

The Legislative Council meeting on 18 January 2012

Motion on “Annual Report 2010 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance”

Progress Report

At the Legislative Council meeting on 18 January 2012, the motion on “Annual Report 2010 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance”, moved by the Hon James TO was carried. The wording of the motion carried by the LegCo is “That this Council notes the Annual Report 2010 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance.”

Progress report

2. Interception of communications and covert surveillance operations are critical to the capability of our law enforcement agencies (LEAs) in combating serious crimes and protecting public security. The Interception of Communications and Surveillance Ordinance (the Ordinance), enacted in August 2006, provides for a statutory regime for the conduct of interception of communications and covert surveillance by the LEAs. The Commissioner on Interception of Communications and Surveillance (the Commissioner), appointed by the Chief Executive on the recommendation of the Chief Justice pursuant to section 39 of the Ordinance, is responsible for overseeing the compliance by the LEAs with the relevant requirements of the Ordinance.

3. Pursuant to section 49 of the Ordinance, the Commissioner submitted his Annual Report 2010 (the Report) to the Chief Executive in June 2011. The Report covers the period from 1 January 2010 to 31 December 2010 (the report period). The Chief Executive has caused a copy of the Report to be laid on the table of the Legislative Council on 30 November 2011.

The Report

4. The Commissioner is satisfied with the overall performance of the LEAs and their officers in their compliance with the requirements of the Ordinance. The LEAs, panel judges, and relevant parties have provided the assistance that the Commissioner needed to perform his

oversight and review functions under the Ordinance. With regard to interception operations, the Commissioner made the observation that the LEAs have acted in a responsible manner and complied strictly with the requirements and spirit of the Ordinance. The Commissioner also observed that the panel judges have continued to be vigilant and applied the requirements of the Ordinance in a stringent manner in considering the LEAs' applications for prescribed authorizations and in granting such authorizations. The Commissioner did not find anything that indicate deliberate flouting or disregard of the statutory provisions or the law by the LEAs, nor did he find any officer committing the mistake or irregularity for ulterior motive or with ill will. Apart from the cases that might involve technical problems, other incidents were consequences of inadvertent or careless mistakes, or unfamiliarity with the rules and procedures of the scheme under the Ordinance on the part of the concerned officers. Follow-up work on these non-compliance cases or irregularities was all completed by the LEAs in compliance with the Commissioner's advice and recommendations.

5. During the report period, the Commissioner has continued to give advice and recommendations on various procedural matters in the course of discharging his duties in overseeing and supervising the performance of the LEAs over their compliance with the requirements of the Ordinance. For those recommendations set out in Chapter 8 of the Report, the Security Bureau and the LEAs either have implemented them in full or are taking follow-up actions to address the Commissioner's concerns. The Security Bureau has also amended the Code of Practice to put the Commissioner's recommendations into full effect as appropriate. The revised Code of Practice was issued by the Secretary for Security pursuant to section 63 of the Ordinance on 28 November 2011. For those recommendations that would further require legislative amendments, the Administration is considering them in the context of the comprehensive review of the Ordinance.

Progress of the comprehensive review

6. We conducted two rounds of consultation in mid-2011 and early 2012 respectively. We will consolidate the comments and report the findings to the Security Panel in the first half in 2012.