

香港特別行政區政府
保安局



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The Government of the
Hong Kong Special Administrative Region
Security Bureau

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來函檔號 Your Ref.:

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23 February 2016

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

Dear Miss Ma,

We refer to our letter of 29 January 2016 referenced LC Paper No. CB(2)768/15-16(01) and the meeting of Bills Committee on Interception of Communications and Surveillance (Amendment) Bill 2015 (“the Bill”) on 2 February 2016. The supplementary information in response to Members’ follow-up questions is set out below.

Previous Cases of Disciplinary Actions

According to the annual reports published by the Commissioner on Interception of Communications and Surveillance (“the Commissioner”) since the commencement of the Interception of Communications and Surveillance Ordinance (“ICSO”) (Cap. 589) in August 2006 (“Annual Reports”), 70 disciplinary actions had been taken according to the reports submitted to the Commissioner under section 42, 47, 52 or 54. Of these disciplinary actions, one was a reprimand and two were written warnings of dismissal. The brief facts of these disciplinary actions, based on the information in the relevant Annual Reports, are at **Annex**.

Section 33 of the Telecommunications Ordinance (“TO”) (Cap. 106)

Prior to the enactment of the ICSO, section 33 of the TO provided that the Chief Executive (“CE”) might, when he considered that the public interest so required, order the interception of telecommunication messages or the disclosure of such messages to the Government or specified officers. The Court of First Instance declared in February 2006 that, insofar as section 33

authorized or allowed access to, or disclosure of, the contents of any message or any class of messages, it was unconstitutional. Section 33 of the TO was subsequently amended by Schedule 5 to the ICSO. As a result, section 33(1) of the TO now provides that the CE may order that any class of messages shall be intercepted for the purpose of providing or making available facilities reasonably required for the execution of prescribed authorizations for telecommunications interception that may from time to time be issued or renewed under the ICSO. Section 33(2) makes it clear that the order under section 33(1) shall not of itself authorize the obtaining of contents of any individual message. Hence there is no question of interference with the privacy of communications.

The above said, since the CE's exercise of such power relates to the operational arrangement in connection with provision of facilities required for the conduct of telecommunications interception authorized under the ICSO, we consider that disclosure of any relevant statistics may reveal operational details and/or capabilities of the LEAs to criminals and terrorists who may be able to elude detection and justice as a result. Disclosing these statistics would be prejudicial to the prevention or detection of crime or the protection of public security.

Section 49 of the ICSO provides that the Commissioner has to set out in his annual report a list of information covering various issues. This list was drawn up with great care to strike a balance between confidentiality and transparency. We consider that the same principle should be adhered to in considering disclosure of any other information in relation to the conduct of covert operations authorized under the ICSO. Having regard to the potential risk of inadvertently disclosing the operational details and/or capabilities of the LEAs to criminals and terrorists, we find it not appropriate to compile and provide the requested information.

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)

Cases in which a reprimand or written warning of dismissal was awarded according to the reports submitted to the Commissioner under section 42, 47, 52 or 54 of the ICSO

Disciplinary action	Year of Award	Nature of Operation	Brief Facts of Case from the Relevant Annual Reports
Reprimand	2012	Surveillance	<p>A device issuing officer deliberately entered false information into the device register to pretend that the devices concerned were issued for an operation authorized under a prescribed authorization. The officer was given a reprimand.</p> <p><i>(see Case 3 in Table 12 of Chapter 9 of Annual Report 2012)</i></p>
Written warning of dismissal	2010	Surveillance	<p>An LEA officer, who was the Acting Authorizing Officer of Type 2 surveillance, unduly authorized the use of optical surveillance device(s) by the participating agent which was not sought in the application, and such authorization was unrestricted as to the proper places at which the use was to be made, but omitted to authorize the use of listening and optical surveillance devices by the LEA officers which was sought in the application. The officer was given a “written warning of dismissal” for negligence of duty and lack of care and due diligence in scrutinizing the relevant application documents and in granting the application.</p> <p><i>(see Case 3 in Table 12 of Chapter 10 of Annual Report 2010)</i></p>
	2012	Interception	<p>In preparing the application for a prescribed authorization for interception, the processing officer of the dedicated application team failed to detect the discrepancy between the telephone number shown on the draft application documents and the number shown on the verification form, leading to unauthorized interception of a wrong facility. The officer was given a written warning of dismissal.</p> <p><i>(see Case 6 in Table 12 of Chapter 9 of Annual Report 2012)</i></p>