

立法會
Legislative Council

LC Paper No. CB(2)1770/14-15
(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, 1 June 2015, at 8:30 am
in Conference Room 2 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 Paul TSE Wai-chun, JP
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Frankie YICK Chi-ming
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon LEUNG Che-cheung, BBS, MH, 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 Kwok-kin, SBS
Hon WONG Yuk-man
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

Miss Emily NG Wing-shan
Assistant Secretary for Security E3

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

Miss Lulu YEUNG
Clerical 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 -
 - (a) statistics maintained by the Judiciary on the respective number of approved and rejected applications for search warrant by law enforcement agencies ("LEAs") for obtaining information from Internet service providers ("ISPs") as well as the reasons for rejection in the past two years, if available;
 - (b) information on the number of search warrants issued by magistrates to LEAs for obtaining from ISPs messages transmitted by instant messaging programmes in the past year;
 - (c) a breakdown by nature of the different types of technology crimes set out in paragraph 2 of the Administration's response to issues raised at the meeting on 11 May 2015 (LC Paper No. CB(2)1572/14-15(01)); and
 - (d) a response to issues raised in the submissions from deputations on the Bill.

3. The Administration advised that the views of members on the scope of Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) would be taken into consideration if there was a need to review the definition of "interception" or "telecommunications system" under ICSO in the future .

II. Any other business

4. Members noted that the next meeting had been scheduled for 29 June 2015 at 2:30 pm to continue discussion with the Administration.

(Post-meeting note: On the instruction of the Chairman, two additional meetings were subsequently scheduled for 22 June 2015 at 2:30 pm and 14 July 2015 at 2:30 pm.)

5. There being no other business, the meeting ended at 10:31 am.

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Monday, 1 June 2015, at 8:30 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 001054	Chairman	Opening remarks	
001055 - 001445	Admin	Briefing on the Administration's response to issues raised at the meeting on 11 May 2015 (LC Paper No. CB(2)1572/14-15(01)).	
001446 - 001846	Mr SIN Chung-kai Ms Cyd HO Admin Chairman	Concerns of Mr SIN Chung-kai as well as Ms Cyd HO and the Administration's response regarding availability of statistics on cases in which law enforcement agencies ("LEAs") obtained information from Internet service providers ("ISPs") with a search warrant in the past two years. The Administration was requested to provide statistics maintained by the Judiciary on the respective number of approved and rejected applications for search warrant by LEAs for obtaining information from ISPs, if available.	Admin
001847 - 002213	Ms Cyd HO Admin Chairman	Ms Cyd HO's concerns and the Administration's response regarding the nature of different types of technology crimes set out in paragraph 2 of the Administration's response to issues raised at the meeting on 11 May 2015 (LC Paper No. CB(2)1572/14-15(01)). The Administration was requested to provide a breakdown by nature of the different types of technology crimes.	Admin
002214 - 002639	Chairman Admin	Briefing on Annex A 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)).	

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002640 - 005535	Chairman Mr James TO Mr SIN Chung-kai Admin	<p>Views of Mr James TO and Mr SIN Chung-kai that -</p> <p>(a) the criteria for the issue of an authorization under the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) were more stringent than the criteria for the issue of a search warrant; and</p> <p>(b) the scope of ICSO should be expanded to cover the obtaining from ISPs by LEAs of information which had been transmitted by an instant messaging programme.</p> <p>Administration's response that -</p> <p>(a) the existing scope of ICSO was adequate and the Administration did not see any need for expanding the scope of ICSO;</p> <p>(b) the regime under ICSO was used by LEAs very actively. Since the commencement of ICSO, over 2 400 persons had been arrested as a result of or further to operations under ICSO;</p> <p>(c) interception could only be carried out for the prevention or detection of serious crime, for which a person could be sentenced on conviction to not less than seven years' imprisonment or for the protection of public security;</p> <p>(d) information obtained by interception of telecommunications under ICSO, which was conducted in a covert manner, was used as intelligence instead of evidence;</p> <p>(e) information obtained in an operation involving the execution of a search warrant, which would become overt soon after approval of the application concerned, could be adduced as evidence in court;</p> <p>(f) LEAs had to observe stringent requirements when applying for search</p>	

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		<p>warrants from magistrates. Apart from giving justifications, LEAs were required to take an oath before the magistrate; and</p> <p>(g) the views of Mr TO and Mr SIN would be taken into consideration if there was a need to review the definition of interception or telecommunications system under ICSO in the future.</p>	
005536 - 011031	Mr James TO Chairman Admin SALA3	<p>Mr James TO's view that -</p> <p>(a) a message transmitted by an instant messaging programme differed from a telephone call in that the former was stored in the ISP's server after transmission; and</p> <p>(b) the Administration should either :</p> <p>(i) expand the scope of ICSO to cover messages transmitted by instant messaging programmes; or</p> <p>(ii) tighten the criteria for issue of search warrants relating to messages transmitted by instant messaging programmes; or</p> <p>(iii) issue guidelines to LEAs to restrict the use of search warrants to obtain messages transmitted by instant messaging programmes until a period of, say, three months after transmission.</p> <p>Administration's response that -</p> <p>(a) the existing scope of ICSO was adequate and the Administration had no plans to expand the scope of ICSO;</p> <p>(b) LEAs had to observe stringent requirements when applying for search warrants; and</p> <p>(c) Mr TO's views would be taken into consideration if there was a need to</p>	

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		<p>review the definition of interception or telecommunications system under ICSO in the future.</p> <p>SALA3's advice that the addressing of Mr TO's concerns would necessitate amendments to various Ordinances relating to search warrants, which were outside the scope of the Bill.</p>	
011032 - 013406	<p>Chairman Deputy Chairman Mr MA Fung-kwok Mr SIN Chung-kai Mr James TO Admin</p>	<p>Views of the Deputy Chairman, Mr MA Fung-kwok, Mr SIN Chung-kai, Mr James TO and the Administration's response regarding whether there were differences in the employment of interception of communications and search warrants in the investigation of crime.</p> <p>Views of Mr MA Fung-kwok and Mr YIU Si-wing that it was more appropriate to discuss issues relating to search warrants at meetings of the relevant Panel, as they were outside the scope of the Bill.</p> <p>The Administration was requested to provide, in addition to statistics maintained by the Judiciary on the respective number of approved and rejected applications for search warrant by LEAs for obtaining information from ISPs in the past two years, the reasons for rejection, if available.</p>	Admin
013407 - 014656	<p>Mr James TO Ms Emily LAU Chairman Admin</p>	<p>Concerns of Mr James TO and Ms Emily LAU regarding why statistics on request for information by LEAs to ISPs were available but those involving application for search warrants were not available.</p> <p>Administration's response that -</p> <p>(a) statistics on request for information by LEAs to ISPs were available because a dedicated team under the Police's Cyber Security and Technology Crime Bureau was responsible for coordinating the obtaining of information from ISPs for investigation of crime; and</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>(b) records of application for search warrants were kept in individual case files and substantial resources would be required for compiling the statistics required from individual case files.</p> <p>The Administration was requested to provide information on the number of search warrants issued by magistrates to LEAs for obtaining from ISPs messages transmitted by instant messaging programmes in the past year.</p>	Admin
014657 - 015116	Mr Paul TSE Admin	Mr Paul TSE's questions and the Administration's response regarding the difference in contexts involving interception of communications and search warrants in the investigation of crime.	
015117 - 015830	Ms Claudia MO Admin	<p>Ms Claudia MO's concern regarding whether there was adequate protection against abuse by LEAs in the obtaining of information from ISPs.</p> <p>Administration's response that -</p> <p>(a) an application to panel judges for interception could only be made with strong justifications where other less intrusive means of investigation were considered not available or inappropriate. Such applications were considered by panel judges having regard to the conditions stipulated in section 3 of ICSO which laid down the proportionality and necessity tests; and</p> <p>(b) LEAs had to observe stringent requirements when applying for search warrants from magistrates.</p>	
015831 - 020131	Ms Emily LAU Clerk Chairman Admin	<p>Ms Emily LAU's concern regarding whether the Administration had provided a response to the submission of the Hong Kong Journalists Association.</p> <p>The Administration was requested to provide a response to issues raised in the submissions from deputations on the Bill.</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
020132 - 020220	Chairman Ms Emily LAU	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
22 June 2015