

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

來函檔號 Your Ref.:

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11 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 meeting of the Bills Committee on Interception of Communications and Surveillance (Amendment) Bill 2015 (“the Bill”) on 4 January 2016 and your letter of 5 January 2016.

We enclose at Annex A the Government’s further written response to two issues raised at the meeting on 4 January 2016 and at Annex B a full set of the Administration’s proposed Committee Stage Amendments to the Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Andrew Tsang', written in a cursive style.

(Andrew Tsang)
for Secretary for Security

Encl (6 pages)

c.c.

Department of Justice

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

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

**Further Written Response to Issues Raised
at the Bills Committee's Meeting on 4 January 2016**

To consider amending sections 23(3)(a), 24(3)(b), 26(3)(b)(i) and 27(3)(b) of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) to state that the immediate destruction arrangement thereunder is subject to the requirement under section 59 as amended by the further Committee Stage Amendments ("CSA") to clause 19 proposed by the Administration ("our proposed CSAs") in LC Paper No. CB(2)443/15-16(01) dated 11 December 2015

The purpose of our proposed CSAs is to give full effect to the recommendation of the first Commissioner on Interception of the Communications and Surveillance with regard to section 59 of the ICSO. As stated in the Explanatory Memorandum of the Bill, clause 19 of the Bill amends section 59 "to provide for the destruction of protected products that have been provided to the Commissioner in compliance with a requirement imposed by the Commissioner under section 53(1)(a) of the Ordinance". The new section 59(1B) to be added by the proposed CSAs already clearly provides that the requirements of the section apply "[d]espite section 23(3)(a) or 26(3)(b)(i) or any requirement in an order made under section 24(3)(b) or 27(3)(b)" ("the relevant sections"). To remind the law enforcement agencies and panel judges of the new requirements, we will amend the Code of Practice ("CoP"), which is a public document promulgated under section 63 of the ICSO, to spell out the new provisions that need to be observed for the destruction of protected products relating to the scenarios governed by the relevant sections. Having regard to the relevance of our proposed CSAs to section 59, the fact that the ICSO would be read and interpreted as a whole, and the clarity afforded by the provisions of the new section 59(1B), we do not consider it necessary to further amend our proposed CSAs.

Whether information obtained in a covert operation the prescribed authorization of which has subsequently been revoked or in an unauthorised covert operation will be aggregated into intelligence

2. This subject was explained in LC Paper No. CB(2)214/15-16(01) dated 6 November 2015 and LC Paper No. CB(2)443/15-16(01) dated 11 December 2015. All LEAs' intelligence management systems are subject to tight control, and the LEAs have put in place strict internal guidelines requiring that intelligence must be obtained lawfully. Data in an intelligence management system are subject to regular review and those which are no longer intelligence worthy would be removed. In the context of a covert operation, as soon as an officer has notice of the revocation of the prescribed authorization, he must not use or gain access to any protected products (including their copies) obtained between the revocation of the prescribed authorization and the discontinuance of the operation for the purpose of investigation or any other purpose. We will spell this out clearly in the CoP as mentioned in Appendix III of LC Paper No. CB(2)443/15-16(01) dated 11 December 2015. The "any other purpose" mentioned above includes intelligence gathering.

**Security Bureau
January 2016**

Interception of Communications and Surveillance (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
9	In the proposed section 38A, in the heading, by deleting “ Revocation of device retrieval warrant ” and substituting “ Report to panel judge: device retrieval warrant cannot be executed ”.
10	By deleting “month and year from” and substituting “date on”.
12(1)	By deleting “month and year from” and substituting “date on”.
17(1)	By deleting “ Revocation of prescribed authorization following ” and substituting “ Report to relevant authority: ”.
18	In the proposed section 58A, in the heading, by deleting “ Revocation of prescribed authorization in case of ” and substituting “ Report to relevant authority: ”.
19	By renumbering the clause as clause 19(1).
19(1)	In the proposed section 59(1)(c), by deleting “that the protected product” and substituting “that, except as otherwise provided in subsection (1A), the protected product”.

19

By adding—

“(2) After section 59(1)—

Add

“(1A) Subsection (1B) applies if the protected product consists of information described in section 23(3)(a), 24(3)(b)(i) or (ii), 26(3)(b)(i) or 27(3)(b)(i) or (ii).

(1B) Despite section 23(3)(a) or 26(3)(b)(i) or any requirement in an order made under section 24(3)(b) or 27(3)(b), the head of the department concerned—

(a) must immediately notify the Commissioner of the case;

(b) must make arrangements to ensure that the information is retained; and

(c) must—

(i) if the Commissioner notifies the head of the department that the Commissioner will not require the provision of the information under section 53(1)(a), cause the immediate destruction of the information; or

(ii) if the Commissioner requires the provision of the information under section 53(1)(a)—

(A) provide the information as required; and

(B) cause the immediate destruction of the information when it is no longer required by the Commissioner.”.”.

《2015年截取通訊及監察(修訂)條例草案》

委員會審議階段

由保安局局長動議的修正案

<u>條次</u>	<u>建議修正案</u>
9	在建議的第38A條中，在標題中，刪去“ 撤銷器材取出手令 ”而代以“ 向小組法官提供報告：不能執行器材取出手令 ”。
10	刪去“始於何年何月”而代以“的開始日期”。
12(1)	刪去“始於何年何月”而代以“的開始日期”。
17(1)	刪去“於逮捕截取或秘密監察的目標人物後， 撤銷訂明授權 ”而代以“向有關當局提供報告： 截取或秘密監察的目標人物被逮捕 ”。
18	在建議的第58A條中，在標題中，刪去“ 遇上資料不準確或情況改變而撤銷訂明授權 ”而代以“向有關當局提供報告： 資料不準確或情況出現變化 ”。
19	將該條重編為草案第19(1)條。
19(1)	在建議的第59(1)(c)條中，在“受保護成果”之前加入“除第(1A)款另有規定外，”。

19

加入 —

“(2) 在第59(1)條之後 —

加入

“(1A) 如受保護成果屬第23(3)(a)、24(3)(b)(i)或(ii)、26(3)(b)(i)或27(3)(b)(i)或(ii)條所描述的資料，則第(1B)款適用。

(1B) 儘管有第23(3)(a)或26(3)(b)(i)條的規定，亦儘管根據第24(3)(b)或27(3)(b)條作出的命令有任何規定，有關部門的首長 —

- (a) 須即時將有關個案通知專員；
- (b) 須作出安排，以確保有關資料獲得保留；及
- (c) 須按以下規定行事 —
 - (i) 如專員通知該部門的首長，指專員不會根據第53(1)(a)條要求提供該等資料，則須安排將該等資料即時銷毀；或
 - (ii) 如專員根據第53(1)(a)條要求提供該等資料，則須 —
 - (A) 按要求提供該等資料；及
 - (B) 安排於專員不再需要該等資料時，將該等資料即時銷毀。”。