

立法會
Legislative Council

LC Paper No. CB(2)1586/14-15
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/14

**Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015**

**Minutes of meeting
held on Monday, 11 May 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon YIU Si-wing (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Frankie YICK Chi-ming
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan

Public Officers : Item I
attending

Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security E

Ms Alice YEUNG Lai-shan
Assistant Secretary for Security E2

Mr Godfrey KAN Ka-fai
Senior Assistant Solicitor General
Department of Justice

Ms Monica LAW Man-yuen
Senior Assistant Law Draftsman (II)2
Department of Justice

Clerk in : Miss Betty MA
attendance Chief Council Secretary (2) 1

Staff in : Mr KAU Kin-wah
attendance Senior Assistant Legal Adviser 3

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

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

2. Members requested the Administration to provide information, if available, on the respective number and percentage of cases in which law enforcement agencies obtained information from Internet service providers with or without a court warrant in the past two years.

II. Any other business

3. Members noted that the next meeting had been scheduled for 1 June 2015 at 8:30 am to continue discussion with the Administration.
4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
29 May 2015

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Monday, 11 May 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000905	Chairman	Opening remarks	
000906 - 001742	Admin	Briefing on Annex B to the Administration's response to issues raised at the meetings on 9 April and 2 May 2015 (LC Paper No. CB(2)1391/14-15(01).	
001743 - 002712	Chairman Mr James TO Admin	Mr James TO's view that the Administration should explain with examples whether a message transmitted through instant messaging applications fell within the scope of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589). Administration's response that whether the interception of a message was within the scope of ICSO depended on whether the message fell within the definition of "communication" under ICSO and whether it was transmitted by a system falling within the definition of "telecommunications system" under the Telecommunications Ordinance (Cap. 106).	
002713 - 003547	Chairman Mr Charles MOK Admin	Mr Charles MOK's concerns regarding - (a) whether interception of electronic mails fell within the scope of ICSO; (b) whether authorizations had been made under ICSO for investigation of cyber crime; and (c) whether a court warrant was required for law enforcement agencies ("LEAs") when obtaining information stored in the servers of Internet service providers ("ISPs") which was related to messages transmitted through instant messaging programmes.	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Administration's response that -</p> <ul style="list-style-type: none"> (a) interception of an electronic communication transmitted by a telecommunications system fell within the scope of ICSO; and (b) LEAs would apply for a court warrant when they intended to obtain information other than metadata from ISPs. 	
003548 - 004248	Chairman Mr SIN Chung-kai Admin	<p>Mr SIN Chung-kai's question regarding -</p> <ul style="list-style-type: none"> (a) whether the interception of messages transmitted through Whatsapp Messenger fell within the scope of ICSO; and (b) whether authorizations had ever been made under ICSO for interception of messages transmitted through Whatsapp Messenger. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) disclosure of details on operational arrangements might reveal law enforcement capabilities of LEAs to criminals, who might be able to elude justice, thus undermining LEAs' strength in crime investigation and protection of public security; (b) an "intercepting act" under ICSO referred to interception of the contents of a communication in the course of its transmission by a telecommunications system; (c) there was no mention in the annual reports of the Commissioner on Interception of Communications and Surveillance ("the Commissioner") of any interception of messages transmitted by instant messaging programmes; and (d) an application to panel judges for interception could only be made with strong justifications where other less intrusive means of investigation were 	

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		<p>considered not available or inappropriate and having regard to the conditions in section 3 of ICSO.</p>	
004249 - 004958	<p>Chairman Deputy Chairman Admin</p>	<p>The Deputy Chairman's concern regarding whether any application under ICSO had been rejected by panel judges.</p> <p>Administration's response that -</p> <p>(a) between the commencement of ICSO and the end of 2013, a total of 223 applications had been rejected by panel judges, representing about 1.9% of the total number of applications; and</p> <p>(b) since the commencement of ICSO, 2 819 persons had been arrested as a result of or further to operations under ICSO.</p>	
004959 - 005659	<p>Chairman Mr Christopher CHUNG Admin</p>	<p>Mr Christopher CHUNG's question regarding -</p> <p>(a) the interception of group communications which involved third parties who were not the subject of investigation; and</p> <p>(b) whether other crime uncovered in the interception of communications would be followed up by LEAs.</p> <p>Administration's response that -</p> <p>(a) LEAs, when submitting an application for interception, had to inform panel judges of the targets involved as well as the detailed justifications; and</p> <p>(b) LEAs would take follow up actions as appropriate if there were other crimes uncovered during the interception operation. The panel judges would be notified if there were any material change in circumstances.</p>	

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005700 - 010227	Chairman Mr CHAN Kam-lam	<p>Mr CHAN Kam-lam's views that -</p> <ul style="list-style-type: none"> (a) there was a need for LEAs to carry out interception of communications and surveillance for the detection of crime; (b) the detailed operational information of LEAs should not be disclosed, as such disclosure might affect LEAs' effectiveness in law enforcement; and (c) it would be more appropriate for policy issues which fell outside the scope of the Bill to be followed up by the relevant Panel. 	
010228 - 010842	Chairman Admin	<p>The Chairman's question regarding -</p> <ul style="list-style-type: none"> (a) whether the interception of a message transmitted by an instant messaging programme such as Whatsapp Messenger fell within the meaning of "intercepting act" under ICSO during the course of transmission by means of a telecommunications system; and (b) whether a court warrant was required when LEAs obtained information from ISPs for investigation of the crimes referred to in paragraph 7 of the Administration's paper. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) an "intercepting act" under ICSO referred to interception of the contents of a communication in the course of its transmission by a telecommunications system; and (b) LEAs would apply for a court warrant when they intended to obtain information other than metadata from ISPs. Examples of crimes the investigation of which would likely require information from ISPs were set out in paragraph 7 of the Administration's paper. 	

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010843 - 011643	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's concerns regarding the respective number and percentage of cases in which LEAs obtained information from ISPs with and without a court warrant in the past two years.</p> <p>Administration's response that -</p> <p>(a) the proposal in the Bill of empowering the Commissioner and staff designated by him to examine products of interception and surveillance would serve as a strong deterrent against any malpractice or concealment by LEAs; and</p> <p>(b) it would provide the information requested by Ms Cyd HO, if available.</p>	Admin
011644 - 012725	Chairman Mr James TO Admin	<p>Mr James TO's view that -</p> <p>(a) a proper balance should be struck under ICSO between the protection of privacy and law enforcement; and</p> <p>(b) the scope of interception of communications under ICSO should be reviewed having regard to the latest trend in the mode of communication among members of the public.</p> <p>Administration's response that -</p> <p>(a) a key objective of the design of ICSO was to strike a balance between the efficacy of law enforcement and protection of privacy;</p> <p>(b) the scope of interception of communications under ICSO was outside the scope of the Bill;</p> <p>(c) the Panel on Security had been consulted on and expressed support for the scope and the proposals in the Bill; and</p> <p>(d) LEAs would apply for a court warrant if they intended to obtain information other than metadata from ISPs.</p>	

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012726 - 013814	Chairman Mr Charles MOK Admin	<p>Mr Charles MOK's concerns regarding whether an application for a court warrant would be submitted only in cases where an ISP refused to provide information stored inside its server.</p> <p>Mr MOK's concern that some ISPs had informed him that there had been occasions when police officers copied information stored inside their servers without a court warrant.</p> <p>Administration's response that -</p> <p>(a) LEAs would apply for a court warrant when obtaining information other than metadata from ISPs; and</p> <p>(b) a dedicated team under the Police's Cyber Security and Technology Crime Bureau would coordinate the obtaining of information from ISPs for detection of crime.</p> <p>The Chairman's remark that it would be more appropriate for such issues to be followed up at a meeting of the relevant Panel.</p>	
013815 - 015304	Chairman Mr Dennis KWOK Mr SIN Chung-kai Admin	<p>View of Mr Dennis KWOK and Mr SIN Chung-kai that the definition of relevant terms relating to interception of communications, which fell within the scope of ICSO, should be reviewed and updated to catch up with technological developments in telecommunications.</p> <p>Mr SIN Chung-kai's view that an application for a court warrant should not be submitted only when an ISP refused to provide information stored inside its server.</p> <p>Administration's response that -</p> <p>(a) although the terms were defined in ICSO, these definitions fell outside the scope of the Bill;</p> <p>(b) the Commissioner and LEAs had not raised concerns about the adequacy of ICSO to cope with latest developments in telecommunication; and</p>	

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		(c) LEAs would have to apply for a court warrant when obtaining information other than metadata from ISPs.	
015305 - 015737	Chairman Mr Christopher CHUNG Admin	Mr Christopher CHUNG's concern about whether the interception of communications by persons other than public officers fell within the scope of ICSO. Administration's response that such a subject fell outside the scope of ICSO. The matter had been examined by the Law Reform Commission and its recommendations were being followed up by another policy bureau.	
015738 - 020049	Chairman Ms Emily LAU Admin	Ms Emily LAU's question regarding whether the interception of a message transmitted by an instant messaging programme such as Whatsapp Messenger fell within the scope of ICSO. Administration's response that an "intercepting act" under ICSO referred to interception of the contents of a communication in the course of its transmission by a telecommunications system. The act by an LEA would be caught by ICSO if it met the relevant statutory definitions.	