

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

**Bills Committee on
Interception of Communications and Surveillance Bill**

**Minutes of meeting
held on Saturday, 17 June 2006, at 9:00 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon LAU Kong-wah, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Dr Hon David LI Kwok-po, GBS, JP
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

Public Officers attending : Mr Stanley YING
Permanent Secretary for Security

Miss S H CHEUNG
Deputy Secretary for Security

Mr Ian WINGFIELD
Law Officer (International Law)
Department of Justice

Ms Sherman CHAN
Senior Assistant Law Draftsman

Ms Frances HUI
Senior Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2)5

Ms Sandy HAU
Clerical Assistant (2) 1

I. Meeting with the Administration

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

2. The Bills Committee requested the Administration -

Clause 21

- (a) to consider providing the number of cases involving participant monitoring among the statistics on Type 2 surveillance for the period between 20 February 2006 and 19 May 2006;

Clause 23

- (b) to consider spelling out explicitly that clause 23(3) was a penalty clause, such as by amending "If no application for confirmation of the emergency authorization is made within the period of 48 hours" along the lines of "where the officer has failed to make an application for confirmation within the period of 48 hours";
- (c) to consider preventing the information destroyed from being used in other contexts, such as in affirmations of officers as source of information, by stipulating that there should be no direct or indirect use of the information;
- (d) to consider providing in the Bill that even though an application for confirmation failed to be made within 48 hours, the law enforcement officers should still submit to a panel judge a report on the emergency authorisation issued and explain why the confirmation had not been applied for in time;
- (e) to consider, instead of destroying all information obtained in an emergency authorisation that was not confirmed as provided under clause 23(3)(a), stipulating in the Bill that the information should be preserved for the sole purpose of investigation by the Commissioner;
- (f) to consider providing in the Bill that the Commissioner must investigate into the failure of seeking a confirmation from a panel judge within 48 hours of an emergency authorisation or an oral application;
- (g) to consider whether the reference to "to the extent that it could not have been obtained without carrying out the interception or Type 1 surveillance" in clause 23(3)(a) was necessary;

Clause 24

- (h) to consider providing in clause 24(3)(b) that the information should be destroyed, instead of giving the discretion to a panel judge;

- (i) to consider providing that once a confirmation was not approved, the emergency authorisation should be considered void, and immunity should be extended to officers in respect of criminal liability only;

Clause 25

- (j) to consider, in consultation with the Judiciary, whether arrangements could be made for recording of oral applications (by panel judges or by applicants) for judge's authorisation;
- (k) to consider including statistics on oral applications and emergency applications in the annual reports of the Commissioner;
- (l) to consider specifying in the Bill or the Code of Practice that oral applications for executive authorisations should be tape recorded or recorded on file;

Clause 26

- (m) to consider whether the reference to "to the extent that it could not have been obtained without carrying out the interception or covert surveillance" in clause 26(3)(b)(i) was necessary;
- (n) to consider providing in clause 26(3)(b) that the information should be destroyed, instead of giving the discretion to a panel judge;

Clause 27

- (o) to consider providing in the Code of Practice that written records would be made on the additional information provided to the authorising officer in respect of an application for executive authorisation;
- (p) to consider whether the reference to "to the extent that it could not have been obtained without carrying out the interception or covert surveillance" in clause 27(3)(b) was necessary;
- (q) to consider providing in the Code of Practice that notes made by the approving authority during oral applications had to be put on the relevant case file; and

Clause 29

- (r) to consider whether the existing mechanism for compensation for damage caused to property during law enforcement operations would be sufficient for compensating damage to property incurred in carrying out covert operations, and whether a special compensation mechanism would be necessary.

3. The Administration advised that it would set out in the Code of Practice -
 - (a) the procedures for applications for the issue of emergency authorisation;
 - (b) that an emergency authorisation took effect at the date and hour specified by the head of department concerned when issuing the emergency authorisation; and
 - (c) that applications for emergency authorisation should only be a last resort.

II. Date of next meeting

4. The Bills Committee noted that the next meeting had been scheduled for the same afternoon at 2:00 pm to continue discussion with the Administration.
5. The meeting ended at 1:00 pm.

Council Business Division 2
Legislative Council Secretariat
8 November 2006

**Proceedings of meeting of the
Bills Committee on
Interception of Communications and Surveillance Bill
on Saturday, 17 June 2006, at 9:00 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000311	Chairman Hon LAU Kong-wah Hon Emily LAU	Timing for discussion of papers issued on the previous day; starting time of the meeting in the afternoon	
000312 - 004834	Hon LAU Kong-wah Hon LI Kwok-ying Hon Emily LAU Hon Audrey EU Hon Albert HO Hon James TO Hon Mrs Selina CHOW Chairman Admin	Examination of clauses 20, 21 and 22; procedures for applications for the issue of emergency authorisation; whether an emergency authorisation took effect at the date and hours specified by the head of department concerned when issuing the emergency authorisation; provision of information about previous applications when making an application; the number of cases involving participant monitoring among the statistics on Type 2 surveillance for the period between 20 February 2006 and 19 May 2006	Admin to consider providing the number of cases involving participant monitoring among the statistics on Type 2 surveillance for the period between 20 February 2006 and 19 May 2006
004835 - 014108	Hon LAU Kong-wah Hon Howard YOUNG Hon Margaret NG Hon Albert HO Hon Emily LAU Hon James TO Chairman Admin	Examination of clause 23; spelling out explicitly that clause 23(3) was a penalty clause, such as by amending "If no application for confirmation of the emergency authorization is made within the period of 48 hours" along the lines of "where the officer has failed to make an application for confirmation within the period of 48 hours"; providing in the Bill that the Commissioner must investigate into the failure of seeking a confirmation from a panel judge within 48 hours of an emergency authorisation or an oral application; preventing the information destroyed from being used in other contexts, such as in affirmations of officers as source of information, by stipulating that there should be no direct or indirect	Admin to provide a response

Time marker	Speaker	Subject(s)	Action Required
		<p>use of the information; providing in the Bill that even though an application for confirmation failed to be made within 48 hours, the law enforcement officers should still submit to a panel judge a report on the emergency authorisation issued and explain why the confirmation had not been applied for in time; stipulating in the Bill that the information should be preserved for the sole purpose of investigation by the Commissioner, instead of destroying all information obtained in an emergency authorisation that was not confirmed as provided under clause 23(3)(a); whether the reference to "to the extent that it could not have been obtained without carrying out the interception or Type 1 surveillance" under clause 23(3)(a) was necessary</p>	
<p>014109 - 020111</p>	<p>Chairman Hon Margaret NG Hon LI Kwok-ying Hon James TO Admin</p>	<p>Examination of clause 24; whether a panel had the discretion to confirm an emergency authorisation with or without variation; effect of clause 24(3)(b); whether a panel judge could confirm part of an emergency authorisation and refuse to confirm the remaining part; providing in clause 24(3)(b) that the information should be destroyed, instead of giving the discretion to a panel judge</p>	<p>Admin to consider providing in clause 24(3)(b) that the information should be destroyed, instead of giving the discretion to a panel judge</p>
<p>Break</p>			

Time marker	Speaker	Subject(s)	Action Required
021541 - 023127	Hon Margaret NG Hon LAU Kong-wah Hon James TO Admin Chairman	Examination of clause 24; effect of clause 24(5); whether panel judges should be required to give reasons for confirmation of an emergency authorisation with variation; providing that once a confirmation was not approved, the emergency authorisation should be considered void, and immunity should be extended to officers in respect of criminal liability only	Admin to consider providing that once a confirmation was not approved, the emergency authorisation should be considered void, and immunity should be extended to officers in respect of criminal liability only
023128 - 031538	Chairman Hon LAU Kong-wah Hon Howard YOUNG Hon Emily LAU Hon LI Kwok-ying Hon James TO Admin	Examination of clause 25; criteria for making oral applications; why oral application was applicable to renewals; tape recording of oral applications; whether law enforcement agencies would resort to making oral applications before considering emergency applications; whether arrangements could be made for recording of oral applications (by panel judges or by applicants) for judge's authorisation	Admin to consider, in consultation with the Judiciary, whether arrangements could be made for recording of oral applications (by panel judges or by applicants) for judge's authorisation; to consider including statistics on oral applications and emergency applications in the annual reports of the Commissioner; to consider specifying in the Bill or the Code of Practice that oral applications for

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			'executive authorisations should be tape recorded or recorded on file
031539 - 032501	Hon LAU Kong-wah Admin Chairman Hon Margaret NG Hon LI Kwok-ying	Examination of clause 26; whether the reference to "to the extent that it could not have been obtained without carrying out the interception or covert surveillance" in clause 26(3)(b)(i) was necessary	Admin to consider whether the reference to "to the extent that it could not have been obtained without carrying out the interception or covert surveillance" in clause 26(3)(b)(i) was necessary
032502 - 033217	Admin Hon Margaret NG Hon James TO Chairman	Examination of clause 27; providing in the Code of Practice that written records would be made on the additional information provided to the authorising officer in respect of an application for executive authorisation; providing in the Code of Practice that notes made by the approving authority during oral applications had to be put on the relevant case file; whether the reference to "to the extent that it could not have been obtained without carrying out the interception or covert surveillance" in clause 27(3)(b) was necessary	Admin to consider providing in the Code of Practice that written records would be made on the additional information provided to the authorising officer in respect of an application for executive authorisation; to consider providing in the Code of Practice that notes made by the approving authority during oral applications "

Time marker	Speaker	Subject(s)	Action Required
			had to be put on the relevant case file; to consider whether the reference to "to the extent that it could not have been obtained without carrying out the interception or covert surveillance" in clause 27(3)(b) was necessary
033218 - 033353	Admin Chairman	Examination of clause 28	
033354 - 035942	Admin Hon LAU Kong-wah Hon Howard YOUNG Hon Emily LAU Chairman	Examination of clause 29; whether the existing mechanism for compensation for damage caused to property during law enforcement operations would be sufficient for compensating damage to property incurred in carrying out covert operations, and whether a special compensation mechanism would be necessary	Admin to consider whether the existing mechanism for compensation for damage caused to property during law enforcement operations would be sufficient for compensating damage to property incurred in carrying out covert operations, and whether a special compensation mechanism would be necessary

Time marker	Speaker	Subject(s)	Action Required
035943 - 040037	Chairman	Date of next meeting	

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