

立法會
Legislative Council

LC Paper No. CB(2)1939/14-15
(These minutes have been seen
by the Administration)

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

**Minutes of meeting
held on Monday, 29 June 2015, at 2:30 pm
in Conference Room 3 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 CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
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 Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Hon WONG Yuk-man
Hon KWOK Wai-keung
Dr Hon Elizabeth QUAT, 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
Acting 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

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 -
- (a) advise whether the intercept products of all cases involving legal professional privilege, journalistic material, non-compliance and irregularity referred to in all the annual reports of the Commissioner on Interception of Communications and Surveillance ("the Commissioner") were retained by law enforcement agencies ("LEAs") and whether the intercept products of other interception cases had been destroyed by LEAs;
 - (b) explain whether the Commissioner was empowered under the Bill to require an LEA to retain all or certain categories of intercept products for a certain period of time for his checking;
 - (c) explain the operation and interactions of section 53 and section 59 of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) in relation to the time limit for destruction of intercept products;
 - (d) consider setting out in law or in the Commissioner's annual reports the requirement for LEAs to retain intercept products for a certain period of time specified by the Commissioner for his checking;
 - (e) explain why different LEAs had different policies regarding the range of time for destruction of intercept products;
 - (f) provide information on the longest and shortest range of time for destruction of intercept products by LEAs;
 - (g) explain why the time limit for destruction of originals of intercept products was different from that for the summaries and extracts of the originals;
 - (h) consider requiring LEAs to maintain statistics for the coming three months on the respective numbers of approved and rejected applications for search warrant to obtain information from Internet service providers and provide such statistics to the Bills Committee;

- (i) consider requiring LEAs to maintain statistics on the total duration of communications intercepted under ICSO and the quantity of documents preserved in relation to such operations; and
- (j) advise whether persons other than officers of the designated LEAs, including persons who were not law enforcement officers and employees of outsourced contractors were permitted to listen to communications intercepted.

II. Any other business

- 3. Members noted that the next meeting had been scheduled for 14 July 2015 at 2:30 pm to continue discussion with the Administration.
- 4. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 2
Legislative Council Secretariat
17 July 2015

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Monday, 29 June 2015, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000903	Chairman	Opening remarks	
000904 - 001947	Admin Chairman	Briefing by the Administration on its response to issues raised at the Bills Committee meeting on 22 June 2015 (LC Paper No. CB(2)1803/14-15(01)).	
001948 - 002524	Chairman Mr NG Leung-sing Admin	Mr NG Leung-sing's concerns and the Administration's response regarding - (a) how the Commissioner on Interception of Communications and Surveillance ("the Commissioner") would perform checking of protected products after the Bill was passed; and (b) the additional manpower required for assisting the Commissioner in performing checking of protected products.	
002525 - 003623	Ms Claudia MO Admin Chairman	Ms Claudia MO's concerns and the Administration's response regarding - (a) the destruction policy of law enforcement agencies ("LEAs") in relation to originals of intercept products, summaries and extracts of the originals, surveillance products, other documents and records in relation to prescribed authorizations under the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589); and (b) the requirement that a protected product should be destroyed once its retention was no longer necessary for the relevant purpose of the prescribed authorization, unless the Commissioner imposed a requirement that the protected product should be provided to him for the purpose of performing his functions.	

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003624 - 003921	Chairman Admin	Briefing by the Administration on the proposals in the Bill regarding the time gap between revocation of a prescribed authorization and the actual discontinuance of operation.	
003922 - 004303	Chairman Admin	Briefing by the Administration on the proposals in the Bill regarding partial revocation of prescribed authorizations, additional grounds for revoking prescribed authorizations and revocation of device retrieval warrants.	
004304 - 004527	Chairman Ms Claudia MO Admin	Ms Claudia MO's question and the Administration's response regarding whether a prescribed authorization covering a number of telephone lines could be partially revoked.	
004528 - 004729	Chairman Admin	Briefing by the Administration on the proposals in the Bill regarding clarification of the meaning of the terms "relevant person" and "duration".	
004730 - 004904	Chairman Admin	Briefing by the Administration on the proposals in the Bill regarding reporting of non-compliance to the Commissioner.	
004905 - 005234	Chairman Deputy Chairman Admin	Concerns of the Deputy Chairman and the Administration's response regarding - (a) how LEA's non-compliance with ICSO were identified by the Commissioner; and (b) statistics regarding LEA's non-compliance with ICSO in the past.	
005235 - 010213	Mr James TO Chairman Admin	Mr James TO's concerns regarding - (a) whether different LEAs had different policies regarding the range of time for destruction of intercept products; and (b) the respective range of time for destruction of intercept products by LEAs.	

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		<p>Administration's response that -</p> <ul style="list-style-type: none"> (a) LEAs had formulated their respective guidelines on the destruction of intercept products; (b) it was not appropriate to disclose the internal guidelines of LEAs on the destruction of intercept products; and (c) the originals of intercept products were generally destroyed within one month from interception. 	
010214 - 010400	Ms Claudia MO Admin	<p>Ms Claudia MO's concerns regarding how the copying and destruction of intercept products were monitored.</p> <p>Administration's response that all access to communications intercepted was logged in audit trail reports.</p>	
010401 - 010932	Ms Claudia MO Mr NG Leung-sing Chairman	Views of Ms Claudia MO, Mr NG Leung sing and the Administration's response regarding the need to rely on the Commissioner to monitor LEAs' compliance with ICSO.	
010933 - 011528	Deputy Chairman Admin	<p>The Deputy Chairman's concerns regarding -</p> <ul style="list-style-type: none"> (a) the need for destruction of intercept products within a certain time period after interception and the monitoring of such destruction by the Commissioner; and (b) whether the Commissioner had expressed any views on LEAs' destruction of intercept products. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) the Commissioner was generally content with LEAs' arrangements for the destruction of intercept products; (b) the intercept products of cases involving legal professional privilege ("LPP"), journalistic material, non-compliance and irregularity had all been retained by LEAs 	

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		<p>for checking by the Commissioner on the Commissioner's request; and</p> <p>(c) the Bill proposed that any requirement that any protected product should be provided to the Commissioner would override the requirement for LEAs to destroy the protected product when it was no longer necessary for the relevant purpose of the prescribed authorization. LEAs would liaise with the Commissioner on any necessary adjustments required to the current arrangements for destruction of intercept products to facilitate the exercise of the Commissioner's power to check intercept products after the passage of the Bill.</p>	
011529 - 013142	Mr James TO Admin Chairman SALA3	<p>Mr James TO's concerns regarding -</p> <p>(a) whether the intercept products of all cases involving LPP, journalistic material, non-compliance and irregularity referred to in the annual reports of the Commissioner were retained by LEAs;</p> <p>(b) whether the intercept products of other interception cases had been destroyed by LEAs; and</p> <p>(c) how random checking of intercept products could be performed by the Commissioner when the products had been destroyed by LEAs.</p> <p>Mr James TO's remarks that the requirement for LEAs to retain intercept products for a certain period of time specified by the Commissioner for checking by the latter should be set out in law or in the Commissioner's annual reports. Otherwise, he would propose Committee stage amendments to set out such a requirement in ICSO.</p> <p>Mr YIU Si-wing's remark that the power of the Commissioner to check intercept products could be set out in law, while the practical</p>	

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		<p>arrangements could be set out in the code of practice for LEAs.</p> <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) to protect the privacy of persons who had been the subject of interception, intercept products had been destroyed as soon as their retention was not necessary for the relevant purpose of the prescribed authorization; (b) the intercept products of cases involving LPP, journalistic material, non-compliance and irregularity had all been retained by LEAs for checking by the Commissioner upon the Commissioner's request; (c) the originals of intercept products of cases which did not involve LPP, journalistic material, non-compliance or irregularity were generally destroyed within one month from interception; (d) there were established mechanisms for LEAs and panel judges to provide weekly reports to the Commissioner to facilitate his monitoring work; (e) since the commencement of ICSO in 2006, there were about 200 cases involving non-compliance, irregularity, LPP or journalistic material out of 11 710 applications for authorization; (f) after passage of the Bill, LEAs would liaise with the Commissioner on any necessary adjustments required to the current arrangements to facilitate the exercise of the Commissioner's power to check intercept products; and (g) Mr James TO's views regarding the proposed requirement for LEAs to retain intercept products for a sufficiently long period of time to facilitate checking by the Commissioner would be conveyed to the Commissioner. 	

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		<p>The Administration was requested to -</p> <p>(a) advise whether the intercept products of all cases involving LPP, journalistic material, non-compliance and irregularity referred to in the annual reports of the Commissioner were retained by LEAs and whether the intercept products of other interception cases had been destroyed by LEAs; and</p> <p>(b) consider setting out in law or in the Commissioner's annual reports the requirement for LEAs to retain intercept products for a certain period of time specified by the Commissioner for his checking.</p>	<p>Admin</p>
<p>013143 - 013612</p>	<p>Ms Claudia MO Admin Chairman</p>	<p>Ms Claudia MO's question and the Administration's response regarding how random checking of intercept products would be carried out by the Commissioner.</p>	
<p>013613 - 015030</p>	<p>Mr James TO Chairman Deputy Chairman Admin</p>	<p>Mr James TO's concerns regarding whether the Commissioner was empowered under ICSSO to require an LEA to retain all or certain categories of intercept products for a certain period of time for his checking.</p> <p>Mr James TO's view that -</p> <p>(a) the requirement for LEAs to retain intercept products for a certain period of time specified by the Commissioner for checking by the Commissioner should be set out in law;</p> <p>(b) whether different LEAs had different policies regarding the range of time for destruction of intercept products; and</p> <p>(c) the Administration should provide information on the respective range of time for destruction of intercept products by the four designated LEAs.</p>	

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		<p>Administration's response that -</p> <ul style="list-style-type: none"> (a) the Commissioner was empowered by section 53 of ICSO to require any person to provide any information, document or other matter in his possession in the manner specified by the Commissioner. Section 59 of ICSO set out the requirements for the keeping and destruction of protected products; (b) it was not appropriate to disclose the internal guidelines of LEAs on the destruction of intercept products; and (c) the originals of intercept products were generally destroyed within one month from interception. <p>The Deputy Chairman's view that there was a need for LEAs to maintain their respective policies on the destruction of intercept products, given their difference in nature of work and subject of investigation.</p> <p>The Administration was requested to -</p> <ul style="list-style-type: none"> (a) explain whether the Commissioner was empowered to require an LEA to retain all or certain categories of intercept products for a certain period of time specified by the Commissioner for his checking; and (b) explain the operation and interactions of section 53 and section 59 of ICSO in relation to the time limit for destruction of intercept products. 	Admin
015031 - 015902	Chairman Mr James TO Ms Claudia MO Admin	<p>Mr James TO's request for the Administration to -</p> <ul style="list-style-type: none"> (a) explain why different LEAs had different policies regarding the range of time for destruction of intercept products; (b) provide information on the longest and shortest range of time for destruction of intercept products by LEAs; 	

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		<p>(c) explain why the time limit for destruction of originals of intercept products was different from that for the summaries and extracts of the originals;</p> <p>(d) consider requiring LEAs to maintain statistics for the coming three months on the respective numbers of approved and rejected applications for search warrant to obtain information from Internet service providers and provide such statistics to the Bills Committee;</p> <p>(e) consider requiring LEAs to maintain statistics on the total duration of communications intercepted under ICSSO and the quantity of documents preserved in relation to such operations; and</p> <p>(f) advise whether persons other than officers of the designated LEAs, including persons who were not law enforcement officers and employees of outsourced contractors were permitted to listen to communications intercepted.</p> <p>Ms Claudia MO's remark that Mr James TO's request for the Administration to provide information on the respective range of time for destruction of intercept products by LEAs was reasonable.</p> <p>The Administration was requested to provide a response to the issues raised by Mr James TO.</p>	<p>Admin</p>
015903 - 015934	Chairman	Date of next meeting	