



Our Ref. : PCO(O)115/156 pt.12
Your Ref.: SBCR 3/2/3231/94

25 April 2006

By Fax & By Post

Mr Stanley Ying, JP
Permanent Secretary for Security
Security Bureau
Government Secretariat
Lower Albert Road
Hong Kong

Dear

Stanley

Interception of Communications and Surveillance Bill (“the Bill”)

Referring to your letter of 1 April 2006 explaining the legislative intent behind certain issues of the Bill, I would like to further elaborate as follows:

Type 2 surveillance

While paragraph (b) of the definition does not apply to the recording of words spoken by any person, it still raises privacy concern under paragraph (a) particularly in view of the provision found in paragraph (a)(ii) which allows for surveillance to be carried out by persons other than the participating party.

Device retrieval warrant

It is precisely for the situations mentioned by you that I suggest making it a mandatory obligation on the part of the law enforcement agencies (“LEAs”) to apply for issuance of a device retrieval warrant. This is necessary for the purpose of safeguarding against unlawful collection of personal data through surveillance devices.

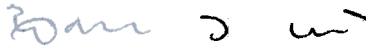
Code of Practice

Although the Commissioner on Interception of Communications and Surveillance has the general power to review compliance of the code of practice by the LEAs, the effectiveness of a code of practice is questionable in the absence of provisions in the Bill stating the legal effect of its breach. The admissibility of evidence on breach of a provision of the code of practice as provided for under section 13(2) of the Personal Data

(Privacy) Ordinance (“the Ordinance”) is seen to be particularly useful and relevant in view of the corresponding penal sanction imposed on breach of the provisions of the Ordinance.

hope the above serve to clarify the points made in my previous letter of 28 March 2006.

Yours sincerely,



(Roderick B WOO)
Privacy Commissioner for Personal Data

- c.c. : Clerk to Bills Committee (Attn : Mrs Sharon Tong) (By Fax : 2509 0775)
- c.c. : Department of Justice (By Fax : 2877 2130)
(Attn : Mr Ian Wingfield, JP – Law Officer (International Law))
- c.c. : Secretary for Home Affairs (Attn : Ms Joanna Choi) (By Fax : 2573 8461)