立法會
Legislative Council

Ref : CB2/BC/2/05

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

**Minutes of meeting
held on Tuesday, 1 August 2006, at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LI Kwok-ying, MH, JP
Dr Hon Joseph LEE Kok-long, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP

Members absent : 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 David LI Kwok-po, GBS, JP
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon Bernard CHAN, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, JP
Hon Tommy CHEUNG Yu-yan, JP

Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC

Public Officers : Mr Stanley YING
attending Permanent Secretary for Security

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

Clerk in : Ms Amy YU
attendance Senior Council Secretary (2)3

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

Miss Josephine SO
Council Secretary (2) 1

Miss Helen DIN
Legislative Assistant (2) 1

I. Meeting with the Administration

The Bills Committee discussed with the Administration the updated draft Code of Practice (LC Paper No. CB(2)2872/05-06(01)) which was tabled at the meeting (index of proceedings attached at **Annex**).

2.　The Bills Committee requested the Administration -

Footnotes 3 and 9

(a)　to consider moving the contents of footnote 3 and footnote 9 to the main body of the Code of Practice;

(b)　to consider rephrasing the contents of footnote 3 in the form of directives as with footnote 9, rather than as quotations from the speech to be made

by the Secretary for Security at the resumption of the Second Reading debate on the Bill;

Paragraph 12 – Definition of "private information"

(c) to consider amending "may include activities of a professional or business nature" in the definition of "private information" along the lines of "include activities of a professional or business nature";

Paragraph 13 – Reasonable expectation of privacy

(d) to consider deleting the last sentence of paragraph 13, i.e. "An individual does not have a subjective expectation of privacy if he has been put on notice that his activities in a specified area would be watched by others for legitimate purpose";

Paragraphs 16 to 22- Aural surveillance and optical surveillance

(e) to consider amending the subheading "Aural surveillance" along the lines of "Surveillance using listening devices";

(f) to consider deleting the words "with no one else sitting or standing nearby" in paragraph 17;

(g) to consider adding to the last sentence in paragraph 17 that in cases where law enforcement officers intentionally approached persons having dinner in a restaurant with the purpose of listening to their conversation with the use of a surveillance device, applications for prescribed authorisation should be made;

(h) to consider deleting words "at the backstage" in paragraph 19;

(i) to consider amending paragraphs 18 and 22 along the lines that a person in private premises might not have a reasonable expectation of privacy in respect of his spoken words/activities if such spoken words/activities could be heard/seen by a person without the aid of a device in a public place or in a place where he had the right to be there;

Paragraph 37 – Public security

(j) to consider adding in paragraph 37 some examples of threats which had an indirect impact on Hong Kong's public security;

(k) to consider stating explicitly in paragraph 37 that the phrase "carried on by violent means" did not include minor scuffles during demonstrations

or other public gatherings;

Paragraph 39 – Proportionality test

(l)   to consider deleting the last sentence of paragraph 39, i.e. "The operation will not be proportionate if it is excessive in the circumstances of the case or if the information could reasonably be obtained by other less intrusive means.";

Paragraph 45 – Information to be provided in an application for prescribed authorisation

(m)   to consider bringing home to law enforcement officers during training/briefings that all relevant information should be included in an application for prescribed authorisation, including information which might undermine the application;

Annexes to of Code of Practice

(n)   to consider, in designing the electronic versions of the forms at the Annex, specifying the fields for mandatory input, where applicable; and

Full set of Code of Practice

(o)   to provide a full set of the updated Code of Practice, in both Chinese and English, to members when available.

II.   Any other business

Giving notice for moving Committee Stage amendments

3.   The Chairman said that the requisite period for giving notice of moving Committee Stage amendments (CSAs) to a bill (i.e. not less than 7 clear days before the day on which the bill was to be considered in committee) under Rule 57(2) of the Rules of Procedure might not be adequate to deal with situations where a large number of CSAs had been proposed.   Ms Emily LAU and Mr James TO shared the Chairman's view.   Mr James TO said that the issue could be looked into by the Committee on Rules of Procedure.

4.   The Chairman thanked members, the Administration, and the Secretariat staff for their assistance in the scrutiny work.

5. The meeting ended at 11:27 am.

Council Business Division 2
<u>Legislative Council Secretariat</u>
29 December 2006

**Proceedings of meeting of the
Bills Committee on
Interception of Communications and Surveillance Bill
on Tuesday, 1 August 2006, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000145 - 000238	Chairman	Opening Remarks	
000239 - 000525	Admin Chairman	Briefing by the Administration on the updated Code of Practice (LC Paper No. CB(2)2872/05-06(01) - paragraphs 4-5	
000526 - 002240	Hon Emily LAU Admin Hon James TO Chairman Hon LEUNG Kwok-hung	Consequences of non-compliance with the footnotes in the Code of Practice; whether to move the contents of footnote 3 and footnote 9 to the main body of the Code of Practice; whether to rephrase the contents of footnote 3 in the form of directives as with footnote 9, rather than as quotations from the speech to be made by the Secretary for Security at the resumption of the Second Reading debate on the Bill	**Admin to consider moving the contents of footnote 3 and footnote 9 to the main body of the Code of Practice; to consider rephrasing the contents of footnote 3 in the form of directives as with footnote 9, rather than as quotations from the speech to be made by the Secretary for Security at the resumption of the Second Reading debate on the Bill**
002241 - 002733	Admin	Briefing by the Administration on paragraphs 12,13 and 15 under the heading "Covert surveillance", and paragraphs 16-19 under the subheading "Aural surveillance"	
002734 - 003946	Hon James TO Admin Hon Emily LAU	Definition of "private information"(paragraph 12); whether there was a need to amend "may include activities of a professional or business nature" in the definition of "private	**Admin to consider amending "may include activities of a professional or business nature" in the definition of "private information" along the**

Time marker	Speaker	Subject(s)	Action Required
		information"; whether the definition of "private information" should be set out in the Ordinance rather than the Code of Practice	**lines of "include activities of a professional or business nature"**
003947 - 005429	Hon Emily LAU Hon James TO Admin	Examples of situations where an individual "has been put on notice that his activities in a specified area would be watched by others for legitimate purpose" (i.e. last sentence of paragraph 13); whether the last sentence of paragraph 13 should be deleted	**Admin to consider deleting the last sentence of paragraph 13, i.e. "An individual does not have a subjective expectation of privacy if he has been put on notice that his activities in a specified area would be watched by others for legitimate purpose"**
005430 - 011001	Hon Emily LAU Admin Hon James TO SALA1	Whether the subheading "Aural surveillance" should be replaced by "Surveillance using listening devices"; whether the words "with no one else sitting or standing nearby" in paragraph 17 should be deleted; whether to add to the last sentence in paragraph 17 that in cases where law enforcement officers intentionally approached persons having dinner in a restaurant with the purpose of listening to their conversation with the use of a surveillance device, applications for prescribed authorisation should be made	**Admin to consider amending the subheading "Aural surveillance" along the lines of "Surveillance using listening devices"; to consider deleting the words "with no one else sitting or standing nearby" in paragraph 17; to consider adding to the last sentence in paragraph 17 that in cases where law enforcement officers intentionally approached persons having dinner in a restaurant with the purpose of listening to their conversation with the use of a surveillance device, applications for prescribed authorisation should be made**

Time marker	Speaker	Subject(s)	Action Required
011002 - 011711	Hon LEUNG Kwok-hung Admin	Surveillance carried out without the use of any surveillance device	
011712 - 011849	Hon Emily LAU Admin	Whether the words "at the backstage" in paragraph 19 should be deleted	**Admin to consider deleting the words "at the backstage" in paragraph 19**
011850 - 013104	Hon James TO Admin Chairman	Whether a person had reasonable expectation of privacy if his words spoken within private premises could be heard without the aid of a device by persons outside the premises (paragraph 18)	
013105 - 013122	Chairman	Continuing the meeting beyond 10:30 am if necessary	
013123 - 013754	Hon Emily LAU Admin Chairman	Whether there was a need to amend paragraphs 18 and 22 along the lines that a person in private premises might not have a reasonable expectation of privacy in respect of his spoken words/activities if those words/activities could be heard/seen by a person in a public place or in a place where he had the right to be there, without the aid of a device	**Admin to consider amending paragraphs 18 and 22 along the lines that a person in private premises might not have a reasonable expectation of privacy in respect of his spoken words or activities if those words/activities could be heard/seen by a person in a public place or in a place where he had the right to be there, without the aid of a device**
013755 - 013924	Chairman Admin	Briefing by the Administration on paragraph 26 on the definition of "public place"	
013925 - 014259	Chairman Admin	Briefing by the Administration on paragraphs 36-41 under the heading "Prescribed Authorisations"	

Time marker	Speaker	Subject(s)	Action Required
014300 - 015126	Hon Emily LAU Admin Chairman Hon Howard YOUNG	Adding to paragraph 37 some examples of threats which had an indirect impact on Hong Kong's public security ; meaning of the word "likely" in paragraph 37	**Admin to consider adding to paragraph 37 some examples of threats which had an indirect impact on Hong Kong's public security**
015127 - 015737	Hon James TO Admin	Meaning of "advocacy, protest or dissent" and "carried on by violent means" (paragraph 37); whether there was a need to state explicitly in paragraph 37 that the phrase "carried on by violent means" did not include minor scuffles during demonstrations or other public gatherings	**Admin to consider stating explicitly in paragraph 37 that the phrase "carried on by violent means" did not include minor scuffles during demonstrations or other public gatherings**
015738 - 020504	Hon Emily LAU Admin	Giving examples to illustrate operations which were considered excessive in the circumstances of the case (paragraph 39); suggestion to delete the last sentence of paragraph 39	**Admin to consider deleting the last sentence of paragraph 39**
020505 - 020722	Chairman Admin	Briefing by the Administration on paragraphs 45 and 50 under the heading "Application procedures - General rules"	
020723 - 023152	Hon James TO Admin Hon Howard YOUNG Chairman Hon LEUNG Kwok-hung	Whether there was a need to state explicitly in paragraph 45 that the applicant for prescribed authorisation had the duty to make a full disclosure of all information relevant to the determination of the application, including information which might undermine his application; request that the Administration should bring home to law enforcement officers during training/briefings that all	**Admin to consider bringing home to law enforcement officers during training/briefings that all relevant information should be included in an application for prescribed authorisation, including information which might undermine the application.**

Time marker	Speaker	Subject(s)	Action Required
		relevant information should be included in an application for prescribed authorisation, including information which might undermine the application.	
023153 - 023221	Chairman Admin	Briefing by the Administration on paragraph 54 under the heading "Issue of Judge's Authorisations"	
023222 - 023331	Chairman Hon James TO Admin	Specifying the exact date and hour at which a emergency authorisation began to take effect (paragraphs 62 and 63 of the first draft of the Code of Practice)	
023332 - 023411	Chairman Admin	Briefing by the Administration on paragraph 66 under the heading "Issue of Executive Authorisations"	
023412 - 023723	Chairman Admin	Briefing by the Administration on paragraphs 90-91, 94 and 96 under the heading "Oral Applications"; Annexes to the Code of Practice	
023724 - 023909	Hon Howard YOUNG	Whether the Annexes were available electronically; suggestion to specify the fields for mandatory input in designing the electronic versions of the forms at the Annex	**Admin to consider, in designing the electronic versions of the forms at the Annex, specifying the fields for mandatory input, where applicable**

Time marker	Speaker	Subject(s)	Action Required
023910 - 024624	Hon James TO	How law enforcement agencies would add a new telephone number, email address etc. for a subject-based authorisation for interception after obtaining the necessary approval from a senior assistant commissioner (paragraphs 90-91 of the first draft of the Code of Practice)	
024625 - 024709	Chairman Hon Emily LAU	Availability of the full set of updated Code of Practice, in both Chinese and English	**Admin to provide the full set of updated Code of Practice, in both Chinese and English, to members when available**
024710 - 024814	Chairman Admin	Paper provided by the Judiciary Administration setting out the system to be put in place by the Judiciary to deal with documents and records relating to applications for judge's authorisation [LC Paper No. CB(2)2889/05-06(01)]	
024815 - 025322	Hon Emily LAU Chairman SALA1 Hon James TO	President's' rulings on the Committee Stage amendments (CSAs) proposed by Members; whether the period for giving notice of CSAs under Rule 57(2) of the Rules of Procedure was adequate to deal with situations where a large number of CSAs had been proposed	
025323 - 025640	Hon James TO Admin	Whether the Administration would adopt any of the CSAs proposed by Members	

Time marker	Speaker	Subject(s)	Action Required
025641 - 025707	Chairman	Chairman's expression of thanks to members, the Administration, and the Secretariat staff for their assistance in the scrutiny work	

Council Business Division 2
Legislative Council Secretariat
29 December 2006