

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.: SBCR 14/2/3231/94 Pt.16

來函檔號 Your Ref.:

電話號碼 TEL. NO.: 2810 2632

傳真號碼 FAX. NO.: 2877 0636

24 March 2015

Mr KAU Kin-wah
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
1 Legislative Council Road,
Hong Kong

Dear Mr Kau,

**Interception of Communications and Surveillance
(Amendment) Bill 2015**

Thank you for your letter of 24 February 2015, sharing with us your observations on the Interception of Communications and Surveillance (Amendment) Bill 2015. Our responses are set out in the note attached for your reference, please.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Millie Ng', written in a cursive style.

(Mrs Millie Ng)
for Secretary for Security

Encl (2 pages)

c.c.

DoJ (Attn : Mr Godfrey Kan, Sr Asst Solicitor General
Ms Monica Law, Sr Asst Law Draftsman)

**Interception of Communications and Surveillance
(Amendment) Bill 2015**

Further authorization or requirement under a prescribed authorization or a device retrieval warrant (Clause 6(2), Clause 8(2), Clause (9), Clause 16(10), Clause 17(5) and Clause 18)

The existing section 32 provides that a prescribed authorization (i.e. a judge's authorization, an executive authorization or an emergency authorization) may be issued or renewed subject to any conditions specified in it that apply to the prescribed authorization itself "or to any further authorization or requirement *under it* (whether granted or imposed under its terms or any provision of this Ordinance)" (emphasis added). Thus, "further authorization or requirement" refers to those under the prescribed authorization in question and covers any further authorization or requirement granted or imposed under section 29 or 30.

2. Under the Amendment Bill, the relevant authority would have the power to impose new conditions in various specified situations. Section 24 deals with the determination of an application for confirmation of emergency authorization and section 27 deals with the determination of an application for confirmation of a prescribed authorization or renewal issued or granted upon oral application. In line with section 32, the proposed sections 24(3A) and 27(3A)(b) aim to make it clear that any new conditions specified by the panel judge or relevant authority may apply to the authorization itself or to any further authorization or requirement under the authorization.

3. Likewise, the new sections 57(5A)(b), 58(3A)(b) and 58A(6)(b) are proposed for similar purpose. Whenever a prescribed authorization is partially revoked following the discontinuance of the interception or covert surveillance, arrest of the subject, or in case of material inaccuracy or change in circumstances, the relevant authority may specify new conditions that apply to the prescribed authorization itself or any further authorization or requirement under it.

4. The existing section 38 provides that a device retrieval warrant may be issued subject to any conditions specified in it that apply to the warrant itself or to any further authorization under it (whether granted under its terms or any provisions of the Ordinance). In line with section 38, the proposed section 38A(4)(b) seeks to make it clear that in a

situation where a device retrieval warrant is not revoked or is only partially revoked, the panel judge may specify new conditions which apply to the warrant itself or to any further authorization under it. Such "further authorization" covers any further authorization granted under section 36 or 37.

Clause 19 - proposed section 59(1)(c)

5. Under the existing section 59(1)(c), the head of the department shall ensure that protected products are destroyed as soon as their retention is not necessary for the relevant purpose of the prescribed authorization. This requirement, together with the other provisions of section 59, reflects our policy to protect privacy by limiting the disclosure of protected products to the minimum that is necessary for the relevant purpose of the prescribed authorization; and to destroy protected products as soon as their retention is no longer necessary for the relevant purpose.

6. In our current proposal to explicitly empower the Commissioner to check protected products for the purpose of performing his functions under the Ordinance, we propose that the requirement to destroy protected products in section 59(1)(c) be subject to any requirement imposed under section 53(1)(a) in relation to protected products. In other words, unless the Commissioner makes a request under section 53(1)(a) as amended by clause 19 that a particular protected product should be provided to him for examination for the purpose of performing his functions, the protected product should be destroyed as soon as its retention is not necessary for the relevant purpose of the prescribed authorization. This aims to strike a balance between protecting privacy and facilitating the performance of the oversight function of the Commissioner.

7. Under section 53(5) of ICSO, the Commissioner may determine the procedure to be adopted in performing any of his functions under the Ordinance. We understand that there are arrangements put in place by the Commissioner whereby the four departments make preservation of protected product of specific cases for the Commissioner's examination for the purpose of performing his functions under the Ordinance. Similar arrangements would be made when the new checking power is introduced.