

**Legislative Council
Panel on Security**

**Results of Study of Matters Raised in the
Annual Report 2018 to the Chief Executive by the
Commissioner on Interception of Communications and Surveillance**

Purpose

Pursuant to section 49 of the Interception of Communications and Surveillance Ordinance (Cap. 589) (ICSO), the Commissioner on Interception of Communications and Surveillance (the Commissioner) submitted his Annual Report 2018 (the Report) to the Chief Executive in June 2019. This note sets out the Government's views on the matters raised in the Report.

Background

2. Interception of communications and covert surveillance operations are critical to the capability of our law enforcement agencies (LEAs) in combating serious crimes and protecting public security. ICSO provides a statutory regime for the conduct of interception of communications and covert surveillance by LEAs. The Commissioner, appointed by the Chief Executive on the recommendation of the Chief Justice, is responsible for overseeing the compliance by LEAs and their officers with the relevant requirements of ICSO.

3. The Report covers the period from 1 January 2018 to 31 December 2018 (the report period). The Chief Executive has caused a copy of the Report to be laid on the table of the Legislative Council on 27 November 2019. The Security Bureau, in consultation with LEAs concerned, has studied the matters raised in the Report.

4. ICSO provides a statutory framework for the conduct of interception of communications and covert surveillance. It aims to strike a balance between the need for prevention and detection of serious crimes and the protection of public security on the one hand, and the need for safeguarding the privacy and other rights of individuals on the other. It provides a stringent regime with checks and balances to ensure that LEAs' covert operations are carried out in accordance with the requirements of ICSO.

5. During the report period, interception of communications and covert surveillance operations carried out by LEAs continued to be subject to the tight regulation of the statutory framework under ICSO. LEAs, panel judges, and relevant parties provided the support and cooperation that the Commissioner needed to perform his oversight and review functions under ICSO.

The Commissioner's findings

6. Under section 54 of ICSO, heads of LEAs are required to submit a report to the Commissioner if they consider that there may have been any case of failure to comply with any relevant requirement of ICSO, irrespective of whether the failure was due to the fault of LEAs or their officers or not. LEAs are also required by the Commissioner to report to him cases of irregularity or incidents not covered by section 54, so that all cases of possible non-compliance could be brought to the attention of the Commissioner for examination and review without any delay.

7. The Commissioner observed that LEAs continued to adopt a cautious approach in preparing their applications for interception and covert surveillance operations, and that panel judges handled LEAs' applications carefully and applied stringent control over the duration of the authorisations. The Commissioner stated in the Report that most of the interception and covert surveillance operations were conducted pursuant to prescribed authorisations granted and the additional conditions imposed, except for the few cases as detailed in paragraph 8 below, and there was no sign of abuse of surveillance devices for any unauthorised purposes during the report period.

8. Out of a total of 1 384 authorisation applications for interception and covert surveillance in 2018, there were three cases of non-compliance (Cases 6.7, 6.13, and 6.17) and 24 other cases of irregularity / incident in the report period, while none of them involved reports submitted under section 54 of ICSO. Of these, the Commissioner had completed review of 26 cases. For Case 6.7, it involved human error by an officer operating a recording device, where the officer did not press and hold the stop button of the relevant device long enough, which allowed the recording of a meeting to continue despite the subject having already left, which was outside the ambit of the prescribed authorisation for the Type 1 covert surveillance operation. For Case 6.13, it involved interception product being accessed by an officer below the rank specified by the additional conditions of the prescribed authorisation, due to one supervisor's mistake in assigning access rights to an officer below the specified rank, while two

other supervisors failed to spot the mistake. For Case 6.17, it involved an officer not being able to pick up an alias of the subject in a call due to the circumstances of the call, and as such did not report it to the panel judge as a material change in circumstances of the prescribed authorisation, which was not in compliance with the Code of Practice.

9. The Commissioner did not find in any of the non-compliance / irregularity / incident cases any deliberate disregard of the statutory provisions or the Code of Practice, or any ulterior motive or ill will on the part of the officers involved. Noting that most of these cases were occasions where officers were not vigilant and cautious enough in discharging ICSO duties, the Commissioner expressed his concerns, and advised that LEAs should endeavour to provide their officers with sufficient advice and training to facilitate them to better perform ICSO duties, and that their officers should stay alert and exercise care in different stages of the operations conducted under ICSO.

10. The Commissioner also observed that LEAs recognised the importance of protecting legal professional privilege (LPP) information or journalistic material, and continued to adopt a very cautious approach in handling these cases, save for some occasions where more vigilance and care from the LEA officers was expected. The Commissioner noted that LEAs had repeatedly reminded their officers to be vigilant in this regard.

11. The Commissioner pointed out that although there was a marked increase in the number of reported LPP cases, there was no actual obtainment of LPP information in any of the cases, and considered it a good indication of a high level of alertness maintained by LEA officers in performing their duties to guard against the risk of obtaining information subject to LPP. The Commissioner also observed that for cases assessed to have likelihood of involving LPP information, panel judges would impose additional conditions if they granted the authorisation or allowed the operations to continue. These additional conditions were stringent and effective in safeguarding the right of individuals to confidential legal advice.

The Commissioner's recommendations to the Government

12. Under ICSO, the Commissioner may make recommendations to the Secretary for Security and the heads of LEAs as and when necessary. During the report period, the Commissioner continued to give advice and recommendations on various procedural matters in the course of overseeing LEAs' compliance with ICSO requirements. The

Commissioner was pleased to see that in the report period, LEAs continued to be positive to his recommendations in regard to new arrangements for better operation of the ICSO regime and took initiative to implement system enhancements to prevent recurrence of technical mistakes or to avoid human errors.

13. The Commissioner's recommendations are summarised in Chapter 7 of the Report and were accepted by LEAs. The key recommendations made by the Commissioner in the report period and the Government's response are set out at **Annex**.

Conclusion

14. The control regime under ICSO has continued to operate smoothly during the report period. The Government will continue to closely monitor the operation of ICSO, and fully co-operate with the Commissioner and the panel judges, with a view to better carrying out the objects of ICSO.

Security Bureau
November 2019

**Response of the Government
to the Key Recommendations Made in the Annual Report 2018
of the Commissioner on Interception of Communications and Surveillance**

	Recommendations by the Commissioner	The Government's response
1.	<i>Better control of the use of ancillary equipment in covert surveillance operations (paragraph 7.2(a))</i>	
	All the ancillary equipment intended to be used in covert surveillance operations should be recorded in the inventory lists for surveillance devices. The equipment should not be withdrawn from the device store before the effective time of the prescribed authorisation concerned. The issue and return of the equipment should be recorded in the relevant device register.	Recommendation accepted. The recommendation has been adopted by LEAs.
2.	<i>Reporting of the communications between the subject and the lawyer or the law firm involved in the Reported LPP Call (paragraph 7.2(b))</i>	
	If the other party of a Reported LPP Call was a lawyer or related to a law firm, LEA should state in the report submitted to the Commissioner under the Code of Practice the communications between the subject's facility number and all the facility numbers known to be used by the lawyer or the law firm. This will facilitate examination of the protected products concerned by the Commissioner.	Recommendation accepted. The recommendation has been adopted by the relevant LEAs.