

立法會
Legislative Council

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

Minutes of meeting
held on Saturday, 2 May 2015, at 9:00 am
in Conference Room 1 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 CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon NG Leung-sing, SBS, JP
Hon Frankie YICK Chi-ming
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Hon WONG Kwok-kin, SBS
Hon WONG Yuk-man
Hon Claudia MO
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Public Officers : Item I
attending**

Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security E

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

**Attendance : Item I
by invitation**

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Individual

Miss Kanley TSANG King-lai

Individual

Miss WONG Yuk-ting

Hong Kong In-media

Miss YU Yee-ting
Project Officer

Hong Kong Journalists Association

Miss CHAN Pik-ki
Honorary Secretary

Hong Kong Civil Rights Observer

Mr Andrew SHUM Wai-nam
Member

Labour Party

Miss NG Wai-ling
Representative

Individual

Mr NG Chung-tat

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

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

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with deputations and the Administration

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

2. Members received oral representations from eight deputations/individuals on the Interception of Communications and Surveillance (Amendment) Bill 2015 ("the Bill"). The major views and concerns expressed by deputations at the meeting are summarized below -

- (a) the Administration should clarify whether messages transmitted through instant messaging programmes and the law enforcement agencies' requests for relevant metadata would be subject to regulation under the Interception of

Communications and Surveillance Ordinance ("ICSO") (Cap. 589);

- (b) ICSO should be amended to bring the protection for journalistic material in line with that for legal professional privilege ("LPP");
- (c) the definition of "public security" in ICSO should be reviewed;
- (d) ICSO should be amended to expressly prohibit interception of communications and surveillance for political monitoring;
- (e) surveillance of political activities at public places should be subject to regulation under ICSO;
- (f) law enforcement officers found in breach of ICSO should be subject to criminal sanction;
- (g) the scope of ICSO was too narrow in that it did not cover interception of communications by persons other than public officers;
- (h) the Commissioner on Interception of Communications and Surveillance ("the Commissioner") should not be appointed by the Chief Executive, but by the Judiciary in accordance with its established procedures; and
- (i) all persons whose communication had been intercepted should be notified afterwards.

3. In response to the views and concerns of deputations and members, the Administration made the following points -

- (a) ICSO sought to provide a regulatory regime for the interception of communications and covert surveillance operations by public officers and to ensure that the four designated law enforcement agencies ("LEAs") observed the privacy and other rights of the public in combating serious crimes and protecting public security;

- (b) 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". Under the Telecommunications Ordinance (Cap. 106), "telecommunications system" was defined as "any telecommunications installation, or series of installations, for the carrying of communication by means of guided or unguided electromagnetic energy or both";
- (c) under ICSO, all interception required the prescribed authorization of a panel judge, who must be a judge of the Court of the First Instance, appointed in accordance with section 6 of ICSO. The conditions for the issue or renewal of an authorization were set out in section 3 of ICSO which required that the necessity and proportionality tests must be met. 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;
- (d) 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. 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. Briefings were held by the Commissioner on his annual reports for Legislative Council Members and members of the media as well as members of the public;
- (e) 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 LPP or journalistic material to the Commissioner;

- (f) 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 journalistic material to a panel judge. Any material change of circumstances had to be reported to the panel judge. The Code of Practice for LEAs ("CoP") 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 through interception or surveillance. CoP had also been amended to require LEAs to submit an application for authorization for Type 2 surveillance involving the likelihood of obtaining journalistic material to a panel judge instead of an authorizing officer;
- (g) although some cases relating to journalistic materials had been mentioned in the Commissioner's annual reports between 2009 and 2012, the Commissioner had not identified any non-compliance in the cases concerned;
- (h) the proposal in the Bill of empowering the Commissioner and staff designated by him to examine products of interception and surveillance would serve as a strong deterrent against any malpractice or concealment by LEAs, and enhance protection for LPP and journalistic material;
- (i) the definition of "public security" and related application criteria were clearly set out in ICSO and CoP. This matter was outside the scope of the Bill;
- (j) LEAs had regard to the requirements of section 3 of ICSO in conducting covert operations to combat serious crimes and protect life and property. As noted in CoP, the Secretary for Security had assured during the resumption of Second Reading debate on the Interception of Communications and Surveillance Bill that LEAs would not carry out interception of communications or covert surveillance on grounds of public security to achieve a political objective;

- (k) law enforcement officers acting in breach of the relevant requirements were subject to disciplinary actions under the relevant Civil Service Regulations. They might also be prosecuted for the common law offence of misconduct in public office or other criminal offences such as section 161 of the Crimes Ordinance (Cap. 200) concerning "access to computer with criminal or dishonest intent";
- (l) about 60 law enforcement officers had so far been disciplined for breaching the relevant requirements. The disciplinary actions taken included written warning and severe reprimand, which had been recorded in the officers' personnel files;
- (m) the Privacy Commissioner for Personal Data, who had been consulted on the Bill, had expressed in-principle support for the Bill and made suggestions for clarifying certain issues. His comments would be taken into account when revising the CoP, which was published by a General Notice in the Gazette; and
- (n) 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.

4. Members requested the Administration to -

- (a) provide information on the best practices of relevant legislation of overseas jurisdictions for the checking proposal in the Bill;
- (b) explain the applicability of ICSO to messages transmitted by means of instant messaging programmes through the Internet;
- (c) explain the arrangements of submitting an application for a court warrant to obtain information stored in the servers of Internet service providers ("ISPs") which was related to messages transmitted through instant messaging programmes;

- (d) explain whether requests from LEAs for ISPs to provide information by way of a court warrant were subject to the same requirements as those for the obtaining of evidence in crime investigation; and
- (e) provide information on the criteria for the storage of information obtained from interception of communications and covert surveillance in the LEAs' intelligence databases.

II. Any other business

- 5. Members noted that the next meeting had been scheduled for 11 May 2015 at 8:30 am to continue discussion with the Administration.
- 6. Members noted that the former Commissioner, who had been invited to give views on the Bill at a meeting of the Bills Committee, had declined the invitation.
- 7. There being no other business, the meeting ended at 11:30 am.

Council Business Division 2
Legislative Council Secretariat
20 May 2015

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Saturday, 2 May 2015, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000843	Chairman	Opening remarks	
000844 - 001249	Chairman Miss Kanley TSANG King-lai	Presentation of views	
001250 - 001723	Chairman Miss WONG Yuk-ting	Presentation of views	
001724 - 002136	Chairman Miss YU Yee-ting, Hong Kong In-media	Presentation of views [LC Paper No. CB(2)1214/14-15(01)]	
002137 - 002541	Chairman Miss CHAN Pik-ki, Hong Kong Journalists Association	Presentation of views [LC Paper No. CB(2)1372/14-15(01)]	
002542 - 002948	Chairman Mr Andrew SHUM Wai-nam, Hong Kong Civil Rights Observer	Presentation of views [LC Paper No. CB(2) 1378/14-15(02)]	
002949 - 003415	Chairman Miss NG Wai-ling, Labour Party	Presentation of views	
003416 - 003833	Chairman Mr NG Chung-tat	Presentation of views	
003834 - 004247	Chairman Mr LAW Yuk-kai, Hong Kong Human Rights Monitor	Presentation of views [LC Paper No. CB(2)1378/14-15(01)]	
004248 - 005009	Chairman Mr Charles MOK Admin	Mr Charles MOK's concerns regarding the scope of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589). Mr MOK's concerns and the Administration's response regarding whether operations of law enforcement agencies ("LEAs") involving the	

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		obtaining of metadata from Internet service providers ("ISPs") fell within the scope of ICSO.	
005010 - 005541	Chairman Mr CHAN Kam-lam Admin	Mr CHAN Kam-lam's remarks regarding the need for LEAs to carry out interception of communications and surveillance for the prevention and detection of crime. Mr CHAN's question and the Administration's response regarding how ICSO compared with relevant overseas legislation.	
005542 - 010148	Chairman Mr James TO Mr LAW Yuk-kai, Hong Kong Human Rights Monitor Miss YU Yee-ting, Hong Kong In-media	Concerns of Mr James TO, views of Mr LAW Yuk-kai and Miss YU Yee-ting regarding whether the scope of ICSO should be expanded to cover requests from LEAs for ISPs to provide information stored in their servers which was related to messages transmitted through instant messaging programmes. Mr TO's suggestion that representatives of ISPs be invited to provide information on the scope of instant-message related information stored in their servers and their criteria for release of such information to LEAs.	
010149 - 010654	Chairman Mr Dennis KWOK Admin Mr LAW Yuk-kai, Hong Kong Human Rights Monitor	Concerns of Mr Dennis KWOK, views of Mr LAW Yuk-kai and the Administration's response regarding requests from LEAs in crime investigation for ISPs to provide metadata stored in their servers which were related to messages transmitted through instant messaging programmes.	
010655 - 011214	Chairman Mr SIN Chung-kai Admin	Mr SIN Chung-kai's concerns and the Administration's response regarding - (a) the scope of information requested by LEAs regarding information stored in the servers of ISPs; (b) whether messages transmitted through instant messaging programmes fell within the scope of ICSO; and (c) whether the Administration would consider bringing the protection for	

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		journalistic material under ICSO in line with that for legal professional privilege.	
011215 - 011807	Chairman Mr Tony TSE Miss YU Yee-ting, Hong Kong In-media Miss CHAN Pik-ki, Hong Kong Journalists Association	Mr Tony TSE's concerns, views of Miss YU Yee-ting and Miss CHAN Pik-ki regarding the meaning and definition of journalistic material.	
011808 - 012358	Chairman Mr NG Leung-sing Miss YU Yee-ting, Hong Kong In-media Miss Kanley TSANG King-lai	Mr NG Leung-sing's remarks, views of Miss YU Yee-ting and Miss Kanley TSANG regarding views expressed by deputations and whether there had been cases of press freedom being affected by the implementation of ICSO.	
012359 - 012920	Chairman Mr Charles MOK Mr LAW Yuk-kai, Hong Kong Human Rights Monitor Miss YU Yee-ting, Hong Kong In-media	Mr Charles MOK's concerns, views of Mr LAW Yuk-kai and Miss YU Yee-ting regarding whether there was adequate protection under ICSO against interception of communications or covert surveillance for political monitoring.	
012921 - 013435	Chairman Deputy Chairman Admin	The Deputy Chairman's questions and the Administration's response regarding the safeguards provided under the Bill and those under relevant legislation of other jurisdictions. The Administration was requested to provide information on the best practices of relevant legislation of overseas jurisdictions for the checking proposal in the Bill.	Admin
013436 - 014036	Chairman Mr James TO Admin	Mr James TO's concerns and the Administration's response regarding - (a) the applicability of ICSO to messages transmitted through instant messaging programmes; and (b) requests by LEAs for ISPs to provide information stored in their servers which was related to messages transmitted through instant messaging programmes.	

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		<p>The Administration was requested to explain -</p> <p>(a) the applicability of ICSO to messages transmitted by means of instant messaging programmes through the Internet; and</p> <p>(b) the arrangements of submitting an application for a court warrant to obtain information stored in the servers of ISPs which was related to messages transmitted through instant messaging programmes.</p>	Admin
014037 - 014733	<p>Chairman Mr SIN Chung-kai Miss NG Wai-ling, Labour Party Mr NG Chung-tat Miss WONG Yuk-ting Miss YU Yee-ting, Hong Kong In-media Mr Andrew SHUM Wai-nam, Hong Kong Civil Rights Observer Mr LAW Yuk-kai, Hong Kong Human Rights Monitor Miss Kanley TSANG King-lai</p>	<p>Mr SIN Chung-kai's question, views of Miss NG wai-ling, Mr NG Chung-tat, Miss WONG Yuk-ting, Miss YU Yee-ting, Mr Andrew SHUM, Mr LAW Yuk-kai and Miss Kanley TSANG regarding whether the scope of ICSO should be extended to cover messages transmitted by means of instant messaging programmes through the Internet.</p>	
014734 - 015031	<p>Chairman Mr Tony TSE Admin</p>	<p>Mr Tony TSE's questions and the Administration's response regarding the possible sanctions against a law enforcement officer in breach of ICSO.</p>	
015032 - 015656	<p>Chairman Mr Charles MOK Mr LAW Yuk-kai, Hong Kong Human Rights Monitor Miss Kanley TSANG King-lai Miss WONG Yuk-ting Mr NG Chung-tat Miss YU Yee-ting, Hong Kong In-media</p>	<p>Mr Charles MOK's concerns and views of Mr LAW Yuk-kai, Miss Kanley TSANG, Miss WONG Yuk-ting, Mr NG Chung-tat and Miss YU Yee-ting regarding -</p> <p>(a) whether there were international standards on the monitoring of interception of communications and surveillance; and</p> <p>(b) sanctions against law enforcement officers in breach of ICSO.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
015657 - 020138	Chairman Mr James TO	<p>Mr James TO's concerns regarding -</p> <p>(a) requests from LEAs for provision of information stored in ISP's servers which was related to messages transmitted through instant messaging programmes; and</p> <p>(b) the applicability of ICSO to messages transmitted by means of instant messaging programmes through the Internet.</p> <p>The Administration was requested to explain whether requests from LEAs for ISPs to provide information by way of a court warrant were subject to the same requirements as those for the obtaining of evidence in crime investigation.</p>	Admin
020139 - 022630	Chairman Admin	Administration's response to issues raised by deputations.	
022631 - 022943	Chairman Mr James TO	Mr James TO's request for the Administration to provide a response regarding the criteria for the storage of information obtained from interception of communications and covert surveillance in the LEAs' intelligence database.	Admin
022944 - 023017	Chairman Miss Kanley TSANG King-lai	Miss Kanley TSANG's question and the Chairman's reply regarding whether the written response to be provided by the Administration would be made available on the Legislative Council website.	
023018 - 023218	Chairman Mr James TO	<p>Date of next meeting.</p> <p>Reply of the former Commissioner on Interception of Communications and Surveillance to the Bills Committee's invitation for attending a meeting to give views on the Bill.</p> <p>Mr TO's suggestion that representatives of ISPs be invited to provide information on the scope of instant-message related information stored in their servers and their criteria for release of such information to LEAs.</p>	

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