)	8 (5)
	Total: 449 (285)		Total : 30 (19)		Total: 47 (30)	

Note 1 : The estimated number of cases before the implementation of the ICSO regime were counted on the basis of the number of “cases” (see paragraph 5(a) of the covering paper), with renewals counted as new “cases”. After the ICSO regime was implemented, the figures are the actual number of authorizations granted.

Note 2 : Estimated number of cases previously provided to the Panel on Security in Secretary for Security’s letter to the Clerk to Panel dated 25 February 2006.

Note 3 : Estimated number of cases previously provided to the Panel on Security in Secretary for Security’s letter to the Clerk to Panel dated 9 June 2006.

Note 4 : Actual authorization / renewal figures as set out in Chapter 12 of the Annual Report 2006 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance. Figures in brackets are average figures for a 3-month period calculated on a pro-rata basis.