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本函檔號 OUR REF.: SBCR 3/2/3231/94
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1 April 2006

Mr Roderick B. WOO
Privacy Commissioner for Personal Data
12/F, 248 Queen's Road East
Wanchai
Hong Kong

Dear Mr Woo,

Interception of Communications and Surveillance Bill

Thank you for your letter of 28 March 2006 enclosing your comments on the Interception of Communications and Surveillance Bill (the Bill). We are most grateful for the very detailed comments, which we will study carefully and take into account as we discuss the Bill with the Bills Committee. At this point, I would like to make a few quick observations.

You have made a number of suggestions on various issues in the Bill, such as the conditions for issue, renewal or continuance of prescribed authorization, notification of targets of operations, emergency applications, renewals, and powers of the Commissioner on Interception of Communications and Surveillance (the Commissioner). We have explained our thoughts on some of these and other issues to the Panel on Security and the Bills Committee in our papers to the Panel and the Committee and at the relevant meetings. Such discussions will no doubt continue at the Bills Committee.

We would like to clarify our intention behind certain issues of the Bill, such as –

- Type 2 surveillance. Paragraph (b) of the definition under Type 2 surveillance applies only to tracking and optical surveillance devices. An authorization for Type 2 surveillance does not authorize the installation of a device in adjacent premises to record the words spoken by the subject next door.

- Device retrieval warrants. A prescribed authorization already authorizes the retrieval of devices under clause 30. Device retrieval warrants are only necessary where, for some reason, the devices cannot be retrieved before an authorization expires or is discontinued. Once the authorization has expired or has been discontinued, law enforcement officers would no longer be able to use the device to obtain personal information lawfully.
- Code of practice. Clause 59(5) provides that a failure to comply with any provision of the Code is for all purposes not of itself to be regarded as a failure to comply with any provision of this Ordinance. The formulation is similar to that in a number of codes of practice. We note, for example, the Personal Data (Privacy) Ordinance (PD(P)O) also stipulates that a breach of the codes made under the PD(P)O shall not of itself render the data user liable to any civil or criminal proceedings. This is certainly not an "absolute exoneration". In any case, the Commissioner has the general power to review compliance of departments on the "relevant requirements" (defined to include, inter alia, the code of practice) and report to the Chief Executive, the Secretary for Justice or the head of department as he deems appropriate.

We will clarify these and other issues regarding your interpretation of some of the clauses as the Bills Committee proceeds with its discussion.

You have also commented on the specific scope and wording of some clauses. We will take them into account when we finalise the clauses in discussion with the Bills Committee.

Before closing, may I thank you again for your comments on the Bill and look forward to further exchanges with you.

Yours sincerely,



(Stanley YING)
for Secretary for Security

c.c. Mrs Sharon Tong, Clerk to Bills Committee 2509 0775