

立法會
Legislative Council

LC Paper No. CB(2)1395/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/14

Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015

Minutes of meeting
held on Thursday, 9 April 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon YIU Si-wing (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Frankie YICK Chi-ming
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan

Public Officers : Item I
attending

Mrs Millie NG KIANG Mei-nei
Acting Deputy Secretary for Security 1

Ms Alice YEUNG Lai-shan
Assistant Secretary for Security E2

Mr Godfrey KAN Ka-fai
Senior Assistant Solicitor General
Department of Justice

Ms Monica LAW Man-yuen
Senior Assistant Law Draftsman (II)2
Department of Justice

Clerk in : Miss Betty MA
attendance Chief Council Secretary (2) 1

Staff in : Mr KAU Kin-wah
attendance Senior Assistant Legal Adviser 3

Mr Raymond LAM
Senior Council Secretary (2) 7

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members requested the Administration -

- (a) to explain whether interception of communication through social media and instant messaging applications fell within the scope of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) and was subject to monitoring by the Commissioner on Interception of Communications and Surveillance ("the Commissioner");

- (b) to explain the meaning of "intercepting act" and "communication transmitted by a telecommunications system" under ICSO, including whether the latter covered message transmitted through online means of communication; and
- (c) to consider providing expressly in clause 13 of the Bill that protected products which the Commissioner might require a law enforcement agency to provide included those which contained journalistic material.

II. Any other business

3. To facilitate efficient and structured examination of the Bill, members agreed to the proposal that the clauses of the Bill be grouped according to different study areas, which would be examined in sequence.
4. Members agreed that the former Commissioner be invited to give his views on the Bill at a future meeting of the Bills Committee.
5. Members agreed that further meetings of the Bills Committee be scheduled for 11 May 2015 at 8:30 am, 1 June 2015 at 8:30 am and 29 June 2015 at 2:30 pm to continue discussion with the Administration.
6. There being no other business, the meeting ended at 12:37 pm.

Council Business Division 2
Legislative Council Secretariat
5 May 2015

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Thursday, 9 April 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000659	Chairman	Opening remarks	
000700 - 001857	Chairman Admin	Briefing by the Administration on the Interception of Communications and Surveillance (Amendment) Bill 2015 ("the Bill").	
001858 - 002759	Chairman Mr CHAN Kam-lam Admin	<p>Mr CHAN Kam-lam's concerns regarding -</p> <p>(a) whether the Commissioner on Interception of Communications and Surveillance ("the Commissioner") had encountered any difficulties in obtaining information from law enforcement agencies ("LEAs") when performing his functions under the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589); and</p> <p>(b) whether the proposed examination of protected products by the Commissioner might lead to disclosure that compromised the interception or surveillance operations of LEAs.</p> <p>The Administration's response that -</p> <p>(a) the former Commissioner had recommended amending ICSO to provide an express provision empowering himself and staff designated by him to examine products of interception and surveillance ("protected products"). The former Commissioner considered that the provision of such power would serve as a strong deterrent against malpractice or concealment by LEAs; and</p> <p>(b) the former Commissioner had advised that appropriate security and supervisory</p>	

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		<p>measures would be introduced to prevent unauthorized access to and disclosure of protected products. The examination of protected products would be carried out at the premises of LEAs. Internal guidelines would be issued to the Commissioner's designated staff, who would be subject to disciplinary actions for non-compliance.</p>	
002800 - 003640	<p>Chairman Mr Christopher CHUNG Admin</p>	<p>Mr Christopher CHUNG's concerns that -</p> <ul style="list-style-type: none"> (a) there were inadequate checks and balances in place to prevent abuse by the Commissioner and his designated staff in the examination of protected products; and (b) the examination of protected products by the Commissioner's designated staff would not be regulated by law but internal guidelines. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) the Commissioner, who was responsible for overseeing LEAs' compliance of the requirements of ICSO, was a serving or former Justice of Appeal of the Court of Appeal, a serving or former judge of the Court of First Instance, or a former permanent judge of the Court of Final Appeal; (b) the Commissioner would put in place appropriate security and supervisory measures to prevent unauthorized access to and disclosure of protected products; (c) all access to protected products by the Commissioner and his designated staff would be recorded or logged in audit trail reports; and (d) the Commissioner was required under ICSO to submit annual reports to the Chief Executive, who would cause a copy of the report to be laid on the table of the Legislative Council. 	

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003641 - 004743	Chairman Ms Emily LAU Clerk Admin SALA3	<p>Date of meeting to receive views of the public on the Bill.</p> <p>Invitation of the former Commissioner's views on the Bill.</p> <p>Ms Emily LAU's concern regarding -</p> <p>(a) whether communication through social media was regulated by ICSO; and</p> <p>(b) whether interception of such communication was monitored by the Commissioner.</p> <p>Administration's response that -</p> <p>(a) "communication" was defined under ICSO as any communication transmitted by a postal service or telecommunications system;</p> <p>(b) all LEAs had to act in accordance with the law when carrying out interception and surveillance; and</p> <p>(c) under ICSO, all interception operations required the prescribed authorization of a panel judge. All interception and covert surveillance operations conducted under ICSO were subject to the oversight of the Commissioner.</p> <p>SALA3's advice that -</p> <p>(a) "telecommunications system" was defined under the Telecommunications Ordinance (Cap. 106) as any telecommunications installation, or series of installations, for the carrying of communication by means of guided or unguided electromagnetic energy or both; and</p> <p>(b) most information posted on social media was open to access by other persons and thus the need for interception might not arise.</p>	

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		<p>The Administration was requested to explain whether interception of communication through social media and instant messaging applications fell within the scope of ICSO and was subject to monitoring by the Commissioner.</p>	<p>Admin</p>
<p>004744 - 005610</p>	<p>Chairman Mr Tony TSE Admin</p>	<p>Mr Tony TSE's expression of support for the proposals in the Bill and concerns regarding -</p> <p>(a) the proportion of interception and surveillance operations examined by the Commissioner in the past; and</p> <p>(b) where the Commissioner's performance of oversight function was facilitated by allowing the Commissioner and his designated staff to examine interception and surveillance products, the existence of proper checks and balances to prevent leakage and minimize disclosure of such products.</p> <p>Administration's response that -</p> <p>(a) there were on average about 1 200 interception operations and less than 100 surveillance operations in a year in the past few years;</p> <p>(b) while examination was not made by the Commissioner on each and every interception and surveillance operation, there were established mechanisms for LEAs and panel judges to provide weekly reports to the Commissioner to facilitate his monitoring work; regular visits were also made by the Commissioner to LEAs' offices to monitor compliance. In addition, LEAs were required to report all cases of non-compliance and irregularity, as well as cases involving legal professional privilege ("LPP") or journalistic material to the Commissioner; and</p> <p>(c) the Commissioner would put in place security and supervisory measures to prevent unauthorized access to and</p>	

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		disclosure of protected products. Staff of the Commissioner designated to examine protected products would be restricted to a few whose rank would be equivalent to or above a police inspector and had passed integrity checks.	
005611 - 010349	Chairman Mr MA Fung-kwok Admin	<p>Mr MA Fung-kwok's expression of support for the proposals in the Bill and concerns regarding -</p> <ul style="list-style-type: none"> (a) the possibility of leakage of protected products during transportation between LEAs and the Commissioner's office; and (b) the number and rank of the Commissioner's staff who would be designated to examine protected products. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) the Commissioner intended to delegate his power to examine protected products to certain staff in his office whose rank was equivalent to or above a police inspector; (b) it was estimated that three additional staff of such a rank would be needed for the Commissioner's office; and (c) the examination of protected products by the Commissioner and his designated staff would be carried out at the premises of LEAs. No copy of the protected products would be made during the examination. 	
010350 - 011215	Chairman Admin SALA3	<p>Chairman's question regarding -</p> <ul style="list-style-type: none"> (a) whether the Commissioner had delegated some of his existing duties to designated staff of his office in the past; and (b) whether designated staff delegated by the Commissioner with the power to examine protected products could further delegate such a power to other staff of the Commissioner's office. 	

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		<p>Administration's response that -</p> <ul style="list-style-type: none"> (a) there was currently no provision in ICSO regarding delegation of the Commissioner's duties to staff in his office, although the Commissioner was assisted by staff of his office in carrying out his duties; and (b) the Bill proposed that only the Commissioner would be empowered to delegate his power to examine protected products. <p>SALA3's advice that -</p> <ul style="list-style-type: none"> (a) unless it was required in law that certain duties had to be performed in person by the Commissioner, the Commissioner could delegate his duties to designated staff of his office; (b) where there was an express provision in law empowering the Commissioner to delegate certain duties to designated staff of his office but no express provision empowering such designated staff to further delegate such duties to other staff, such designated staff had no power to further delegate such duties. Clauses 13 and 14 of the Bill expressly provided for the power of delegation concerned to eliminate rooms for doubt; and (c) section 17 of the Official Secrets Ordinance (Cap. 521) applied to any information, document or article which was interception product within the meaning of ICSO and prohibited disclosing without lawful authority such information, document or article that was or had been in the possession of a person by virtue of his position as a public servant or government contractor. Given that application of the provision depended on possession of the relevant information, the adequacy of the provision might need further examination. 	

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011216 - 012033	Ms Claudia MO Chairman Admin	<p>Date of meeting to receive views of the public on the Bill.</p> <p>Ms Claudia MO's concerns regarding -</p> <ul style="list-style-type: none"> (a) safeguards against interception involving journalistic material; (b) whether communication through social media was regulated by ICSO; (c) whether LEAs had carried out any interception of communications for political monitoring; and (d) whether there was legislation regulating interception of communications by parties other than LEAs. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) under ICSO, all interception required the prescribed authorization of a panel judge. An application for interception could only be made with strong justifications where other less intrusive means of investigation were not available. Interception could only be carried out for the prevention or detection of serious crime, for which a person could be sentenced on conviction to not less than seven years' imprisonment or for the protection of public security; (b) there were mechanisms in place for protection of journalistic material. When making an application for a prescribed authorization, an LEA applicant had to submit with his application an affidavit or written statement on his assessment of the likelihood of obtaining LPP or journalistic material to a panel judge who would assess the application having regard to the proportionality and necessity tests. The Code of Practice for LEAs had been amended to formalize the requirement that the Commissioner should be notified of cases where journalistic material had been obtained or would likely be obtained 	

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		<p>through interception or surveillance. The Code of Practice had also been amended to require that any application for Type II surveillance involving the likelihood of obtaining journalistic material should be submitted to a panel judge for approval;</p> <p>(c) both the former and incumbent Commissioner had advised in their response to media enquires that they had not identified any interception of communications or covert surveillance for political monitoring;</p> <p>(d) most information posted on social media were open to access by other persons and thus the need for interception might not arise;</p> <p>(e) under ICSO, an "intercepting act" was defined to mean the inspection of some or all of the contents of the communication, in the course of its transmission by a postal service or by a telecommunications system, by a person other than its sender or intended recipient; and</p> <p>(f) the subject of interception of communications by persons other than public officers fell outside the scope of ICSO. The matter had been examined by the Law Reform Commission and its recommendations were being followed up by another policy bureau.</p>	
012034 - 012455	Mr KWOK Wai-keung Chairman Admin	<p>Mr KWOK Wai-keung's expression of support for the Bill, which would strengthen the monitoring of interception and surveillance operations.</p> <p>Mr KWOK's concern about increasing communication through social media on the web, which might not involve electromagnetic energy in transmission, and difficulties in detection of crime which involved telecommunication systems outside the territories of Hong Kong.</p>	

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		<p>The Administration's response that cyber crime, especially where part of the criminal activities took place outside Hong Kong, had posed challenge to LEAs in recent years. LEAs were tackling the problem through exchange of intelligence and cooperation with other jurisdictions.</p>	
<p>012456 - 013817</p>	<p>Chairman Mr Charles MOK Admin</p>	<p>Mr Charles MOK's concerns that -</p> <ul style="list-style-type: none"> (a) ICSO was only applicable to designated LEAs but not parties other than LEAs; (b) there were inconsistencies in the practice of seeking information from Internet service providers ("ISPs") in the investigation of cyber crime. Although the ISP sector was in discussion with the Security Bureau and the Police over the establishment of a mechanism for such provision of assistance, the progress had been slow; (c) there should be mechanisms in place to regulate the use of portable electronic storage devices; and (d) ISPs were not aware of their rights and obligations in the provision of information to the Police for detection of crime. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) portable electronic storage devices were mainly used by LEAs in covert surveillance and the subject had been followed up by the Commissioner and control measures were discussed in his annual reports; (b) the Law Reform Commission had published a report relating to the regulation of interception of communications and the subject of interception by persons other than public officers was being followed up by another policy bureau; and (c) for the prevention and detection of crime, LEAs might request ISPs to provide 	

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		<p>information about subscribers. Such general enquiries did not involve the obtaining of any content of communications. Unauthorized interception of communications was prohibited under ICSO.</p> <p>The Administration was requested to explain the meaning of "intercepting act" and communication transmitted by a telecommunications system under ICSO, including whether the latter covered message transmitted through online means of communication.</p>	<p>Admin</p>
<p>013818 - 014512</p>	<p>Chairman Ms Emily LAU Admin</p>	<p>Ms Emily LAU's view that the protection for journalistic material in ICSO should be amended to bring it in line with that for LPP, as recommended in the submission from Hong Kong In-media.</p> <p>Administration's response that -</p> <p>(a) there were mechanisms in place for protection of journalistic material. As the Bill proposed that the Commissioner be empowered to examine any protected product, which included those containing journalistic material, the protection for journalistic material would be enhanced; and</p> <p>(b) as the right to confidential legal advice was protected by both common law and Article 35 of the Basic Law, it was necessary to confer express power on the Commissioner to examine protected products containing LPP information.</p> <p>The Administration was requested to consider providing expressly in clause 13 of the Bill that protected products which the Commissioner might require a LEA to provide included those which contained journalistic material.</p>	<p>Admin</p>

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014513 - 015145	Chairman Ms Cyd HO Ms Emily LAU Deputy Chairman	Invitation of the former Commissioner to give his views on the Bill at a future meeting of the Bills Committee, or provide a written submission if he was unable to attend.	
015146 - 015416	Chairman Ms Emily LAU	Proposal for grouping clauses of the Bill according to different study areas, which would be examined in sequence. Dates of additional meetings in May and June 2015.	

Council Business Division 2
Legislative Council Secretariat
5 May 2015