

立法會
Legislative Council

LC Paper No. CB(2)1004/15-16
(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 Tuesday, 2 February 2016, at 10:45 am
in Conference Room 2B of the Legislative Council Complex

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

Public Officers : Item I
attending

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

Mr Andrew TSANG Yue-tung
Principal Assistant Secretary for Security E

Mr CHIU Man-hin
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 Timothy TSO
attendance Senior Assistant Legal Adviser 1

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 to -

- (a) provide information on the nature of non-compliance for cases in which an officer had received a "reprimand" or a "written warning of dismissal" in the table on page 4 of the

Administration's response to Mr James TO's letters dated 11 and 12 January 2016 (LC Paper No. CB(2)768/15-16(01)); and

- (b) explain the background and the effect of the consequential amendments to section 33 of the Telecommunications Ordinance (Cap. 106) in Schedule 5 to the Interception of Communications and Surveillance Ordinance (Cap. 589) and reconsider providing statistics relating to the Chief Executive's exercising of his power under the section.
3. At the request of Mr James TO, the Administration undertook to advise, before resumption of the Second Reading debate on the Bill, on whether the passage of any proposed Committee stage amendments ("CSAs") would result in the Administration withdrawing the Bill.

II. Any other business

4. The Chairman concluded that, pending the Administration's provision of written response to the issues in paragraph 2 above, the Bills Committee had completed scrutiny of the Bill.

5. Members noted and supported the resumption of the Second Reading debate on the Bill at the Council meeting of 16 March 2016. Members also noted that the deadline for giving notice for moving CSAs to the Bill would be 7 March 2016 and a report on the deliberations of the Bills Committee would be submitted to the House Committee on 26 February 2016.

6. There being no other business, the meeting ended at 11:56 am.

Council Business Division 2
Legislative Council Secretariat
2 March 2016

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Tuesday, 2 February 2016, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000556	Chairman	Opening remarks	
000557 - 000901	Chairman Mr James TO Admin	<p>Mr James TO's question regarding whether the passage of any of Members' proposed Committee stage amendments ("CSAs") would result in the Administration withdrawing the Interception of Communications and Surveillance (Amendment) Bill 2015 ("the Bill").</p> <p>Administration's response that as a matter of principle, the Administration wanted the Bill to be passed so that the regime under the ICSO would be enhanced. The Department of Justice was still being consulted on Members' proposed CSAs and it was too early to advise on the Administration's position.</p> <p>At the request of Mr James TO, the Administration undertook to advise, before resumption of the Second Reading debate on the Bill, on whether the passage of any proposed CSAs would result in the Administration withdrawing the Bill.</p>	
000902 - 001701	Chairman Mr WONG Yuk-man	<p>Mr WONG Yuk-man's view that the Administration should provide the statistics requested in Questions 1 to 7 of Mr James TO's letter dated 12 January 2016.</p> <p>Mr WONG's expression of support for Mr James TO's proposed CSAs to the proposed new section 58A of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) (LC Paper No. CB(2)768/15-16(02)).</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
001702 - 002347	Chairman Mr Dennis KWOK Admin	<p>Mr Dennis KWOK's view that -</p> <p>(a) if the Administration did not support his proposed CSAs to the Bill, it should consider incorporating the requirements proposed in the CSAs in the Code of Practice ("CoP") for law enforcement agencies ("LEAs"); and</p> <p>(b) the Administration should provide a breakdown by nature of non-compliance of the cases set out in the table on page 4 of the Administration's response to Mr James TO's letters dated 11 and 12 January 2016 (LC Paper No. CB(2)768/15-16(01)).</p> <p>Administration's response that -</p> <p>(a) CoP was issued for the purpose of providing practical guidance to officers of LEAs in respect of matters provided for in ICSO. The proposal in Mr Dennis KWOK's CSAs however fell outside the scope of ICSO; and</p> <p>(b) the statistics had been compiled on the basis of information contained in various annual reports of the Commissioner on Interception of Communications and Surveillance.</p> <p>The Administration was requested to provide information on the nature of non-compliance for cases in which an officer had received a "reprimand" or a "written warning of dismissal" in the table on page 4 of the Administration's response to Mr James TO's letters dated 11 and 12 January 2016 (LC Paper No. CB(2)768/15-16(01)).</p>	Admin
002348 - 003310	Chairman Ms Claudia MO Mr James TO Admin	<p>Ms Claudia MO's expression of support for Mr James TO's proposed CSAs to the proposed new section 58A of ICSO.</p> <p>Ms Claudia MO's view that the meaning of "becomes aware" in the proposed new section 58A of ICSO was not precise and there was a difference between the meaning of</p>	

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		<p>"becomes aware" and its Chinese rendition "知悉".</p> <p>Mr James TO's view that the "reasonable suspicion" threshold proposed in his CSAs would facilitate prevention of the abuse of power by LEAs.</p> <p>Administration's response that -</p> <p>(a) the determination of whether there was material inaccuracy in the information provided and material change in circumstances should be based on facts but not "reasonable suspicion"; and</p> <p>(b) the expression "becomes aware" had been used in sections 57 and 58 of ICSO since its enactment and these sections had been in operation for some 10 years without problems.</p>	
003311 - 011053	<p>Chairman Mr James TO Ms Claudia MO Ms Cyd HO Mr WONG Yuk-man Admin</p>	<p>Views of Mr James TO, Ms Claudia MO, Ms Cyd HO and Mr WONG Yuk-man that -</p> <p>(a) the Administration should provide members with statistics relating to the Chief Executive ("CE")'s exercising of his power under section 33(1) of the Telecommunications Ordinance ("TO") (Cap. 106);</p> <p>(b) the requested statistics did not contain sensitive information; and</p> <p>(c) the Administration's refusal to disclose such statistics would arouse suspicion about whether it was trying to conceal any abuse by CE of the power given under the section.</p> <p>Administration's response that -</p> <p>(a) there was no question of the Administration trying to conceal any abuse by CE of the power given under section 33 of TO;</p>	

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		<p>(b) section 33 of TO was amended by Schedule 5 to ICSO which had repealed the provision that had been ruled unconstitutional by the court in 2006; and</p> <p>(c) an order made by CE under the section could not of itself authorize the obtaining of the contents of any individual message.</p> <p>The Administration was requested to explain the background and the effect of the consequential amendments to section 33 of TO in Schedule 5 to ICSO and reconsider providing statistics relating to CE's exercising of his power under the section.</p>	Admin
011054 - 011657	Chairman	Completion of scrutiny of the Bill. Proposed legislative timetable.	