

(Translation)

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香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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Clerk to the Finance Subcommittee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Anita SIT)

Dear Ms SIT,

FCR(2017-18)3
Proposed creation of one permanent post of
Chief Superintendent of Police
in the Hong Kong Police Force
to lead the Cyber Security and Technology Crime Bureau

At the meeting of the Finance Committee on 19 May 2017, we explained the Government's position with regard to members' questions on the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO"). We now provide a written response as follows.

On whether individual social media and instant messaging applications fall within the scope of regulation under ICSO, our position was clearly explained during the Legislative Council's scrutiny in 2015 and 2016 of the Interception of Communications and Surveillance (Amendment) Bill 2015 and vide the supplementary information in ESC52/16-17(01), ESC61/16-17(01), ESC77/16-17(02) and FC143/16-17(02) in connection with the above establishment proposal. Under ICSO, if a communication is transmitted by a telecommunications system, and a law enforcement agency ("LEA") intercepts the communication in the course of its transmission, the interception will be regarded as an "intercepting act" and such an operation must be authorised by a panel judge.

Under ICSO, all applications for authorisation must meet the stringent conditions as prescribed in ICSO, i.e. the operation must be for the purpose of “preventing or detecting serious crimes or protecting public security” and must meet the “proportionality” and “necessity” tests. An authorising authority shall not issue an authorisation or allow the continuation of an authorisation unless it is satisfied that these conditions are met. Each stage of the operation is subject to stringent control under ICSO. The Commissioner on Interception of Communications and Surveillance (“the Commissioner”) also monitors the compliance with various requirements under ICSO by LEAs concerned.

Pursuant to section 49 of ICSO, every year the Commissioner is required to submit an annual report to the Chief Executive and provide therein an assessment on LEAs’ overall compliance with the relevant requirements during the report period. Besides, ICSO also specifies the information and data to be set out in the annual report, including the number of authorizations issued, the average duration of the authorizations, the number of applications for renewal, the number of applications for examination received during the report period, the number of cases in which information subject to legal professional privilege has been obtained, the number of cases in which disciplinary action has been taken in respect of any officer of a department, the nature of such action etc.

The Commissioner pointed out in paragraph 1.12 of the Annual Report 2015 that,

“In this annual report, I have continued the practice of providing the utmost transparency of my work as the Commissioner, while taking care not to divulge any information the disclosure of which may prejudice the prevention or detection of crime or the protection of public security. I must point out that it is crucial not to reveal information that might be useful to individuals who may wish to cause harm to Hong Kong. In this regard, I have included as much information as possible insofar as its publication does not amount to contravention of the non-prejudice principle.”

In fact, operations carried out under ICSO are of sensitive and confidential nature and the information of which involves LEAs’ covert operations and their contents. The disclosure of such information will very likely reveal to criminals details of LEAs’ operations and investigation tactics, thus undermining LEAs’ capabilities in combating serious crimes and enabling criminals to elude justice. In enacting ICSO, section 49 was drawn up with

great care to strike a balance between confidentiality and transparency. The Commissioner, as required by ICSO, sets out in every year's annual report various figures in relation to interception operations during the report period, including the numbers of applications for prescribed authorization and the refused ones. We find it inappropriate to disclose information outside the scope as specified by ICSO.

(Andrew TSANG)
for Secretary for Security

c.c.
HKPF (CSTCB)