



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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Secretary for Security
Security Bureau
10/F, East Wing
Central Government Office
2 Tim Mei Road, Tamar
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By Fax (2810 7702)

9 June 2015

Dear Mrs NG

**Interception of Communications and Surveillance
(Amendment) Bill 2015**

Thank you for your reply letter of 24 March 2015.

We have subsequently exchanged views on the following drafting issues. I now set out in writing my suggestions for your further consideration.

Further authorization or requirement under a prescribed authorization or a device retrieval warrant (clauses 6(2), 8(2), 9(2), 16(10), 17(5) and 18)

Your reference to section 32 of the Ordinance is understood. It is agreed that section 32 as a general provision could refer to "any further authorization or requirement" under a prescribed authorization. However, the proposed amendments are provisions applicable to specific situations, in which further authorization would not be made. Please consider whether the word "further" may be dispensed with in the captioned proposed amendments.

Clause 19 – proposed section 59(1)(c)

Your position appears to rely solely on the arrangements put in place by the Commissioner whereby protected products of specific cases would be preserved for the Commissioner's examination. That means legally the

time gap described in my last letter is left open. It seems to me that there are different categories of cases which are subject to the review or examination by the Commissioner and express provision may be made to ensure the preservation of protected products in certain cases. The first category are those cases in respect of which a report has been submitted to the Commissioner under section 23(3)(b), 26(3)(b) or 54. Under section 41(2), the review by the Commissioner of such cases is mandatory. It seems that it could be expressly provided that protected products of such cases should not be destroyed until the Commissioner has completed his review. Regarding other cases, it could also be expressly provided that protected products that contain journalist material or may be subject to legal professional privilege should also not be destroyed until the Commissioner has completed his review under section 41. By these provisions, the time gap could be partially closed and the policy intent of the proposed amendments may be better achieved.

Please also consider and clarify how section 59(1)(c) as currently drafted would interact with sections 23(3)(a) and 26(3)(a) which require immediate destruction of protected products, and sections 24(3)(b)(i) and 27(3)(b)(i) whereby a panel judge may order immediate destruction of protected products.

I would appreciate it if you would let me have your reply in both English and Chinese versions before the next meeting of the Bills Committee.

Yours sincerely



(KAU Kin-wah)

Senior Assistant Legal Adviser

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