

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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本函檔號 Our Ref.: SBCR 14/2/3231/94 Pt. 27

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4 January 2016

Miss Betty Ma
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss Ma,

We refer to the letter of 31 December 2015 from the Secretariat of the Bills Committee on Interception of Communications and Surveillance (Amendment) Bill 2015 (“the Bill”) enclosing three proposed Committee Stage Amendments (“CSAs”) to the Bill and two revised versions of the proposed CSAs submitted by Hon James TO. The proposals mentioned therein have been fully deliberated by the Bills Committee and the Administration’s position has been clearly explained for times in our previous written responses. After careful examination of the latest proposals by Hon James TO, we have no change to our position on the relevant issues. The relevant paragraph references to our previous written responses are set out below for ease of reference and discussion.

(A) Newly Proposed CSAs

Clause 9 of the Bill - Section 38A of the Interception of Communications and Surveillance Ordinance (Cap. 589) (“ICSO”)

As regards the current arrangement for retrieval of surveillance devices, the mechanism for applying for device retrieval warrants as well as the roles of the Commissioner and panel judges under such a mechanism, please refer to paragraphs 33-39 of Annex to LC Paper No. CB(2)214/15-16(01) issued on 6 November 2015 (“response dated 6 November 2015”) and paragraphs 9-11 of Appendix III to LC Paper No. CB(2)443/15-16(01) issued on 11 December 2015 (“response dated 11 December 2015”).

Clause 13 - Section 53

On whether public officers should be subject to criminal sanctions in the event of unauthorized interception or covert surveillance or failure to comply with requirements by the Commissioner under the ICSO, please refer to paragraphs 26-27 of the response dated 6 November 2015 and paragraphs 13-14 of Appendix II and paragraphs 4-7 of Appendix III to the response dated 11 December 2015 for the Administration's position. For the legal basis on which the Commissioner and his delegated officers may make written notes and summaries when checking protected products, please refer to paragraph 8 of Appendix III to the response dated 11 December 2015.

Clause 17(1) - Section 58

Regarding the proposed introduction of the "reasonable suspicion" standard under section 58 of the existing ICSO and the proposed section 58A under the Bill as well as the requirement that a law enforcement agency ("LEA") shall provide a report under section 58 of the existing ICSO when it becomes aware of the arrest of a subject, please refer to paragraphs 23 and 45-46 of the response dated 6 November 2015, paragraphs 1-3 of Appendix III to the response dated 11 December 2015 and paragraphs 2-4 of Annex to LC Paper No. CB(2)546/15-16(01) issued on 31 December 2015 for the Administration's position and explanations.

(B) Revised CSAs

Clause 19 - Section 59

As regards the proposed CSA to introduce criminal sanctions under section 59 of the ICSO, please refer to paragraphs 11-14 of Appendix II to the response dated 11 December 2015 for the Administration's position.

Clause 20 - Section 65A

On the proposal to set out in law that LEAs shall not use any protected products obtained during the "time gap", please refer to paragraphs 15-18 of Appendix II and paragraph 14 of Appendix III to the response dated 11 December 2015 and paragraphs 5-6 of the response dated 6 November 2015 for the Administration's position on the CSA concerned.

In view of our position on the relevant proposals, the Administration does not accept the five CSAs proposed by Hon James TO.

Yours sincerely,

(M H CHIU)
for Secretary for Security

c.c.

Department of Justice

(Attn: Mr Godfrey KAN, Senior Assistant Solicitor General
Ms Monica LAW, Senior Assistant Law Draftsman)