

立法會
Legislative Council

LC Paper No. CB(2)1850/14-15
(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 Monday, 22 June 2015, at 2:30 pm
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 Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Emily LAU Wai-hing, JP
Hon Frankie YICK Chi-ming
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

Miss Emily NG Wing-shan
Acting Assistant Secretary for Security E2

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

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

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

2. Members requested the Administration to -

- (a) provide a breakdown of the cases classified as "others" under the category "others" in Annex A to the Administration's response to issues raised at the meeting on 1 June 2015 (LC Paper No. CB(2)1732/14-15(01));

- (b) consider requiring law enforcement agencies ("LEAs") to maintain statistics for the coming three months on the respective numbers of approved and rejected applications for search warrant to obtain information from Internet service providers ("ISPs") and provide such statistics to the Bills Committee;
- (c) explain the existing work of the Commissioner on Interception of Communications and Surveillance in relation to listening to communications intercepted by LEAs and that after the Bill was enacted;
- (d) provide information on the provisions in the Interception of Communications and Surveillance Ordinance (Cap. 589) which empowered LEAs to audio record communications intercepted;
- (e) provide information on whether all communications intercepted were audio recorded by LEAs, whether all such audio records were transcribed by LEAs into text, the timing for performing such transcription, whether intercepted communications involving legal professional privilege or journalistic material were transcribed into text, the respective numbers of law enforcement officers involved in carrying out such audio recording and transcription work as well as the number of hours of audio records and pages of transcripts involved in a year;
- (f) provide information on whether LEAs were allowed to listen to intercepted communications and orally convey the contents to the relevant investigating team without carrying out any audio recording;
- (g) provide information on whether persons other than law enforcement officers, such as translators, had been involved in listening to intercepted communications in foreign languages; and
- (h) provide information on whether there were requirements or guidelines by each LEA on the time limit for destruction of intercepted communications.

3. Members agreed that a letter would be sent to the Judiciary suggesting that statistics on the respective numbers of approved and rejected applications for search warrant by LEAs for obtaining information from ISPs should be maintained.

II. Any other business

4. Members noted that the next meeting had been scheduled for 29 June 2015 at 2:30 pm to continue discussion with the Administration.

5. There being no other business, the meeting ended at 4:32 pm.

Council Business Division 2
Legislative Council Secretariat
3 July 2015

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Monday, 22 June 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000925	Chairman	Opening remarks	
000926 - 000949	Admin	Administration's response to issues raised at the meeting on 1 June 2015 (LC Paper No. CB(2)1732/14-15(01)).	
000950 - 001157	Chairman Mr SIN Chung-kai Admin	Mr SIN Chung-kai's concern and the Administration's response regarding a breakdown of the cases classified as "others" under the category "others" in Annex A to the Administration's paper. The Administration was requested to provide a breakdown of the cases classified as "others" under the category "others" in Annex A to the Administration's response to issues raised at the meeting on 1 June 2015 (LC Paper No. CB(2)1732/14-15(01)).	Admin
001158 - 001638	Chairman Ms Claudia MO Admin	Ms Claudia MO's concern and the Administration's response regarding the interpretation as well as scope of "public security" and "violent means" in section 2 of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589).	
001639 - 002948	Chairman Mr James TO Mr SIN Chung-kai Admin	Views of Mr James TO and Mr SIN Chung-kai that statistics should be maintained by law enforcement agencies ("LEAs") and the Judiciary on the respective number of approved and rejected applications for search warrant by LEAs for obtaining information from Internet service providers ("ISPs"). Administration's response that both LEAs and the Judiciary did not maintain statistical figures on the number of approved and rejected applications for search warrant by LEAs for obtaining information from ISPs. The Administration was requested to consider requiring LEAs to maintain statistics for the coming three months on the respective	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>numbers of approved and rejected applications for search warrants to obtain information from ISPs and provide such statistics to the Bills Committee.</p> <p>Members agreed that a letter would be sent to the Judiciary suggesting that statistics on the respective numbers of approved and rejected applications for search warrant by LEAs for obtaining information from ISPs should be maintained.</p>	Clerk
002949 - 003432	Chairman Ms Claudia MO Admin	Ms Claudia MO's concern and the Administration's response regarding the proposal in the Bill of empowering the Commissioner on Interception of Communications and Surveillance ("the Commissioner") to examine products of interception and surveillance as well as prevention of the disclosure of such products.	
003433 - 003629	Chairman Mr Charles MOK	Mr Charles MOK's concern that although he had requested for two years the provision of statistics concerning access to computer with criminal or dishonest intent, both the Administration and the Judiciary had advised that they did not maintain such statistics.	
003630 - 003827	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's view that LEAs should maintain statistics for the coming few months on the respective number of approved and rejected applications for search warrants to obtain information from ISPs and provide such statistics to the Bills Committee.</p> <p>The Administration's response that it would discuss the issue with the relevant LEAs.</p>	Admin
003828 - 004313	Chairman Mr Paul TSE Deputy Chairman	<p>Views of Mr Paul TSE and the Deputy Chairman that -</p> <p>(a) it would be inappropriate to deploy too much manpower and resources for compilation of statistics relating to search warrants; and</p> <p>(b) issues relating to search warrants should be discussed at meetings of the relevant Panel.</p>	

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004314 - 004425	Chairman	<p>Proposed order and areas for study of the Bill (LC Paper No. CB(2)1214/14-15(02).</p> <p>Discussion of issues relating to checking of protected products by the Commissioner.</p>	
004426 - 004641	Admin	Briefing by the Administration on the proposals in the Bill regarding the checking of protected products by the Commissioner.	
004642 - 005324	Chairman Mr James TO Admin	<p>Mr James TO's concerns regarding -</p> <ul style="list-style-type: none"> (a) the existing work of the Commissioner in relation to listening to communications intercepted by LEAs and that after the Bill was enacted; (b) whether all communications intercepted were audio recorded by LEAs; (c) whether all such audio records were transcribed by LEAs into text; and (d) whether there were provisions in ICSSO empowering LEAs to audio record intercepted communications. <p>The Administration's response that -</p> <ul style="list-style-type: none"> (a) the disclosure of detailed operational arrangements might reveal law enforcement capabilities of LEAs to criminals, who might be able to elude justice, thus undermining LEAs' strength in crime investigation and protection of public security; (b) LEAs had assigned dedicated teams not involved in the investigation of the cases concerned to listen to communications intercepted; and (c) 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. 	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Administration was requested -</p> <p>(a) to explain the existing work of the Commissioner in relation to listening to communications intercepted by LEAs and that after the Bill was enacted; and</p> <p>(b) to provide information on the provisions in ICSO which empowered LEAs to audio record communications intercepted.</p>	Admin
005325 - 005834	Chairman Mr WONG Yuk-man Admin	<p>Mr WONG Yuk-man's view that LEAs had on many occasions failed to comply with the requirements in ICSO.</p> <p>Administration's response that since the implementation of ICSO in 2006, there were 11 700 applications under ICSO but only 29 cases of non-compliance.</p>	
005835 - 010401	Chairman Mr SIN Chung-kai Admin	<p>Mr SIN Chung-kai's concern regarding the effectiveness of the Commissioner's monitoring work.</p> <p>Administration's response that 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. Information provided by LEAs were cross-checked by the Commissioner against information provided by panel judges.</p>	
010402 - 010845	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's concern regarding whether the Commissioner would be allowed to listen to protected products before the proposed legislative amendments were passed.</p> <p>Administration's response that both the former and incumbent Commissioners considered it more appropriate to listen to the protected products after there was an express provision in ICSO empowering the Commissioner to do so.</p>	

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010846 - 013003	Chairman Mr James TO Mr SIN Chung-kai Admin	<p>Mr James TO's concerns regarding -</p> <ul style="list-style-type: none"> (a) whether all communications intercepted were audio recorded; (b) whether all such audio records were transcribed by LEAs into text; (c) the respective numbers of law enforcement officers involved in such audio recording and transcription work; and (d) whether each LEA had its own dedicated team of staff for listening to such audio records. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) the disclosure of detailed operational arrangements might reveal law enforcement capabilities of LEAs to criminals, who might be able to elude justice, thus undermining LEAs' strength in crime investigation and protection of public security; and (b) each LEA had its dedicated teams not involved in the investigation of the cases concerned to listen to communications intercepted. <p>Mr SIN Chung-kai's concern and the Administration's response regarding how the Commissioner performed his monitoring work under ICSO.</p> <p>The Administration was requested to provide information on -</p> <ul style="list-style-type: none"> (a) whether all communications intercepted were audio recorded by LEAs; (b) whether all such audio records were transcribed by LEAs into text; (c) the number of law enforcement officers involved in carrying out such audio recording work, the number of hours of 	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>audio records and pages of transcripts involved in a year; and</p> <p>(d) whether persons other than law enforcement officers, such as translators, had been involved in listening to intercepted communications in foreign language.</p>	
013004 - 015507	Chairman Mr James TO Mr SIN Chung-kai Admin	<p>Mr James TO's concern regarding -</p> <p>(a) whether there were requirements or guidelines on the time limit for destruction of intercepted communications;</p> <p>(b) whether the Commissioner could listen to intercepted communications before LEAs listen to such intercepted communications; and</p> <p>(c) the timing for transcription of audio records into text.</p> <p>Concerns of Mr SIN Chung-kai and Mr James TO regarding whether LEAs could listen to intercepted communications and orally convey the contents to the relevant investigating team without audio recording.</p> <p>Administration's response that -</p> <p>(a) intercepted communications were destroyed as soon as retention was not necessary for the relevant purpose of the prescribed authorization;</p> <p>(b) there was no restriction on the timing for listening to intercepted communications by the Commissioner; and</p> <p>(c) the Administration would discuss with the Commissioner the mechanism for the latter to listen to communications intercepted.</p> <p>The Administration was requested to provide information on -</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>(a) whether there were requirements or guidelines by each LEA on the time limit for destruction of intercepted communication;</p> <p>(b) whether LEAs were allowed to listen to intercepted communications and orally convey its contents to the relevant investigating team without any audio recording; and</p> <p>(c) the timing for transcription of audio records into text.</p>	
015508 - 015746	Chairman Mr Paul TSE Mr SIN Chung-kai	Views of Mr Paul TSE and Mr SIN Chung-kai regarding whether there was a need for transcription of all intercepted communications into text.	
015747 - 020235	Chairman Mr James TO Admin Mr Paul TSE	<p>Mr James TO's concern, views of Mr Paul TSE and the Administration's response regarding whether intercepted communications involving LPP or journalistic material were transcribed into text.</p> <p>The Administration was requested to provide information on whether intercepted communications involving LPP or journalistic material were transcribed into text.</p>	Admin
020236 - 020300	Chairman	Date of next meeting	