

立法會
Legislative Council

LC Paper No. CB(2)2027/14-15
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by the Administration)

Ref : CB2/BC/1/14

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

Minutes of meeting
held on Tuesday, 14 July 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon YIU Si-wing, BBS (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Frankie YICK Chi-ming, JP
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
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon Cyd HO Sau-lan, JP
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

Mr CHIU Man-hin
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 Timothy TSO
attendance Senior Assistant Legal Adviser 1**

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) convey to law enforcement agencies ("LEAs") members' views regarding maintenance of statistics by LEAs on approved and rejected applications for search warrants to obtain information from Internet service providers, and reconsider requiring LEAs to maintain such statistics for the coming three months and provide such statistics to the Bills Committee if possible;
 - (b) explain the mechanism and party responsible for authorizing persons who were not law enforcement officers to listen to communications intercepted which were of a foreign language in which law enforcement officers were not proficient;
 - (c) explain the mechanism to be adopted by the Commissioner on Interception of Communications and Surveillance ("the Commissioner") to listen to communications intercepted which were of a foreign language in which the Commissioner and his designated officers were not proficient;
 - (d) provide information on the respective range of time for destruction of intercept products by LEAs and explain why LEAs had their own respective policies on destruction of the products; and
 - (e) review the drafting of the Chinese text of the proposed new subparagraphs (b) in clause 3(1), (2), (3) and (4) of the Bill to enhance clarity.

II. Any other business

3. The Chairman advised that the next meeting would be scheduled after the meeting and members would be informed in due course.
4. There being no other business, the meeting ended at 4:27 pm.

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Tuesday, 14 July 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000459	Chairman	Opening remarks	
000500 - 001131	Admin Chairman Mr James TO Mr SIN Chung-kai	Administration's response to issues raised at the Bills Committee meeting on 29 June 2015 (LC Paper No. CB(2)1879/14-15(01)).	
001132 - 001803	Mr James TO Admin Chairman	<p>Mr James TO's questions regarding -</p> <p>(a) whether requests of the Commissioner on Interception of Communications and Surveillance ("the Commissioner") for law enforcement agencies ("LEAs") to preserve intercept products of specific cases for his checking had been made in writing;</p> <p>(b) whether the intercept products of all cases involving legal professional privilege ("LPP") referred to in the annual reports of the Commissioner had been retained by LEAs for the Commissioner's checking; and</p> <p>(c) whether the normal period of retention of intercept products by LEAs for checking by the Commissioner could be extended from one month to a few months.</p> <p>Administration's response that -</p> <p>(a) requests of the Commissioner for LEAs to preserve intercept products of specific cases for his checking had all along been made in writing;</p> <p>(b) the intercept products of cases involving LPP referred to in the annual reports of the Commissioner had been retained by LEAs for the Commissioner's checking if so requested by the Commissioner;</p>	

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		<p>(c) LEA's normal retention period of one month for intercept products would be adequate for allowing the Commissioner to check the products; and</p> <p>(d) 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.</p>	
001804 - 005029	<p>Mr SIN Chung-kai Ms Claudia MO Deputy Chairman Mr WONG Yuk-man Mr James TO Admin Chairman</p>	<p>Views of Mr SIN Chung-kai, Ms Claudia MO, Mr James TO and Mr WONG Yuk-man that LEAs should maintain statistics for the coming three months on the respective numbers of approved and rejected applications for search warrants to obtain information from Internet service providers ("ISPs") and provide such statistics to the Bills Committee.</p> <p>The Deputy Chairman's view that there was not a need for LEAs to maintain statistics on the respective numbers of approved and rejected applications for search warrants to obtain information from ISPs.</p> <p>Mr James TO's view that the requested statistics relating to search warrants would facilitate members' relevant monitory work.</p> <p>Administration's response that -</p> <p>(a) LEAs had already devoted very heavy resources in maintaining statistics of different crimes and their trends, different aspects of law enforcement such as body worn cameras, stop and search, indebtedness of police officers, drink driving, etc, for the reference of the Legislative Council ("LegCo") and for public consumption;</p> <p>(b) compilation of the requested statistics relating to search warrants, being one of the many routine procedures during crime investigation, would entail substantial resource implications;</p>	

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		<p>(c) The court was the approving authority of search warrant applications. LEAs had to observe stringent requirements when applying for search warrants from the court; and</p> <p>(d) the subject of applications to the court for search warrants fell outside the scope of the Bill.</p> <p>Ms Claudia MO's view that intercept products should be destroyed only when so advised by the Commissioner.</p> <p>Administration's response that section 59(1)(c) of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) required that protected products should be destroyed as soon as their retention was not necessary for the relevant purposes of the prescribed authorizations. The originals of intercept products were normally destroyed by LEAs within one month from interception.</p> <p>The Administration was requested to -</p> <p>(a) convey to LEAs members' views regarding maintenance of statistics by LEAs on approved and rejected applications for search warrants to obtain information from the ISPs; and</p> <p>(b) reconsider requiring LEAs to maintain such statistics for the coming three months and provide such statistics to the Bills Committee if possible.</p>	<p>Admin</p>
005030 - 005429	Ms Claudia MO Chairman Admin	Ms Claudia MO's question and the Administration's response regarding the interpretation of the last sentence in paragraph 3 of the Annex to the Administration's paper.	
005430 - 010629	Mr Charles MOK Mr James TO Admin Chairman	Views of Mr Charles MOK and Mr James TO that LEAs should maintain statistics for the coming three months on the respective numbers of approved and rejected applications for search warrant to obtain information from ISPs.	

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		<p>Mr James TO's view that representatives of the Police should attend the next meeting to answer questions regarding applications for search warrants.</p>	
010630 - 012411	<p>Mr James TO Chairman Admin SALA1</p>	<p>Mr James TO's question regarding whether the Administration would introduce Committee stage amendments ("CSAs") to give effect to the proposals in paragraph 3 of the Administration's paper.</p> <p>Administration's response that the proposals in paragraph 3 of the Administration's paper had already been incorporated in the Bill.</p> <p>Mr James TO's concerns regarding the mechanism and party responsible for authorizing persons who were not law enforcement officers to listen to communications intercepted which were of a foreign language in which law enforcement officers were not proficient.</p> <p>Administration's response that -</p> <p>(a) section 4(1) of ICSO prohibited any public officer from directly or indirectly carrying out interception without the authority of a prescribed authorization; and</p> <p>(b) there were mechanisms in place for LEAs to make special arrangements for handling different operational scenarios.</p> <p>SALA1's advice on the meaning of "public officer" under section 4(1) of ICSO and section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).</p> <p>The Administration was requested to -</p> <p>(a) explain the mechanism and party responsible for authorizing persons who were not law enforcement officers to listen to communications intercepted which were of a foreign language in which law enforcement officers were not proficient; and</p>	<p>Admin</p>

Time marker	Speaker(s)	Subject(s)	Action Required
		(b) explain the mechanism to be adopted by the Commissioner to listen to communications intercepted which were of a foreign language in which the Commissioner and his designated officers were not proficient.	
012412 - 013018	Mr James TO Chairman Admin	<p>Mr James TO's concerns and the Administration's response regarding whether and why different LEAs had different policies regarding the range of time for destruction of intercept products.</p> <p>The Administration was requested to provide information on the respective range of time for destruction of intercept products by LEAs and explain why LEAs had their own respective policies regarding the destruction of the products.</p>	Admin
<i>Clause-by-clause examination</i>			
013019 - 014110	Chairman Admin Mr James TO SALA1 Mr Paul TSE	<p>Examination of the long title of the Bill.</p> <p>Mr James TO's concern that the long title of bills introduced in recent years had a very narrow scope.</p> <p>Concerns of Mr James TO and Mr Paul TSE regarding whether Members could move CSAs to enlarge the scope of the long title of a bill.</p> <p>SALA1's advice that -</p> <p>(a) under Rule 57(4)(a) of the Rules of Procedure ("RoP"), an amendment to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it related;</p> <p>(b) when considering the subject matter of a bill, the President of LegCo had in past rulings all along taken into account all relevant factors including the long title, the explanatory memorandum, the LegCo Brief on the bill and other relevant factors; and</p>	

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		(c) proposed amendments to the long title of a bill to expand the scope of the bill were ruled in the past to be inadmissible under RoP. The long title of a bill was generally not subject to amendment unless an amendment made to the provisions of the bill made it necessary to do so (Rule 58(9) of RoP).	
014111 - 014319	Chairman Admin Mr James TO SALA1	<p>Examination of clauses 1 and 2 of the Bill.</p> <p>Mr James TO's concern regarding the effect of lack of a commencement clause in the Bill.</p> <p>Administration's response that the Bill would come into operation upon the gazettal of the Amendment Ordinance.</p> <p>SALA1's advice that according to section 20 of Cap. 1, the Bill would come into operation when the enacted Ordinance was published in the Gazette.</p>	
014320 - 015734	Chairman Admin Mr James TO Mr Paul TSE SALA1	<p>Examination of clause 3 of the Bill.</p> <p>Concerns of Mr James TO, advice of SALA1 and the Administration's response regarding interpretation of the Chinese text of the proposed new subparagraph (b) in clause 3(3) of the Bill.</p> <p>Views of Mr Paul TSE regarding how the Chinese text of the proposed new subparagraph (b) in clause 3(3) of the Bill could be amended to enhance clarity.</p> <p>The Administration was requested to review the drafting of the Chinese text of the proposed new subparagraphs (b) in clause 3(1), (2), (3) and (4) of the Bill to enhance clarity.</p>	Admin
015735 - 015824	Chairman	Date of next meeting	