

(Translation)

LC Paper No. CB(2)172/11-12(01)

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(Total 2 pages)

25 October 2011

Mr Raymond Lam  
Clerk to Panel on Security  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Mr Lam,

**Panel on Security –  
Results of Study of Matters Raised in the Annual Report 2009 to the  
Chief Executive by the Commissioner on Interception of  
Communications and Surveillance**

This letter provides the supplementary information requested by Members during the discussion on the Annual Report 2009 of the Commissioner on Interception of Communications and Surveillance (the Commissioner) at the Panel meeting held on 29 November 2010.

**LPP Report 2 in Annual Report 2009**

2. Regarding the applicability of section 31(1)(a)(ii) of the Interception of Communications and Surveillance Ordinance (ICSO), section 31(1)(a)(ii) provides that, unless exceptional circumstances exist, no prescribed authorization may contain terms that authorize the interception of communications *“by reference to ... any telecommunications service used at an office or other relevant premises, or a residence, of a lawyer, or any telecommunications service known ... to be ordinarily used by a lawyer for the purpose of providing legal*

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*advice to clients*". The telecommunications service referred to in the prescribed authorization in LPP Report 2 was not such a telecommunications service. The authorization did not contain any terms that authorize the interception of communications by reference to any telecommunications service used by a lawyer. We therefore consider that section 31 is not applicable to the case in LPP Report 2. That said, the LEA concerned had followed the stringent requirements under the ICSO regime by reporting the facts of the case to the Panel Judge and the Commissioner after the incident. The Commissioner has also verified that no LPP information had been passed to the investigators through the summaries produced for his inspection.

3. Following the recommendation of the Commissioner in relation to this case, the LEA concerned has immediately put in place precautionary measures to improve the department's procedure to guard against the risk of obtaining LPP information in circumstances as revealed in the case. The LEA has reported the remedial measures concerned to the Commissioner. No disciplinary action was taken against the officers concerned.

#### **Relationship between Covert Operations and Arrest**

4. The number of persons arrested as a result of or further to covert operations conducted by the LEAs pursuant to a prescribed authorization is affected by a number of factors such as the nature, scale and number of culprits involved in the cases, the surveillance consciousness of the culprits and their accomplices, the strength of evidence unveiled by other investigative means, and any unexpected situations encountered during the covert or arrest operations, etc. Therefore, the number of arrested persons may fluctuate from year to year. The LEAs consider that covert operations continue to be an essential and indispensable investigative tool in the prevention and detection of serious crimes. According to the information revealed in the annual reports of the Commissioner, a total of 1 807 persons were arrested as a result of or further to operations carried out pursuant to prescribed authorizations during the August 2006 to 2009.

Yours sincerely,

( Mrs Millie Ng )  
for Secretary for Security