

Annual Report 2023 to the Chief Executive

by
The Commissioner on
Interception of Communications
and Surveillance

June 2024

截取通訊及監察事務專員辦公室

Office of the Commissioner on Interception of Communications and Surveillance

本處檔號 Our ref.: ICS/12/1C Pt.7

電話 Tel. No.:

來函檔號 Your ref.:

傳真 Fax No.:

27 June 2024

The Honourable John KC Lee, GBM, SBS, PDSM, PMSM
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China

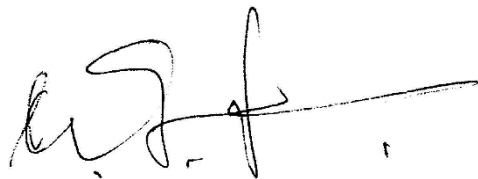
CONFIDENTIAL

Dear Sir,

Annual Report for the Year 2023

I have the pleasure, pursuant to section 49 of the Interception of Communications and Surveillance Ordinance, in submitting to you the annual report for the year 2023, together with its Chinese translation.

Yours sincerely,



(Yeung Chun Kuen)
Commissioner on Interception of
Communications and Surveillance

Encl: Annual Report for 2023

CONTENTS

<i>Chapter</i>		Page
	<i>Abbreviations</i>	<i>iv – vi</i>
1	Introduction	1 – 3
2	Interception	4 – 14
3	Covert Surveillance	15 – 27
4	Legal Professional Privilege and Journalistic Material	28 – 38
5	Application for Examination and Notification to Relevant Person	39 – 44
6	Non-compliance, Irregularities and Incidents	45 – 50
7	Statutory Tables	51 – 71
8	Review of Compliance by Law Enforcement Agencies	72 – 76
9	Acknowledgement and Way Forward	77 – 78

<i>Tables in Chapter 7</i>		Page
Table 1(a)	- interception – number of authorizations issued/renewed with the average duration of the respective authorizations and number of applications refused [section 49(2)(a)]	54
Table 1(b)	- surveillance – number of authorizations issued/renewed with the average duration of the respective authorizations and number of applications refused [section 49(2)(a)]	55
Table 2(a)	- interception – major categories of offences for the investigation of which prescribed authorizations have been issued or renewed [section 49(2)(b)(i)]	56
Table 2(b)	- surveillance – major categories of offences for the investigation of which prescribed authorizations have been issued or renewed [section 49(2)(b)(i)]	57
Table 3(a)	- interception – number of persons arrested as a result of or further to any operation carried out pursuant to a prescribed authorization [section 49(2)(b)(ii)]	58
Table 3(b)	- surveillance – number of persons arrested as a result of or further to any operation carried out pursuant to a prescribed authorization [section 49(2)(b)(ii)]	58
Table 4	- interception and surveillance – number of device retrieval warrants issued and number of applications for the issue of device retrieval warrants refused [section 49(2)(c)(i) and (ii)]	59

<i>Tables in Chapter 7</i>		Page
Table 5	- summary of reviews conducted by the Commissioner under section 41 [section 49(2)(d)(i)]	60 – 64
Table 6	- number and broad nature of cases of irregularities or errors identified in the reviews [section 49(2)(d)(ii)]	65 – 66
Table 7	- number of applications for examination that have been received by the Commissioner [section 49(2)(d)(iii)]	67
Table 8	- respective numbers of notices given by the Commissioner under section 44(2) and section 44(5) further to examinations [section 49(2)(d)(iv)]	67
Table 9	- number of cases in which a notice has been given by the Commissioner under section 48 [section 49(2)(d)(v)]	68
Table 10	- broad nature of recommendations made by the Commissioner under sections 50, 51 and 52 [section 49(2)(d)(vi)]	69
Table 11	- number of cases in which information subject to legal professional privilege has been obtained in consequence of any interception or surveillance carried out pursuant to a prescribed authorization [section 49(2)(d)(vii)]	70
Table 12	- number of cases in which disciplinary action has been taken in respect of any officer of a department according to any report submitted to the Commissioner under section 42, 47, 52 or 54 and the broad nature of such action [section 49(2)(d)(viii)]	70

Abbreviations

Unless the context otherwise requires:

affidavit / affirmation / statement	affidavit or affirmation in support of an application to a panel judge for a prescribed authorization/statement in writing in support of an application to an authorizing officer for an executive authorization
ATR	audit trail report
Cap.	chapter in the Laws of Hong Kong
Code of Practice, COP	the Code of Practice issued by the Secretary for Security under section 63 of the Ordinance
Commissioner	Commissioner on Interception of Communications and Surveillance
discontinuance report	report on discontinuance of interception or covert surveillance submitted pursuant to section 57 of the Ordinance
DMS	device management system
fresh application	application for a prescribed authorization which is not a renewal
ICSO, Ordinance	Interception of Communications and Surveillance Ordinance (Cap. 589)
interception	interception of communications
JM	journalistic material

LEA	a law enforcement agency under the Ordinance, namely, the Customs and Excise Department, the Hong Kong Police Force, the Immigration Department or the Independent Commission Against Corruption
LPP	legal professional privilege
LPP case	a case that is likely to involve information protected by LPP
LPP information	information protected by LPP
non-ICSO purpose	purpose which is not related to ICSO
PJO	Panel Judges' Office
QR Code	Quick Response Code
renewal application	application for renewal of a prescribed authorization
RSM	removable storage media
REP-11 report / REP-13 report	report on material change in circumstances or initial material inaccuracies under a prescribed authorization made on form REP-11 or form REP-13
Reported LPP Call	a call with LPP likelihood, heightened LPP likelihood or LPP information and is reported to the panel judge by way of an REP-11 report on such
Secretariat	Secretariat, Commissioner on Interception of Communications and Surveillance

section	section of the Ordinance
statutory activity	interception of communications and/or covert surveillance activity referred to in the Ordinance
the panel judge	all or any of the panel judges appointed under section 6 of the Ordinance
the report period	the period from 1 January to 31 December 2023
the Team	a dedicated team comprising officers from the LEAs that operates independently of their investigative arms
weekly report form	the form designed for the LEAs and the PJO to provide information to the Commissioner once every week

CHAPTER 1

INTRODUCTION

1.1 Pursuant to section 49 of the Interception of Communications and Surveillance Ordinance (Cap. 589) ('Ordinance' or 'ICSO'), the Commissioner on Interception of Communications and Surveillance ('Commissioner') is required to submit to the Chief Executive an annual report ending on 31 December in each year. This report covers the period from 1 January to 31 December 2023.

1.2 The ICSO came into operation in August 2006 and was amended with the enactment of the Interception of Communications and Surveillance (Amendment) Ordinance 2016 in June 2016. The ICSO provides a statutory regime to regulate the conduct of interception of communications, through the post or through the use of telecommunications facilities, and covert surveillance by the use of surveillance devices (collectively called 'statutory activities') by public officers of the four law enforcement agencies ('LEAs'), namely, the Customs and Excise Department, the Hong Kong Police Force, the Immigration Department^{Note 1} and the Independent Commission Against Corruption. The statutory provisions ensure that the statutory activities can only be carried out when the relevant requirements stipulated in the Ordinance are satisfied.

1.3 The first and foremost of the relevant requirements is that any statutory activity can only be lawfully and properly conducted by an officer of an LEA pursuant to a prescribed authorization granted by a relevant authority. The relevant authority includes a panel judge who is empowered to issue a prescribed authorization for interception or for

^{Note 1} Immigration Department is not entitled to conduct interception of communications under the Ordinance.

Type 1 surveillance and an authorizing officer of the LEA concerned who can issue a prescribed authorization for Type 2 surveillance. After obtaining a prescribed authorization, the LEA and its officers are required to comply with its terms in carrying out the statutory activity so authorized. They are also required to observe the provisions of the Code of Practice ('COP') issued by the Secretary for Security under section 63 of the ICSO and other relevant requirements.

1.4 Whether a prescribed authorization should be granted is expressly based on the necessity and proportionality principles, and on the premise that the well-being of Hong Kong can be achieved by striking a fair and proper balance between the need for the prevention and detection of serious crime and the protection of public security on the one hand and the safeguarding of the freedom, privacy and other rights of Hong Kong residents on the other.

1.5 An important function of the Commissioner is to oversee the compliance by the LEAs and their officers with the relevant requirements of the scheme under the ICSO. When this function is engaged, the objects and spirit of the Ordinance must be at the forefront of the oversight. Another function of the Commissioner is to make recommendations to the Secretary for Security on the COP and to the LEAs on their arrangements to better carry out the objects of the Ordinance and the provisions of the COP.

1.6 In 2023, I, together with the staff of the Secretariat, Commissioner on Interception of Communications and Surveillance ('Secretariat'), continued to check the compliance of the LEAs with the relevant requirements in various ways. During the periodical visits to the LEAs on the checking of files and documents and after the examination of protected products, I noticed that the LEAs were cautious in conducting covert operations and handling protected products in order to guard

against the obtainment of information subject to legal professional privilege ('LPP') and journalistic materials ('JM'). They made realistic assessments of the likelihood of obtaining LPP information during covert operations as required by the Ordinance. The number and details of new cases that were likely to involve LPP information are given in Chapter 4 of this report. In making applications for prescribed authorizations, the LEAs provided sound justifications for the proposed duration based on the operational requirement for the proper investigation of serious crimes.

1.7 In this annual report, I have continued the practice of providing the utmost transparency of the work of the Commissioner and at the same time, taking great care not to divulge any information the disclosure of which may prejudice the prevention or detection of crime or the protection of public security, as expressly required by various provisions of the Ordinance. With that in mind, I hope I have included as much information as possible insofar as its publication does not amount to contravention of this non-prejudice principle.

CHAPTER 2

INTERCEPTION

Prescribed authorizations for interception

2.1 Under section 29(1) of the Ordinance, a prescribed authorization for interception may –

- (a) in the case of a postal interception, authorize one or both of the following –
 - (i) the interception of communications made to or from any premises or address specified in the prescribed authorization;
 - (ii) the interception of communications made to or by any person specified in the prescribed authorization (whether by name or by description); or
- (b) in the case of a telecommunications interception, authorize one or both of the following –
 - (i) the interception of communications made to or from any telecommunications service specified in the prescribed authorization;
 - (ii) the interception of communications made to or from any telecommunications service that any person specified in the prescribed authorization (whether by name or by description) is using, or is reasonably expected to use.

Written applications

2.2 Applications for the issue or renewal of a prescribed authorization should normally be made in writing to a panel judge unless it is not reasonably practicable to do so. During the report period, there were a total of 1,111 written applications for interception made by the LEAs. All of them were granted by the panel judge. Of the 1,111 applications, 605 were for authorizations for the first time ('fresh applications') and 506 were for renewals of authorizations that had been granted earlier ('renewal applications').

Emergency authorizations

2.3 An officer of an LEA may apply to the head of his department for the issue of an emergency authorization for any interception if he considers that there is an immediate need for the interception to be carried out due to an imminent risk of death or serious bodily harm of any person, substantial damage to property, serious threat to public security or loss of vital evidence, and having regard to all the circumstances of the case, it is not reasonably practicable to apply to a panel judge for the issue of a judge's authorization. An emergency authorization shall not last for more than 48 hours and may not be renewed. As soon as reasonably practicable and in any event within the period of 48 hours from the issue of the emergency authorization, the head of the department shall cause an officer of the department to apply to a panel judge for confirmation of the emergency authorization where any interception is carried out pursuant to the emergency authorization.

2.4 During the report period, no application for emergency authorization for interception was made by any of the LEAs.

Oral applications

2.5 An application for the issue or renewal of a prescribed authorization may be made orally if the applicant considers that, having regard to all the circumstances of the case, it is not reasonably practicable to make a written application in accordance with the relevant provisions under the Ordinance. The relevant authority may orally deliver his determination to issue the prescribed authorization or give the reasons for refusing the application. The COP issued by the Secretary for Security provides that the oral application procedures should only be resorted to in exceptional circumstances and in time-critical cases where the normal written application procedures cannot be followed. An oral application and the authorization granted thereon are regarded as having the same effect as a written application and authorization. Similar to emergency authorizations, the head of the department shall cause an officer of the department to apply in writing to the relevant authority for confirmation of the prescribed authorization orally granted as soon as reasonably practicable and in any event within 48 hours from the issue of the authorization, failing which the prescribed authorization is to be regarded as revoked upon the expiration of the 48 hours.

2.6 During the report period, no oral application for interception was made by any of the LEAs.

Duration of authorizations

2.7 The maximum duration of a prescribed authorization allowed under the Ordinance is three months. During the report period, the longest approved duration of authorization was 92 days and the shortest was several days. Overall, the average duration of all the authorizations was about 57 days.

Offences

2.8 Table 2(a) in Chapter 7 sets out a list of the major categories of offences for the investigation of which prescribed authorizations for interception had been issued or renewed during the report period.

Revocation of authorizations

2.9 Under section 57(1) of the Ordinance, an officer of an LEA, who conducts any regular review pursuant to the arrangements made under section 56 by his head of department, has the responsibility to discontinue an interception or a part of an interception (covert surveillance or a part of covert surveillance) if he is of the opinion that a ground for discontinuance of the prescribed authorization or a part of the prescribed authorization exists. A similar obligation also attaches to the officer who is for the time being in charge of the operation after he becomes aware that such a ground exists. The officer concerned shall then report the discontinuance and the ground for discontinuance to the relevant authority who shall revoke the prescribed authorization concerned or the relevant part of the prescribed authorization concerned.

2.10 The number of authorizations for interception revoked fully under section 57 during the report period was 534. Another 52 cases involved the cessation of a part, but not all, of the interception approved under a prescribed authorization, so that while the prescribed authorization was partially revoked, the remaining part of the interception approved continued to be in force.

2.11 The grounds for discontinuance were that the interception operation was not or was no longer productive, the subject had been arrested, the subject had stopped using the telecommunications facility concerned for his criminal activities, or the value to continue the

interception operation was considered not proportional to the risk of obtaining LPP information, etc.

2.12 Revocation of authorizations is also expressly provided for in section 58 of the Ordinance. When the relevant authority (a panel judge) receives a report from an LEA that the subject of an interception has been arrested, with an assessment of the effect of the arrest on the likelihood that any LPP information will be obtained by continuing the interception, he shall revoke the prescribed authorization if he considers that the conditions under the Ordinance for the continuance of the prescribed authorization are not met. The arrest of the subject may or may not relate to the offence(s) for which the interception is authorized to investigate, nevertheless, the officer of the LEA in charge of the interception who has become aware of the arrest is obliged by section 58 of the Ordinance to submit the report with the assessment to the panel judge. If the conditions for the continuance of the prescribed authorization are still met, the panel judge may decide not to revoke it. During the report period, the LEAs were aware of a total of 188 arrests and 69 section 58 reports were made to the panel judge. Of those 69 section 58 reports, the panel judge allowed the interception operations of 31 of them to continue subject to the imposition of additional conditions to guard against the risk of obtaining LPP information. For the remaining 38 reports, the panel judge allowed the interception operation to continue without additional conditions imposed because there was no indication that the subjects had sought or would seek professional legal advice, the relevant court proceedings had been concluded or the subjects had been released unconditionally. As regards the other arrest cases, decisions were made by the LEAs concerned to discontinue the interception operations pursuant to section 57.

2.13 Section 58A of the Ordinance provides that, where the relevant authority (a panel judge) receives a report from an LEA on

material change in circumstances or material inaccuracies under a prescribed authorization, he shall revoke the prescribed authorization if he considers that the conditions under the Ordinance for the continuance of the prescribed authorization are not met. During the report period, no authorization for interception was revoked by the panel judge under this section of the Ordinance.

Authorizations with five or more previous renewals

2.14 Within the report period, there were eight authorizations for interception with five or more previous renewals. All the cases with six renewals and some of their further renewals were checked and found to be in order during periodical visits to the LEAs.

Arrests attributable to interception

2.15 It is and continues to be the common view of the LEAs that interception is a very effective and valuable investigation tool in the prevention and detection of serious crime and the protection of public security. It has to be pointed out that under section 61 of the Ordinance, any telecommunications interception product shall not be admissible as evidence in any proceedings before any court other than to prove that a relevant offence has been committed. Therefore, whatever is obtained by way of interception can only be used as intelligence. The intelligence gathered from interception very often lead to fruitful and successful conclusion of investigations. During the report period, a total of 111 persons, who were subjects of prescribed authorizations, were arrested as a result of or further to interception operations. In addition, 163 non-subjects were also arrested as a result of the interception operations.

Procedure of oversight for interception

2.16 The LEAs' compliance with the requirements of the Ordinance in respect of the interception cases reported in 2023 was reviewed by the following ways:

- (a) checking of the weekly reports submitted by the LEAs and the Panel Judges' Office ('PJO');
- (b) examination of the contents of the LEAs' files and documents during periodical visits to the LEAs;
- (c) examination of interception products at the LEAs' offices; and
- (d) counter-checking the facilities intercepted with non-LEA parties and through other means.

The following paragraphs further explain how the above reviews were carried out.

Checking of weekly reports

2.17 The LEAs were required to submit weekly reports to the Secretariat on their respective applications, successful or otherwise, and other relevant reports made to the panel judge/departmental authorizing officers by way of completing forms designed for the purpose ('weekly report forms'). Such weekly reports deal with all statutory activities, i.e. interception and covert surveillance. At the same time, the PJO was also requested to submit weekly report forms on the applications they received from all the LEAs, approved or refused, and the revocations of prescribed authorizations. A weekly report covers the statutory

activities with related authorizations and refused applications in the entire week before the week of their submissions to the Secretariat.

2.18 The weekly report forms only contain general information relating to cases of the related week such as whether the application was successful or rejected, the duration of the authorization, the offences involved, the assessment on the likelihood of obtaining LPP information and JM from the proposed operation, etc. Case background, progress of the investigation, identity and particulars of the subject and others as well as other sensitive information are not required and are therefore obliterated or sanitised so that such information will always be kept confidential with minimal risk of leakage.

2.19 Upon receipt of the weekly report forms from the LEAs, the Secretariat would study the details of each weekly report form and, except those relating to Type 2 surveillance, counter-check them against the PJO's returns. In case of discrepancies or doubts, clarification and explanation would be sought from the LEAs and/or the PJO as and when necessary.

Examination of documents and information during periodical visits

2.20 Should the Commissioner perceive a need, clarification and explanation on the weekly report forms would also be sought in the periodical visits to the offices of the LEAs. In the visits, the Commissioner would also select, on a random basis, some other cases for examination apart from those requiring clarification. Documents to be scrutinised by the Commissioner would include the originals of the applications, reports on discontinuance, reports on material change in circumstances, reports on material inaccuracies, case files and internal review documents, etc. Such visits were carried out in the offices of the LEAs so that secret or sensitive information contained in the case files and documents that would otherwise be required to be sent to the Secretariat for checking would

always remain in the safety of the LEAs' offices to avoid any possible leakage.

2.21 If questions or doubts still could not be resolved after the examination of such documents, the Commissioner would require the LEA to answer the queries or to explain the cases in greater detail.

2.22 In addition to matters relating to minor discrepancies in the weekly reports from the LEAs and the PJO, a total of 578 applications for interception and 331 related documents/matters had been checked during the Commissioner's periodical visits to the LEAs in the report period.

Examination of interception products

2.23 Having the express power to examine the protected products after the enactment of the Interception of Communications and Surveillance (Amendment) Ordinance 2016, the Commissioner and his delegated officers have carried out the relevant examinations since October 2016. Each such examination was conducted at the LEAs' offices and only those parts of the interception products to which LEA officers had accessed previously would be examined by the Commissioner and his delegated officers.

2.24 Apart from some specific cases such as LPP and JM cases reported by the LEAs, the Commissioner would also select from the weekly reports, and on the basis of the information provided therein or at random, interception products of other cases for examination with a view to checking if those other interception products may contain any LPP information, JM or any information that indicates heightened LPP/JM likelihood but not reported by the LEAs. Such examination would also enable the Commissioner to identify whether there were any irregularities or concealment of unauthorized acts violating the ICSO, such as checking if

the person using the telecommunications facilities as authorized by a prescribed authorization was actually the subject of the prescribed authorization and if any discontinuance of interception operation was to avoid exposure or detection of inadvertent mistakes or acts done without authority. If there were questions or doubts arising from the examination of the interception products, the Commissioner would require the LEA concerned to provide clarification or explanation.

2.25 During the report period, on the basis of selection as mentioned in paragraph 2.24 above, the interception products of 625 selected authorizations were examined.

Counter-checking with non-LEA parties and through other means

2.26 Apart from checking the weekly returns from the LEAs against those from the PJO, and examining case files, documents and interception products at the LEAs' offices, other measures have also been adopted for further checking the interceptions conducted by the LEAs.

2.27 Wherever necessary, counter-checks were conducted with non-LEA parties who have played a part in the interception process but are independent from the LEAs. The interception of telecommunications facilities by an LEA is made through a dedicated team ('the Team') that, whilst being part of the LEAs, operates independently of their investigative arms. As required by the Commissioner, the Team has archived in a confidential electronic record the status of all interceptions whenever they are effected, cancelled or discontinued. Arrangements have also been made for the archiving of the status of all interceptions being conducted at particular intervals as designated by the Commissioner from time to time. All these records are available to the Secretariat but only the Commissioner and his designated staff can access the confidentially archived information for the purpose of checking the intercepted facilities

for their status of interception at various points of time and as at any reference point of time so designated by the Commissioner, ensuring that no unauthorized interception has taken place. Moreover, the Secretariat counter-checked the LEAs' returns with communications services providers' four-weekly returns to verify the intercepted facilities reported by the LEAs.

Results of various forms of checking

2.28 Various forms of checking, including examination of interception products in respect of specific cases (such as LPP and JM cases) and 625 selected authorizations, 578 applications and 331 related documents/matters, were conducted in the report period as mentioned in paragraphs 2.17 to 2.27. No unauthorized interception was found but four cases of irregularity/incident were revealed as detailed in Chapter 6.

CHAPTER 3

COVERT SURVEILLANCE

Covert surveillance

3.1 Pursuant to section 2 of the ICSO, covert surveillance means any surveillance carried out with the use of any surveillance device if the surveillance is carried out in circumstances where the subject of the surveillance is entitled to a reasonable expectation of privacy, that it is carried out in a manner calculated to ensure that the subject is unaware that the surveillance is or may be taking place, and that it is likely to result in the obtaining of any private information about the subject. Surveillance device means a data surveillance device, a listening device, an optical surveillance device or a tracking device or a device that is a combination of any two or more of such devices. Any surveillance which does not satisfy the above criteria is not covert surveillance under the Ordinance.

Two types of covert surveillance

3.2 There are two types of covert surveillance: Type 1 and Type 2. Type 1 surveillance has a higher degree of intrusiveness into the privacy of the subject and requires a panel judge's authorization whereas an authorization for Type 2 surveillance, termed an executive authorization, can be issued by an authorizing officer of the LEA to which the applicant belongs. An authorizing officer is an officer not below the rank equivalent to that of Senior Superintendent of Police designated by the head of department.

Written applications

3.3 During the report period, there were a total of:

- (a) 41 written applications for Type 1 surveillance, including 22 fresh and 19 renewal applications; and
- (b) five written applications for Type 2 surveillance, all of which were fresh applications.

3.4 All applications for Type 1 and Type 2 surveillance were approved.

Emergency authorizations

3.5 An officer of an LEA may apply in writing to the head of the department for the issue of an emergency authorization for any Type 1 surveillance, if he considers that there is an immediate need for the Type 1 surveillance to be carried out due to an imminent risk of death or serious bodily harm of any person, substantial damage to property, serious threat to public security or loss of vital evidence, and having regard to all the circumstances of the case, it is not reasonably practicable to apply for the issue of a judge's authorization. An emergency authorization shall not last longer than 48 hours and may not be renewed. Where any Type 1 surveillance is carried out pursuant to an emergency authorization, the head of the department shall cause an officer of the department to apply to a panel judge for confirmation of the emergency authorization as soon as reasonably practicable after, and in any event within the period of 48 hours beginning with, the time when the emergency authorization is issued. During the report period, no application for emergency authorization for Type 1 surveillance was made by the LEAs.

3.6 On the other hand, there is no provision in the Ordinance for application for emergency authorization for Type 2 surveillance.

Oral applications

3.7 Applications for Type 1 and Type 2 surveillance, including those for emergency authorization, should be made in writing. Nonetheless, an application for the issue or renewal of a prescribed authorization may be made orally if the applicant considers that, having regard to all the circumstances of the case, it is not reasonably practicable to make a written application. The relevant authority may orally deliver his determination to issue the prescribed authorization or refuse the application.

3.8 The COP stipulates that the oral application procedure should only be resorted to in exceptional circumstances and in time-critical cases where the normal written application procedure cannot be followed. For a prescribed authorization orally granted for Type 1 surveillance, the head of the department shall cause an officer of the department to apply in writing to a panel judge, and for such an authorization for Type 2 surveillance, the applicant shall apply in writing to the authorizing officer for confirmation of the prescribed authorization orally granted as soon as reasonably practicable and in any event within 48 hours from the issue of the authorization. Failing to do so will cause that orally granted prescribed authorization to be regarded as revoked upon the expiration of the 48 hours.

3.9 During the report period, no oral application for Type 1 or Type 2 surveillance was made by the LEAs.

Duration of authorizations

3.10 The maximum duration of prescribed authorizations (fresh authorizations as well as renewals) for Type 1 surveillance granted by the panel judge and Type 2 surveillance by the authorizing officers allowed under the Ordinance is three months. In the report period, the longest approved duration of Type 1 surveillance granted was about 90 days whereas the shortest one was about 28 days. Overall, the average duration for such authorizations was about 70 days. The longest approved duration of Type 2 surveillance granted in the report period was about eight days while the shortest one was about seven days. The overall average duration of Type 2 surveillance executive authorizations was about seven days.

Offences

3.11 The major categories of offences for the investigation of which prescribed authorizations were issued or renewed for surveillance during the report period are set out in Table 2(b) in Chapter 7.

Revocation of authorizations

3.12 During the report period, 19 Type 1 surveillance operations were discontinued under section 57 of the ICSO before the natural expiration of the prescribed authorizations. The grounds for discontinuance were that the subject had been arrested, the anticipated activities did not materialise or the LEA concerned needed to modify the scope of the surveillance authorized. Section 57(3) requires the LEA to report the discontinuance and the ground for discontinuance to the relevant authority who shall revoke the prescribed authorization concerned upon receipt of the report on discontinuance. Of these reported discontinuance cases, 18 prescribed authorizations were

subsequently revoked fully by the panel judge under section 57. The remaining prescribed authorization had already expired by the time the panel judge received the discontinuance report. Thus, the panel judge could only note the discontinuance reported instead of revoking the prescribed authorization.

3.13 As regards Type 2 surveillance, during the report period, five Type 2 surveillance operations were discontinued under section 57 before their natural expiration. The grounds for discontinuance were mainly that the surveillance had been carried out or the subjects had been arrested. All the prescribed authorizations concerned were subsequently revoked by the authorizing officers.

3.14 Revocation of authorizations is expressly provided for in section 58 of the ICSO for covert surveillance when the subject(s) of the covert surveillance has been arrested. During the report period, there were seven Type 1 and three Type 2 surveillance operations involving LEAs being aware of the arrest of the subjects. The LEAs were aware that a total of 32 subjects of the Type 1 surveillance operations had been arrested and three reports were made to the panel judge under section 58 of the Ordinance seeking continuation of the prescribed authorization. In these three cases, as the LEA concerned assessed that the likelihood of obtaining LPP information through continued covert surveillance had not been heightened, the panel judge allowed the operations to continue subject to the same conditions then in force. As regards Type 2 surveillance, the LEAs concerned were aware that four subjects had been arrested but the LEAs did not seek continuation of the executive authorizations by way of section 58 report to the relevant authority and the Type 2 surveillance operations concerned were discontinued pursuant to section 57.

Authorizations with five or more previous renewals

3.15 During the report period, no authorization for Type 1 or Type 2 surveillance was renewed for more than five times.

Application for device retrieval warrant

3.16 During the report period, there was no application for any device retrieval warrant for the devices used in Type 1 and Type 2 surveillance as the devices were removed at the time of the completion of the surveillance operation, successful or otherwise.

Arrests attributable to covert surveillance

3.17 As a result of or further to surveillance operations, a total of 50 persons who were subjects of the prescribed authorizations and 24 non-subjects were arrested.

Procedure of oversight for covert surveillance

3.18 The LEAs' compliance with the requirements of the Ordinance in respect of covert surveillance cases reported in 2023 was reviewed by the following ways:

- (a) checking of the weekly reports submitted by the LEAs and the PJO;
- (b) examination of the contents of the LEAs' files and documents during periodical visits to the LEAs;
- (c) examination of surveillance products at the LEAs' offices; and

- (d) checking of the records kept by the surveillance device recording system of the LEAs.

Details of the above reviews are set out in the ensuing paragraphs.

Checking of weekly reports

3.19 Weekly reports submitted by the LEAs and the PJO cover all statutory activities, including both types of covert surveillance. The way of checking, described in Chapter 2 for interception, equally applies to covert surveillance.

Examination of documents and information during periodical visits

3.20 The mechanism of checking cases during periodical visits to the LEAs is described in Chapter 2.

3.21 During the year, 39 applications for Type 1 surveillance and 46 related documents/matters were checked.

3.22 Pursuant to the Ordinance, an application for Type 2 surveillance is submitted to and determined by a designated authorizing officer of the department concerned. Special attention has all along been paid to examine each and every application for Type 2 surveillance to ensure that all such applications correctly fall within the category of Type 2 surveillance and all executive authorizations are granted properly. During the periodical visits to the LEAs in the report period, four applications for Type 2 surveillance and six related documents/matters were checked.

3.23 For cases where surveillance devices have been withdrawn under a prescribed authorization but no surveillance operation is carried

out, the Commissioner would examine the following matters:

- (a) whether the prescribed authorization should have been sought in the first place;
- (b) the reason for not carrying out any surveillance operation pursuant to the prescribed authorization;
- (c) whether the devices drawn were used during the period concerned for any purposes other than those specified in the prescribed authorization; and
- (d) the way in which the devices drawn were kept by officers before they were returned to the device store/registry.

Such cases are included for examination in the periodical visits, at which the relevant case documents are checked and the LEAs concerned are requested to answer queries where necessary.

Examination of surveillance products

3.24 In accordance with section 53(1)(a) of the Ordinance, the Commissioner and his delegated officers have the express power to check the protected products obtained by the LEAs through covert surveillance. The examination of surveillance products was conducted at the LEAs' offices.

3.25 Apart from some specific cases such as LPP and JM cases, the Commissioner would also select from the weekly reports, on the basis of the information provided therein or at random, other cases for examination with a view to checking if the surveillance products of these cases may contain any LPP information, JM or any information that

indicates heightened LPP/JM likelihood, but not reported by the LEAs. Such examination would also enable the Commissioner to identify whether there were any irregularities or concealment of unauthorized acts violating the ICSO, such as checking if the person under covert surveillance as authorized by a prescribed authorization was actually the subject of the prescribed authorization, if any information subject to LPP in the surveillance products had been screened out by the dedicated units before the products were passed to the investigators, and if any discontinuance of surveillance operation was to avoid exposure or detection of inadvertent mistakes or acts done without authority. If there were questions or doubts arising from the examination of the surveillance products, the Commissioner would require the LEA concerned to provide clarification or explanation.

3.26 During the report period, with the basis of selection as mentioned in paragraph 3.25 above, the surveillance products of 15 selected authorizations were examined.

Checking of surveillance devices

3.27 Having regard to the fact that covert surveillance, as defined by the Ordinance, is surveillance carried out with the use of one or more surveillance devices, the LEAs had been required to develop a comprehensive recording system of surveillance devices, so as to keep a close watch and control over the devices with a view to restricting their use only for authorized and lawful purposes. All the LEAs have adopted computerised device management system ('DMS') in their device stores to keep track of surveillance devices used either for ICSO purposes or non-ICSO purposes. An inventory list of surveillance devices for each device registry is maintained with a unique serial number assigned to each single surveillance device item for identification as well as for checking purposes.

3.28 The LEAs have also established a control mechanism for issuing and collecting surveillance devices. They maintain a register of devices withdrawn based on loan requests supported by a prescribed authorization. They also maintain a separate register of devices withdrawn for administrative or other non-surveillance purposes based on loan requests for surveillance devices in respect of which no prescribed authorization is required. Both types of register also record the return of the devices so withdrawn. Copies of both the updated inventory lists and device registers are submitted to the Commissioner regularly. Where necessary, the LEAs are also required to provide copies of the device request forms for examination. In case of discrepancies or doubts identified as a result of checking the contents of these copies and comparing them with the information provided in the weekly report forms and other relevant documents, the LEA concerned will be asked to provide clarification and explanation.

Removable storage media

3.29 To better control the issue and return of removable storage media ('RSM') (e.g. memory cards, discs and tapes) along with surveillance devices, the LEAs have adopted the use of tamper-proof labels to seal the RSM inside the surveillance devices at the time of issue to avoid any possibility of these RSM being substituted, or in any way tampered with. The LEAs have also adopted the use of QR Code to facilitate the issue and return of the RSM through DMS. Information showing whether RSM is issued or returned with a surveillance device and whether the tamper-proof label sealing the RSM inside the device is intact upon return of the device are clearly documented in the device register.

Visits to device stores

3.30 Apart from the checking of inventory lists and device registers of surveillance devices managed by the LEAs, the Commissioner would also

make visits to the device stores of the LEAs for the following purposes:

- (a) to check the entries in the original registers against the entries in the copy of registers submitted to the Commissioner to ensure that their contents are identical;
- (b) to check the procedures for the issue and return of surveillance devices for purposes under the Ordinance and for non ICSO-related usage;
- (c) to check whether any issue of device was appropriately supported by a request form;
- (d) to check the physical existence of items in the copy inventory entries provided to the Commissioner periodically;
- (e) to check the items of device shown in the copy registers to have been recently returned to ensure that they are being kept in the stores;
- (f) to make stock-check of items against the copy registers;
- (g) to compare the unique number on each item as shown in the copy registers against the number assigned to the item as marked on it or attached to it; and
- (h) to view the items physically and be briefed, if necessary, as to how they may be used for conducting covert surveillance operations.

3.31 During the report period, a total of five visits were made to the device stores of the LEAs.

Devices for non-ICSO purposes

3.32 Surveillance devices do not fall within the regulatory ambit of the Commissioner under the ICSO if they are not used for covert surveillance. Notwithstanding, surveillance devices that are allegedly used for non-ICSO purposes only should also be kept under close scrutiny and control because of the possibility that they might be used without authorization or unlawfully. As a matter of practice, an authorized covert surveillance should always be supported by a prescribed authorization issued by a relevant authority but a non-ICSO operation requiring issue of devices will not have that support. Hence, in keeping track of issue of surveillance devices for non-ICSO purposes, the LEAs have accepted the requirements that a two-level approval by way of an endorsement of an officer and an approval of a senior officer is required. Both officers will sign with date on a device request memo to signify their endorsement and approval respectively. Each device request memo should have a unique memo reference. The withdrawing officer will bring along the device request memo to the device registry where the storekeeper on duty will issue the surveillance devices requested. Where necessary, the LEAs are required to provide copies of the device request memo for examination by the Commissioner.

3.33 During the year, one report relating to surveillance devices for non-ICSO purposes was received from an LEA. Details of this case are described below.

Loss of Surveillance Devices

3.34 An LEA reported to me that two surveillance devices and their associated accessories were reported lost after they were withdrawn for use in a non-ICSO operation. After investigation, it was suspected that the lost items might have accidentally fallen off from an officer's rucksack during the operation. There was nothing to indicate any foul play or

ulterior motive. The LEA proposed to give the officer a verbal advice (non-disciplinary) reminding him to be more cautious in handling surveillance devices. The officer would also be required to make compensation for the loss in accordance with the relevant procedures on loss of government properties.

3.35 Having reviewed the case, I accepted the LEA's findings and considered the proposed action appropriate.

Results of various forms of checking

3.36 Various forms of checking, including examination of surveillance products in respect of specific cases (such as LPP cases) and 15 selected authorizations, 43 applications and 52 related documents/matters, were conducted in the report period as mentioned in paragraphs 3.19 to 3.31. No unauthorized surveillance, non-compliance or irregularity was revealed during the checking.

CHAPTER 4

LEGAL PROFESSIONAL PRIVILEGE AND JOURNALISTIC MATERIAL

Obligations of LEAs regarding LPP cases

4.1 The Ordinance requires that when making an application for a prescribed authorization, the applicant should state, in the affidavit or statement in writing, the likelihood that any information which may be subject to LPP will be obtained by carrying out the statutory activities. Section 31 of the Ordinance stipulates that no interception of telecommunication service of a lawyer used to provide legal advice to clients or covert surveillance at an office or residence of a lawyer ('relevant premises') may be authorized unless the lawyer concerned or the relevant premises is suspected to be involved in a serious crime or a threat to public security or that the communication concerned is for the furtherance of a criminal purpose.

4.2 The COP also provides that the LEA should notify the Commissioner of interception/covert surveillance operations that are likely to involve LPP information as well as other cases where LPP information has been obtained inadvertently. On the basis of the LEA's notification, the Commissioner may review the information passed on to the investigators to ensure that it does not contain any information subject to LPP that should have been screened out.

4.3 For each of these cases, there are procedures to be followed at different stages of the operation. When making an application for a prescribed authorization, the LEA applicant is obligated to state his assessment of the likelihood of obtaining LPP information. If subsequently it transpires that there is anything which may affect the

assessment (which is considered as a material change in circumstances), the officer concerned has to promptly report to the relevant authority the altered LPP assessment. The reporting requirement regarding material change in circumstances is stipulated under section 58A of the ICSO. The report to the panel judge is made by way of an REP-11 report; or, in the case of a Type 2 surveillance operation, by way of an REP-13 report to the authorizing officer. Section 58 of the Ordinance requires that when an LEA becomes aware that the subject of interception or covert surveillance has been arrested, the LEA shall submit to the relevant authority a report assessing the effect of the arrest on the likelihood that any LPP information would be obtained by continuing the interception or covert surveillance. Section 58A further requires an LEA to report to the relevant authority any inaccurate information or change of circumstances. In the report made under section 58A or section 58, the officer has to provide the details of all relevant circumstances, including why the assessment has altered, how it has come about to consider that LPP information has been obtained or may likely be obtained, the details of the likely LPP information that has been obtained, and what steps have been taken or are proposed to take to prevent infringement of the right to communications that are protected by LPP. In order to apprise the Commissioner promptly with updated information on this important matter, the concerned LEA is required to give the Commissioner a similar notification on each of such occurrences in accordance with the COP.

4.4 Regarding cases with assessment that there was likelihood of LPP information involvement, the panel judge would normally impose additional conditions if he granted the authorization or allowed it to continue. These additional conditions were stringent and effective in safeguarding the important right of individuals to confidential legal advice.

4.5 There is a set of reporting and preservation requirements for cases involving LPP information. In particular, for interception

operations involving telephone calls, when an LEA encounters a call with heightened LPP likelihood or LPP information, the LEA is required to submit an REP-11 report to the panel judge in respect of this call. This is named 'Reported LPP Call' irrespective of whether LPP information has indeed been obtained. The reporting officer has to disclose in the report the number of times the Reported LPP Call has been listened or re-listened to, the respective date and time and duration of each such listening or re-listening and the identity of each of the listeners. In addition, in the report to the Commissioner, the reporting officer should also state whether there are any other calls between the telephone number involved in the Reported LPP Call and the subject's telephone number under interception, irrespective of whether such calls are intercepted before or after the Reported LPP Call. If there are such 'other calls', the reporting officer is also required to provide information on whether they have been listened to and if so, for how long and the identity of the listeners. In order to provide such information, the reporting officer should consult the relevant audit trail report ('ATR') that records accesses to the intercepted calls together with the corresponding call data. For LPP cases involving interception, the LEA should preserve all the interception products which are still available at the time of discovery of LPP likelihood, heightened LPP likelihood or LPP information, the transcripts, summaries, notes, ATRs, etc. The preserved records should not be destroyed without the prior consent of the Commissioner as stated under section 59(1)(c) of the Ordinance. LEAs are also required to make similar reporting and preservation arrangements for cases where JM is involved or likely to be involved.

4.6 In the event that LPP information has been inadvertently obtained in covert surveillance operations, the COP provides that investigators monitoring the operations are required to hand over the recording to a dedicated unit who will screen out any information subject to LPP before passing it to the investigators for their retention. The Commissioner should also be notified of such occurrence. On the

basis of the LEA's notification, the Commissioner may review the information passed on by the dedicated unit to the investigators to check that it does not contain any information subject to LPP that should have been screened out. Similarly, the dedicated unit is required to screen out any JM that has been inadvertently obtained and withhold such materials from the investigators.

Outstanding LPP cases in 2022

4.7 It was reported in paragraph 4.23 of the Annual Report 2022 that there were 27 LPP cases which were still on-going beyond 2022, including one case of obtaining LPP information, two cases of obtaining information suspected to be subject to LPP and 24 cases of heightened/assessed LPP likelihood. Amongst these 27 cases, the authorized operations of 26 cases were discontinued in 2023 and I had completed the review of these cases in the report period. Nothing untoward was revealed by various forms of checking of these 26 cases. For the two cases of obtaining information suspected to be subject to LPP, I confirmed that LPP information was obtained by the LEA inadvertently. Details of the three cases of obtaining LPP information are set out in paragraphs 4.8 to 4.17 below. As for the remaining one case of heightened LPP likelihood, it is still on-going beyond the report period and it will be dealt with in the next annual report.

Three cases of obtaining of LPP information

Case 1

4.8 The case where LPP information was obtained involved an interception operation. At the grant of the prescribed authorization concerned, the interception operation was not assessed to have a likelihood of obtaining LPP information. As the interception progressed,

one day, the LEA concerned listened to a call and found that the call indicated heightened likelihood of obtaining LPP information. Having considered the REP-11 report submitted by the LEA on heightened LPP likelihood, the panel judge allowed the prescribed authorization to continue with additional conditions imposed to guard against the risk of obtaining LPP information. Several days later, the LEA encountered a call which contained LPP information. The LEA submitted to the panel judge an REP-11 report on the obtainment of LPP information. Having considered the REP-11 report, the panel judge allowed the prescribed authorization to continue subject to further additional conditions. Subsequently, the intelligence gathered from the interception operation led to the arrest of the subject and the interception operation was discontinued by the LEA accordingly.

4.9 I had reviewed the case and did not find any irregularity. As regards the call which contained LPP information, I had listened to the call and confirmed that the LPP information was obtained inadvertently.

Case 2

4.10 The case where LPP information was obtained involved a Type 1 surveillance operation. This case related to an incident referred to in Case 6.2 of the Annual Report 2022.

4.11 A prescribed authorization was granted by the panel judge to an LEA in conducting Type 1 Surveillance amongst any one or combination of a number of subjects on meeting(s) at a private place. At the grant of the prescribed authorization, the surveillance operation was assessed to have a likelihood of obtaining LPP information. The panel judge imposed additional conditions on the prescribed authorization and its subsequent renewal to guard against the risk of obtaining LPP information.

4.12 Since the commencement of the investigation, the LEA carried out a number of covert surveillance operations and the surveillance products obtained from each occasion were handed over to the dedicated unit for screening. Officers of the dedicated unit found that in 12 operations, information suspected to be subject to LPP had been obtained. On each occasion, the LEA submitted to the panel judge an REP-11 report with the contents of the suspected LPP information detailed separately in an annex to the REP-11 report, and sought approval to continue with the prescribed authorization. Having considered the REP-11 reports, the panel judge allowed the prescribed authorization concerned to continue without imposing further additional condition. The crime investigation was subsequently turned overt and the LEA discontinued the Type 1 surveillance.

4.13 I have reviewed the case. As regards the 12 operations which contained information suspected to be subject to LPP, I had examined the documents/recordings and considered that LPP information had been inadvertently obtained on nine occasions. I also checked and confirmed that the information passed on to the investigators did not contain any information subject to LPP that should have been screened out.

Case 3

4.14 The case where LPP information was obtained involved a Type 1 surveillance operation.

4.15 A prescribed authorization was granted by the panel judge to an LEA in conducting Type 1 Surveillance amongst any combination of a number of subjects on meeting(s) at any places or premises. At the grant of the prescribed authorization, the surveillance operation was assessed to have a likelihood of obtaining LPP information. The panel judge imposed

additional conditions on the prescribed authorization and its subsequent renewals to guard against the risk of obtaining LPP information.

4.16 Since the commencement of the investigation, the LEA carried out several covert surveillance operations and the surveillance products obtained from each occasion were handed over to the dedicated unit for screening. Officers of the dedicated unit found that in three operations, information suspected to involve LPP had been obtained. On each occasion, the LEA submitted to the panel judge an REP-11 report with the contents of the suspected LPP information detailed separately in an annex to the REP-11 report, and sought approval to continue with the prescribed authorization. Having considered the REP-11 reports, the panel judge allowed the prescribed authorization concerned to continue with further additional conditions imposed on the first occasion when information suspected to be subject to LPP had been obtained. The same additional conditions were also imposed on the other two occasions. The surveillance operation was later discontinued by the LEA because no meeting amongst the subjects would likely take place.

4.17 I have reviewed the case. As regards the three operations which contained information suspected to be subject to LPP, I had examined the recordings and documents and considered that LPP information had been inadvertently obtained on all occasions. I also checked and confirmed that the information passed on to the investigators did not contain any information subject to LPP that should have been screened out.

LPP reports received in 2023

4.18 In the report period, LEAs submitted notifications, in accordance with the COP, on 76 new cases that were likely to involve LPP information.

4.19 Amongst these 76 new LPP cases, 19 cases were assessed at the time of application that the operations sought to be authorized would likely obtain information subject to LPP and the panel judge imposed additional conditions in the prescribed authorizations in all these cases. There was no subsequent change in circumstances relating to LPP likelihood for these 19 cases.

4.20 For the remaining 57 cases ^{Note 2}, the LEAs submitted REP-11 or section 58 reports to the panel judge on the subsequent change in circumstances relating to LPP involvement or likelihood. These 57 cases included:

- (a) two cases of obtaining LPP information;
- (b) one case of suspected obtainment of LPP information ; and
- (c) 54 cases of heightened likelihood of obtaining LPP information:
 - (i) in 49 cases, the panel judge allowed the continuation of the prescribed authorization subject to additional conditions imposed to guard against the risk of obtaining LPP information; and
 - (ii) in five cases the concerned LEA discontinued the operations of its own accord.

4.21 Of the 76 new LPP cases, the authorized operations for 42 cases were discontinued by the end of the report period. I had completed the review of these 42 cases. In the review of these LPP cases,

^{Note 2} Some of these cases were assessed at the time of application that the operations sought to be authorized would likely obtain information subject to LPP and some were not.

all the relevant documents and records including the prescribed authorizations, the REP-11 reports, section 58 reports, the determinations by the panel judge, the notes, the summaries, the communication data, the ATRs, etc. were checked. For cases where the panel judge allowed the prescribed authorizations to continue subject to additional conditions, we checked whether the LEAs had complied with the additional conditions imposed by the panel judge, and whether the LPP information or likely LPP information had been screened out from the summaries passed on to investigators. In respect of interception of telephone calls, we also checked whether there were calls between the same telephone numbers preceding the Reported LPP Call that should have been but had not been reported, and whether there was any listening or re-listening to the interception products after the discontinuance or revocation of the prescribed authorizations.

4.22 The protected products of the 42 LPP cases were also examined with particular reference to the following:

- (a) whether the contents of the communications or information reported in the relevant REP-11 report and notification to the Commissioner tallied with what was listened to or viewed by the LEA officers; and
- (b) whether there was any other communication or information that was subject to LPP or indicated heightened LPP likelihood but had not been reported to the relevant authority.

One case of suspected obtainment of LPP information

4.23 The case where LPP information was reported to have been obtained involved an interception operation. At the grant of the prescribed authorization concerned, the interception operation was not

assessed to have a likelihood of obtaining LPP information. As the interception progressed, one day, the LEA concerned listened to a call and considered that LPP information was contained therein. The LEA submitted to the panel judge an REP-11 report to report the obtainment of alleged LPP information. Having considered the REP-11 report, the panel judge allowed the prescribed authorization to continue with additional conditions imposed. The interception operation was later discontinued by the LEA because it was no longer productive.

4.24 I had reviewed the case and did not find any irregularity. As regards the call which was reported to contain LPP information, I had listened to the call and considered that the information concerned was not LPP information.

28 cases of heightened LPP likelihood and 13 cases of assessed LPP likelihood

4.25 The review of the 41 heightened/assessed LPP likelihood cases had been conducted in accordance with the mechanism as stated in paragraphs 4.21 and 4.22 above. Of these 41 cases, one case related to the incident referred to in Case 6.1 of Chapter 6. Nothing untoward was found in the remaining 40 cases.

34 on-going cases of obtaining LPP information and heightened/assessed LPP likelihood

4.26 As the authorized operations for two cases of obtaining LPP information and 32 cases of heightened/assessed LPP likelihood reported in 2023 are still on-going beyond the report period, they will be dealt with in the next annual report.

Obligations of LEAs regarding JM cases

4.27 The Ordinance requires the LEA applicant to set out, at the time of applying for a prescribed authorization, the likelihood that any information which may contain JM will be obtained by carrying out the interception or covert surveillance sought to be authorized. The COP provides that LEAs should notify the Commissioner of cases where information which may contain JM has been obtained or will likely be obtained through interception or covert surveillance operations. The reporting, preservation and screening requirements for cases involving JM are the same as those set out in paragraphs 4.5 and 4.6 above.

Outstanding JM case in 2022

4.28 It was reported in paragraph 4.25 of the Annual Report 2022 that there was one case with heightened likelihood of obtaining JM which was still on-going beyond 2022. The authorized operation of the case was discontinued in 2023. I had completed the review of the case in the report period and did not find any irregularity.

JM reports received in 2023

4.29 In 2023, I received notifications on two cases with heightened likelihood of obtaining JM submitted in accordance with the COP, for which REP-11 reports were submitted to the panel judge. As the authorized operations for these two cases are still on-going beyond the report period, they will be dealt with in the next annual report.

CHAPTER 5

APPLICATION FOR EXAMINATION AND NOTIFICATION TO RELEVANT PERSON

Application for examination

5.1 Pursuant to section 43 of the Ordinance, a person may apply in writing to the Commissioner for an examination if he suspects that he is the subject of any interception or covert surveillance activity carried out by officers of the LEAs. Upon receiving an application, the Commissioner shall carry out an examination to determine:

- (a) whether or not the suspected interception or covert surveillance has taken place; and
- (b) if so, whether or not such interception or covert surveillance has been carried out by an officer of an LEA without the authority of a prescribed authorization,

unless the Commissioner refuses to carry out an examination by reason of section 45(1) of the Ordinance.

5.2 After the examination, if the Commissioner finds the case in the applicant's favour, he shall notify the applicant and initiate the procedure for awarding payment of compensation to him by the Government.

5.3 The circumstances provided in section 45(1) that justify the Commissioner not carrying out an examination are that, in the opinion of the Commissioner:

- (a) the application is received by him more than one year after the last occasion on which the suspected interception or covert surveillance is alleged to have taken place;
- (b) the application is made anonymously;
- (c) the applicant cannot be identified or traced after the use of reasonable efforts; and
- (d) the application is frivolous or vexatious or is not made in good faith.

Section 45(2) of the Ordinance mandates the Commissioner not to carry out an examination or proceed with the examination where, before or in the course of the examination, he is satisfied that any relevant criminal proceedings are pending or are likely to be instituted, until the criminal proceedings have been finally determined or finally disposed of or until they are no longer likely to be instituted. Section 45(3) of the Ordinance defines relevant criminal proceedings as those where the interception or covert surveillance alleged in the application for examination is or may be relevant to the determination of any question concerning any evidence which has been or may be adduced in those proceedings.

The procedure

5.4 The procedure involved in an examination can be briefly described below. Enquiries will be made with the particular LEA which, the applicant alleges, has carried out either interception or covert surveillance or a combination of both against him as to whether any such statutory activity has taken place, and if so the reason why. Enquiries will also be made with the PJO as to whether any authorization had been granted by any panel judge for the particular LEA to carry out any such

activity, and if so the grounds for so doing. Enquiries with other parties will be pursued if that may help to obtain evidence regarding the existence or otherwise of any such alleged statutory activity. The results obtained from the various channels will be compared and counter-checked to ensure correctness. Apart from the information given above, it is considered undesirable to disclose more details about the methods used for the examination of applications or about the examinations undertaken, because that would possibly divulge information that may prejudice the prevention or detection of crime or the protection of public security.

5.5 The applications for examination will have to satisfy the following requirements, namely:

- (a) there is suspicion of interception of communications or covert surveillance that has been carried out against the applicant; and
- (b) the suspected interception or covert surveillance is suspected to have been carried out by one or more of the officers of the LEAs under the Ordinance, namely, the Customs and Excise Department, the Hong Kong Police Force, the Immigration Department and the Independent Commission Against Corruption.

5.6 A number of applicants did not understand the basis of an application for examination under the Ordinance. Some applicants alleged that they had been surreptitiously or openly followed or stalked by officers of an LEA. This normally would not satisfy the proper basis for an application for examination because there was no suspicion of any surveillance device being used. There have been cases previously where the applicants said devices suspected to be used included those which could directly read or control their minds. These again did not form a

proper basis for an application to initiate an examination, the reason being that the devices suspected to be used do not fall within the kind or type of devices under the Ordinance the use of which would constitute a covert surveillance.

5.7 Some applicants described how a particular person, as opposed to an LEA officer, carried out the suspected interception or covert surveillance. This would also fail to satisfy the second requirement to entertain an application or to engage in an examination.

5.8 The above information concerning the relevant provisions of the Ordinance, application requirements and procedure as well as the consent form on the use of personal data have been provided on the website of the Secretariat. In addition, guidelines containing the necessary information for making an application are available in the Secretariat office for prospective applicants.

Applications received in 2023

5.9 During the report period, there were five applications for examination. All these applications alleged a combination of interception and covert surveillance. Since none of them came within the ambit of the exceptions covered by section 45(1) or section 45(2), I carried out an examination provided for in section 44 of the Ordinance in respect of each case.

5.10 After making all necessary enquiries, I found all the five cases not in the applicants' favour and accordingly notified each of the applicants in writing of the findings, with four of such notices issued during the report period and one thereafter. By virtue of section 46(4) of the Ordinance, the Commissioner is not allowed to provide reasons for his determination

or to inform the applicants whether or not the alleged or suspected interception or covert surveillance had indeed taken place.

Notification to relevant person

5.11 Section 48 of the Ordinance obliges the Commissioner to give notice to the relevant person whenever, during the performance of the functions under the Ordinance, the Commissioner discovers any interception or covert surveillance carried out by an officer of any one of the four LEAs covered by the Ordinance without a prescribed authorization. However, section 48(3) provides that the Commissioner shall only give such a notice when he considers that doing so would not be prejudicial to the prevention or detection of crime or the protection of public security. Section 48(6) also exempts the Commissioner from his obligation if the relevant person cannot, after the use of reasonable efforts, be identified or traced, or where he considers that the intrusiveness of the interception or covert surveillance on the relevant person is negligible.

5.12 Consideration of the application of section 48 may arise under a number of situations. For example, the interception of telephone communications on a telephone number other than that permitted by a prescribed authorization issued by a panel judge constitutes an unauthorized interception. The Commissioner will then consider whether he should, as obliged by section 48 of the Ordinance, give a notice to the relevant person of the wrong interception. If and when the notice is given, the relevant person will be invited to make written submissions in relation to the assessment of reasonable compensation to be paid to him by the Government.

5.13 During the report period, no notice pursuant to section 48 of the Ordinance was issued.

Prohibition against disclosure of reasons for determination

5.14 Section 46(4) expressly provides that in relation to an application for examination, the Commissioner is not allowed to provide reasons for his determination, or give details of any interception or covert surveillance concerned, or in a case where he has not found in the applicant's favour, indicate whether or not the suspected interception or covert surveillance has taken place.

5.15 It is hoped that the public will understand that this statutory prohibition is designed to forbid the disclosure of any information which might prejudice the prevention or detection of crime or the protection of public security, to prevent any advantage from being obtained by criminals or possible criminals over the LEAs in the latter's efforts in fighting crimes and to protect the safety of the community in Hong Kong. There should not be any doubt that the Commissioner carries out his duties and functions under the Ordinance with the utmost good faith and sincerity.

CHAPTER 6

NON-COMPLIANCE, IRREGULARITIES AND INCIDENTS

Reporting of non-compliance, irregularities and incidents

6.1 By virtue of section 54 of the Ordinance, where the head of any LEA considers that there may have been any case of failure by the LEA or any of its officers to comply with any relevant requirement, he is obliged to submit to the Commissioner a report with details of the case (including any disciplinary action taken in respect of any officer). The head of the LEA is also required to submit to the Commissioner a report with details of the case even if the failure to comply with any relevant requirement is not due to the fault of the LEA or any of its officers. Relevant requirement is defined in the Ordinance to mean any applicable requirement under any provision of the ICSO, the COP, or any prescribed authorization or device retrieval warrant concerned.

6.2 Besides, there is a mechanism on reporting and monitoring of covert operations in place whereby the LEAs are required by the Commissioner to report cases of irregularity, including incidents which are not covered by section 54 of the Ordinance for his consideration and scrutiny so that any possible non-compliance will be properly dealt with.

6.3 For cases of non-compliance, irregularity or incident discovered upon examination of documents, information and protected products during visits to LEAs, the LEA concerned is required to investigate the matter and submit a report or provide explanation to the Commissioner.

6.4 When reporting, the LEAs would normally adopt a two-step approach. They would first submit an initial report upon discovery of the event, to be followed by a full investigation report after an in-depth investigation into the case was made.

Cases occurring in 2023

6.5 In 2023, there were four cases of irregularity/incident. The review of these four cases had been completed and details of the review are set out below.

Case 6.1 : Failure in preservation of part of the interception products for examination by the Commissioner

6.6 An LEA reported to me an incident where interception products obtained from an interception operation had not been wholly preserved for my examination as required. The incident related to a case referred to in Chapter 4 in which it was assessed at the time of application that the interception operation sought to be authorized would likely obtain information subject to LPP.

6.7 To commence an interception operation, the relevant information of the authorization concerned must first be registered in all the servers which would handle the relevant interception products ('the Registration'). For LPP cases, LEAs should preserve, amongst others, the relevant interception products for the Commissioner's examination as required. To preserve the interception products, an officer had to enter instructions ('the Instructions') into a dedicated computer system ('the System') to effect the preservation. The Instructions should be entered into the System after completion of the Registration. If the Instructions were made before completion of the Registration in a server, they would

not be executed in that server and the necessary preservation of the interception products handled by that server would not be effected.

6.8 In this case, the LEA obtained an authorization for interception of an additional facility used by the subject. As the interception was assessed to have a likelihood of obtaining LPP information, the LEA was required to preserve all the interception products for my examination. On the day when the authorization started to take effect, action was taken by a dedicated team to effect the Registration in the two servers which would handle the interception products concerned ('Server A' and 'Server B'). When the Registration process was still in progress, an officer of another team ('the Officer') started to make the necessary arrangement for preservation of the interception products by entering the Instructions into the System. At that time, the Registration was completed only in Server A and it would take about ten more seconds for the Registration in Server B to be completed. As a safeguard, a pop-up message was shown in the computer screen indicating that interception products had been preserved only for Server A. However, the Officer overlooked the pop-up message and proceeded to press a button to allow the preservation to continue without making the necessary rectification. As a result, the necessary preservation of the interception products handled by Server B was not executed. Later on the same day, the supervisor of the officer ('the Supervisor') checked the relevant record in the System but failed to detect the irregularity. About two months later, the interception of the additional facility was discontinued because the subject had stopped using the facility.

6.9 Subsequently, in the course of making available the interception products concerned for my checking, the failure in preservation of the interception products handled by Server B was detected. The LEA informed me of the incident immediately, followed by

a detailed investigation report. The investigation by the LEA found that the incident was mainly due to the lack of vigilance on the part of the Officer, who overlooked the pop-up message. The failure could have been rectified if the Supervisor had detected it when checking the relevant record in the System but she did not due to oversight. Checking of the ATRs concerned showed that interception products in respect of five communications handled by Server B had been accessed to by officers of the LEA. The investigation by the LEA concluded that there was no ulterior motive or ill will involved. The LEA proposed to give a verbal advice (non-disciplinary) to the Officer and the Supervisor reminding them to stay vigilant at all times when performing ICSO duties. To prevent recurrence of similar incidents, the LEA had implemented enhancement measures to the System.

6.10 Having reviewed the case, I agreed with the LEA's findings that no ulterior motive or ill will was involved in the incident, and considered the proposed action against the Officer and the Supervisor as well as the enhancement measures in the System appropriate.

Case 6.2 : No assessment made regarding two calls with contents which may give rise to heightened LPP likelihood

6.11 Checking of protected products of a prescribed authorization selected on a random basis revealed that the contents of two calls contained information which may give rise to heightened LPP likelihood. The LEA concerned was requested to advise whether any assessment on the likelihood of obtaining LPP information arising from the calls were made, the assessment result and the reasons for not recording the assessment made. The LEA replied that the utterance which indicated likelihood of obtaining LPP information in both calls emerged when the officer was about to stop monitoring the calls, thus it had escaped his attention. The matter was thus not reported to his supervisor for further

assessment. Notwithstanding this, checking of the protected products of this case did not reveal that any LPP information was obtained.

6.12 Having considered the circumstances of the case as a whole and other action taken by the same officer in this case, I accepted the explanations given in the LEA's investigation report and considered that no further follow-up action was required. Notwithstanding this, I emphasised to the LEA that all officers should handle all information gathered from interception operations with high degree of vigilance to guard against the risk of obtaining LPP information.

Case 6.3 : No assessment made regarding a call with contents which may give rise to heightened LPP likelihood

6.13 In checking the protected products of a prescribed authorization selected on a random basis, it was noticed that the contents of one call contained information which may give rise to heightened likelihood of obtaining LPP information. The LEA concerned was requested to advise whether any assessment on the likelihood of obtaining LPP information arising from the call was made, the assessment result and the reasons for not recording the assessment made.

6.14 The LEA replied that the officer who monitored the interception operation adopted a working practice which was considered unsatisfactory and led to his failure in picking up the content of the call that contained information which may give rise to heightened LPP likelihood. The matter was thus not reported to his supervisor for further assessment. Notwithstanding this, checking of the protected products of this case did not reveal that any LPP information was obtained. The LEA proposed to give an advice (non-disciplinary) to the officer for reminding him to maintain a high degree of vigilance when performing his duty.

6.15 While I accepted the LEA's explanation for missing out the assessment of the likelihood of obtaining LPP information arising from the concerned call, I emphasised to the LEA that all officers should handle all information gathered from interception operations with high degree of vigilance to guard against the risk of obtaining LPP information. The proposed action against the officer concerned was considered appropriate.

Case 6.4 : No assessment made regarding a call with contents which may give rise to heightened LPP likelihood

6.16 Checking of protected products of a prescribed authorization selected on a random basis revealed that the contents of one call contained information which may give rise to heightened likelihood of obtaining LPP information. The LEA concerned was requested to advise whether any assessment on the likelihood of obtaining LPP information arising from the call was made, the assessment result and the reasons for not recording the assessment made.

6.17 The LEA replied that the utterance which indicated likelihood of obtaining LPP information in the call had escaped the officer's attention because it emerged when he was about to stop monitoring the call. The matter was thus not reported to his supervisor for further assessment. Notwithstanding this, checking of the protected products did not reveal that any LPP information was obtained.

6.18 Having considered the appropriate action taken by the same officer in other similar incidents and the circumstances of the case as a whole, I accepted the explanations given in the LEA's investigation report and considered that no further follow-up action was required for this case. Notwithstanding this, I emphasised to the LEA that all officers should handle all information gathered from interception operations with high degree of vigilance to guard against the risk of obtaining LPP information.

CHAPTER 7

STATUTORY TABLES

7.1 In accordance with section 49(2) of the Ordinance, this chapter provides separate statistical information in relation to the statutory activities in the report period. The information is set out in table form and comprises the following tables:

- (a) Table 1(a) – interception – number of authorizations issued/renewed with the average duration of the respective authorizations and number of applications refused [section 49(2)(a)];
- (b) Table 1(b) – surveillance – number of authorizations issued/renewed with the average duration of the respective authorizations and number of applications refused [section 49(2)(a)];
- (c) Table 2(a) – interception – major categories of offences for the investigation of which prescribed authorizations have been issued or renewed [section 49(2)(b)(i)];
- (d) Table 2(b) – surveillance – major categories of offences for the investigation of which prescribed authorizations have been issued or renewed [section 49(2)(b)(i)];
- (e) Table 3(a) – interception – number of persons arrested as a result of or further to any operation carried out pursuant to a prescribed authorization [section 49(2)(b)(ii)];

- (f) Table 3(b) – surveillance – number of persons arrested as a result of or further to any operation carried out pursuant to a prescribed authorization [section 49(2)(b)(ii)];
- (g) Table 4 – interception and surveillance – number of device retrieval warrants issued and number of applications for the issue of device retrieval warrants refused [section 49(2)(c)(i) and (ii)];
- (h) Table 5 – summary of reviews conducted by the Commissioner under section 41 [section 49(2)(d)(i)];
- (i) Table 6 – number and broad nature of cases of irregularities or errors identified in the reviews [section 49(2)(d)(ii)];
- (j) Table 7 – number of applications for examination that have been received by the Commissioner [section 49(2)(d)(iii)];
- (k) Table 8 – respective numbers of notices given by the Commissioner under section 44(2) and section 44(5) further to examinations [section 49(2)(d)(iv)];
- (l) Table 9 – number of cases in which a notice has been given by the Commissioner under section 48 [section 49(2)(d)(v)];
- (m) Table 10 – broad nature of recommendations made by the Commissioner under sections 50, 51 and 52 [section 49(2)(d)(vi)];
- (n) Table 11 – number of cases in which information subject to legal professional privilege has been obtained in consequence of any interception or surveillance carried out pursuant to a prescribed authorization [section 49(2)(d)(vii)]; and

- (o) Table 12 – number of cases in which disciplinary action has been taken in respect of any officer of a department according to any report submitted to the Commissioner under section 42, 47, 52 or 54 and the broad nature of such action [section 49(2)(d)(viii)].

Table 1(a)

Interception – Number of authorizations issued/renewed with the average duration of the respective authorizations and number of applications refused [section 49(2)(a)]

		Judge's Authorization	Emergency Authorization
(i)	Number of authorizations issued	605	0
	Average duration	50 days	—
(ii)	Number of authorizations renewed	506	Not applicable
	Average duration of renewals	65 days	—
(iii)	Number of authorizations issued as a result of an oral application	0	0
	Average duration	—	—
(iv)	Number of authorizations renewed as a result of an oral application	0	Not applicable
	Average duration of renewals	—	—
(v)	Number of authorizations that have been renewed during the report period further to 5 or more previous renewals	8	Not applicable
(vi)	Number of applications for the issue of authorizations refused	0	0
(vii)	Number of applications for the renewal of authorizations refused	0	Not applicable
(viii)	Number of oral applications for the issue of authorizations refused	0	0
(ix)	Number of oral applications for the renewal of authorizations refused	0	Not applicable

Table 1(b)

Surveillance – Number of authorizations issued/renewed with the average duration of the respective authorizations and number of applications refused [section 49(2)(a)]

		Judge's Authorization	Executive Authorization	Emergency Authorization
(i)	Number of authorizations issued	22	5	0
	Average duration	63 days	7 days	—
(ii)	Number of authorizations renewed	19	0	Not applicable
	Average duration of renewals	78 days	—	—
(iii)	Number of authorizations issued as a result of an oral application	0	0	0
	Average duration	—	—	—
(iv)	Number of authorizations renewed as a result of an oral application	0	0	Not applicable
	Average duration of renewals	—	—	—
(v)	Number of authorizations that have been renewed during the report period further to 5 or more previous renewals	0	0	Not applicable
(vi)	Number of applications for the issue of authorizations refused	0	0	0
(vii)	Number of applications for the renewal of authorizations refused	0	0	Not applicable
(viii)	Number of oral applications for the issue of authorizations refused	0	0	0
(ix)	Number of oral applications for the renewal of authorizations refused	0	0	Not applicable

Table 2(a)

**Interception – Major categories of offences for the investigation of which prescribed authorizations have been issued or renewed ^{Note 3}
[section 49(2)(b)(i)]**

Offence	Chapter No. of Laws of Hong Kong	Ordinance and Section
Arranging passage to Hong Kong of unauthorized entrants	Cap. 115	Section 37D, Immigration Ordinance
Trafficking in dangerous drug	Cap. 134	Section 4, Dangerous Drugs Ordinance
Bribery	Cap. 201	Section 4, Prevention of Bribery Ordinance
Corrupt transactions with agents	Cap. 201	Section 9, Prevention of Bribery Ordinance
Robbery	Cap. 210	Section 10, Theft Ordinance
Burglary	Cap. 210	Section 11, Theft Ordinance
Handling stolen goods	Cap. 210	Section 24, Theft Ordinance
Shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm	Cap. 212	Section 17, Offences against the Person Ordinance
Dealing with property known or believed to represent proceeds of indictable offence	Cap. 455	Section 25, Organized and Serious Crimes Ordinance
Conspiracy to defraud	—	Common Law

^{Note 3} The offences are arranged in the order of the respective chapter numbers of the related Ordinances.

Table 2(b)

Surveillance – Major categories of offences for the investigation of which prescribed authorizations have been issued or renewed ^{Note 4}
[section 49(2)(b)(i)]

Offence	Chapter No. of Laws of Hong Kong	Ordinance and Section
Trafficking in dangerous drug	Cap. 134	Section 4, Dangerous Drugs Ordinance
Bribery	Cap. 201	Section 4, Prevention of Bribery Ordinance
Corrupt transactions with agents	Cap. 201	Section 9, Prevention of Bribery Ordinance
Conspiracy to defraud	—	Common Law
Perverting the course of public justice	—	Common Law

^{Note 4} The offences are arranged in the order of the respective chapter numbers of the related Ordinances.

Table 3(a)

Interception – Number of persons arrested as a result of or further to any operation carried out pursuant to a prescribed authorization [section 49(2)(b)(ii)]

	Number of persons arrested ^{Note 5}		
	Subject	Non-subject	Total
Interception	111	163	274

Table 3(b)

Surveillance – Number of persons arrested as a result of or further to any operation carried out pursuant to a prescribed authorization [section 49(2)(b)(ii)]

	Number of persons arrested ^{Note 6}		
	Subject	Non-subject	Total
Surveillance	50	24	74

^{Note 5} Of the 274 persons arrested, 48 were attributable to both interception and surveillance operations that had been carried out.

^{Note 6} Of the 74 persons arrested, 48 were attributable to both interception and surveillance operations that had been carried out. The total number of persons arrested under all statutory activities was in fact 300.

Table 4

Interception and surveillance – Number of device retrieval warrants issued and number of applications for the issue of device retrieval warrants refused [section 49(2)(c)(i) and (ii)]

(i)	Number of device retrieval warrants issued	0
	Average duration	—
(ii)	Number of applications for device retrieval warrants refused	0

Table 5

**Summary of reviews conducted by the Commissioner under section 41
[section 49(2)(d)(i)]**

Section 41(1)

Reviews on compliance by departments and their officers with relevant requirements, as the Commissioner considers necessary

Number of reviews conducted under section 41(1)		Interception/ Surveillance	Summary of reviews
(a)	Regular reviews on weekly reports	212	Interception & Surveillance LEAs are required to submit weekly reports to the Secretariat providing relevant information on authorizations obtained, applications refused and operations discontinued in the preceding week, for checking and review purposes. During the report period, a total of 212 weekly reports were submitted by the LEAs.
(b)	Periodical visits to LEAs	26	Interception & Surveillance During the report period, 26 visits were made to the LEAs for detailed checking of the application files of doubtful cases as identified from the weekly reports. Moreover, random inspection of other cases and checking of surveillance devices would also be made during the visits. Whenever he considered necessary, the Commissioner would seek clarification or explanation from LEAs directly. From the said visits, a total of 621 applications and 383 related documents/matters had been checked. (See paragraph 2.22 of Chapter 2 and paragraphs 3.21 and 3.22 of Chapter 3.)
(c)	Examination of protected products at the LEAs' offices	37	Interception & Surveillance In 2023, 37 visits were made to the LEAs for examination of protected products. Specific cases such as LPP and JM cases reported by the LEAs, interception products of 625 selected

Number of reviews conducted under section 41(1)		Interception/ Surveillance	Summary of reviews
			<p>authorizations and surveillance products of 15 selected authorizations were examined.</p> <p>(See paragraph 2.25 of Chapter 2 and paragraph 3.26 of Chapter 3.)</p>
(d) LPP cases reviewed by the Commissioner	68	Interception & Surveillance (26 reviews)	<p><u>Outstanding LPP cases in 2022</u> 26 cases, including one case of obtaining LPP information, two cases of obtaining information suspected to be subject to LPP and 23 cases of heightened/assessed LPP likelihood, were still on-going beyond 2022 and the authorized operations of these cases were discontinued in 2023.</p> <p>The review of these cases had been completed. Nothing untoward was revealed. For the two cases of obtaining information suspected to be subject to LPP, the Commissioner confirmed that LPP information was obtained by the LEA inadvertently. Details of the three cases of obtaining LPP information are set out below –</p> <p><u>Case 1</u> An LEA encountered an intercepted call which contained LPP information. The Commissioner confirmed that LPP information was obtained inadvertently. Details are set out in paragraphs 4.8 and 4.9 of Chapter 4.</p> <p><u>Case 2</u> An LEA found that in 12 covert surveillance operations, information suspected to be subject to LPP had been obtained. The Commissioner considered that LPP information had been inadvertently obtained on nine occasions. Details are set out in paragraphs 4.10 to 4.13 of Chapter 4.</p>

Number of reviews conducted under section 41(1)		Interception/ Surveillance	Summary of reviews
			<p><u>Case 3</u></p> <p>An LEA found that in three covert surveillance operations, information suspected to involve LPP had been obtained. The Commissioner considered that LPP information had been inadvertently obtained on all occasions. Details are set out in paragraphs 4.14 to 4.17 of Chapter 4.</p>
		Interception (1 review)	<p><u>One case of suspected obtainment of LPP information</u></p> <p>An LEA listened to an intercepted call and considered that LPP information was contained therein. The Commissioner considered that the information concerned was not LPP information. Details are set out in paragraphs 4.23 and 4.24 of Chapter 4.</p>
		Interception & Surveillance (41 reviews)	<p><u>28 cases of heightened LPP likelihood and 13 cases of assessed LPP likelihood</u></p> <p>All the relevant documents and records were checked and the protected products were examined. Except for the LPP case mentioned in Case 6.1 of Chapter 6, nothing untoward was found.</p> <p>(See paragraph 4.25 of Chapter 4.)</p>
(e)	JM cases reviewed by the Commissioner	1	<p>Interception</p> <p><u>Outstanding JM case in 2022</u></p> <p>One case with heightened likelihood of obtaining JM was still on-going beyond 2022 and the authorized operation of the case was discontinued in 2023.</p> <p>The review of the case had been completed. No irregularity was found.</p> <p>(See paragraph 4.28 of Chapter 4.)</p>

(f) Non-compliance/irregularities/incidents reviewed by the Commissioner	4	Interception	<u>Case 6.1</u> Part of the interception products obtained from an interception operation was not preserved for examination by the Commissioner as required. Details are set out in paragraphs 6.6 to 6.10 of Chapter 6.
		Interception	<u>Case 6.2</u> Assessment was not made regarding two calls with contents which may give rise to heightened LPP likelihood. Details are set out in paragraphs 6.11 and 6.12 of Chapter 6.
		Interception	<u>Case 6.3</u> Assessment was not made regarding a call with contents which may give rise to heightened likelihood of obtaining LPP information. Details are set out in paragraphs 6.13 to 6.15 of Chapter 6.
		Interception	<u>Case 6.4</u> Assessment was not made regarding a call with contents which may give rise to heightened likelihood of obtaining LPP information. Details are set out in paragraphs 6.16 to 6.18 of Chapter 6.

Section 41(2)

The Commissioner shall conduct reviews on cases in respect of which a report has been submitted to him under section 23(3)(b), 26(3)(b)(ii) or 54

Number of reviews conducted under section 41(2)		Interception/ Surveillance	Summary of reviews	
(a)	Report submitted under section 23(3)(b) by the head of department on cases in default of application being made for confirmation of emergency authorization within 48 hours of issue	Nil	Not applicable	For the report period, there was no report submitted under this category.
(b)	Report submitted under section 26(3)(b)(ii) by the head of department on cases in default of application being made for confirmation of prescribed authorization or renewal issued or granted upon oral application within 48 hours of issue	Nil	Not applicable	For the report period, there was no report submitted under this category.
(c)	Report submitted under section 54 by the head of department on any case of failure by the department or any of its officers to comply with any relevant requirement	Nil	Not applicable	For the report period, there was no report submitted under this category.

Table 6

Number and broad nature of cases of irregularities or errors identified in the reviews [section 49(2)(d)(ii)]

Section 41(1)

Number of cases of irregularities or errors identified in the reviews under section 41(1)		Interception/ Surveillance	Broad nature of irregularities or errors identified
(a) Reviews of LPP cases	1	Interception	<u>Case 6.1</u> Failure in preservation of part of the interception products for examination by the Commissioner.
			(For details, see item (f) under section 41(1) in Table 5 and Chapter 6.)
(b) Other reviews	3	Interception	<u>Case 6.2</u> No assessment made regarding two intercepted calls with contents which may give rise to heightened LPP likelihood.
		Interception	<u>Case 6.3</u> No assessment made regarding an intercepted call with contents which may give rise to heightened LPP likelihood.
		Interception	<u>Case 6.4</u> No assessment made regarding an intercepted call with contents which may give rise to heightened LPP likelihood.
			(For details, see item (f) under section 41(1) in Table 5 and Chapter 6.)

Section 41(2)

Number of cases of irregularities or errors identified in the reviews under section 41(2)		Interception/ Surveillance	Broad nature of irregularities or errors identified
(a) Reviews on cases in default of application being made for confirmation of emergency authorization within 48 hours as reported by the head of department under section 23(3)(b)	Nil	Not applicable	As mentioned in Table 5 above, there was no report submitted under this category.
(b) Reviews on cases in default of application being made for confirmation of prescribed authorization or renewal issued or granted upon oral application within 48 hours as reported by the head of department under section 26(3)(b)(ii)	Nil	Not applicable	As mentioned in Table 5 above, there was no report submitted under this category.
(c) Reviews on non-compliance cases as reported by the head of department under section 54	Nil	Not applicable	As mentioned in Table 5 above, there was no report submitted under this category.

Table 7

Number of applications for examination that have been received by the Commissioner [section 49(2)(d)(iii)]

Number of applications received	Applications for examination in respect of			
	Interception	Surveillance	Both Interception and Surveillance	Cases that could not be processed
5	0	0	5	0

Table 8

Respective numbers of notices given by the Commissioner under section 44(2) and section 44(5) further to examinations [section 49(2)(d)(iv)]

Number of notices to applicants given by the Commissioner		Nature of applications for examination		
		Interception	Surveillance	Both Interception and Surveillance
Number of cases that the Commissioner had found in the applicant's favour [section 44(2)]	0	—	—	—
Number of cases that the Commissioner had not found in the applicant's favour [section 44(5)] ^{Note 7}	5	0	0	5

^{Note 7} Of the five notices, four were issued during the report period and one thereafter.

Table 9

**Number of cases in which a notice has been given by
the Commissioner under section 48 [section 49(2)(d)(v)]**

	Number of cases in which a notice has been given in relation to	
	Interception	Surveillance
Notice to the relevant person by the Commissioner stating that he considers that there has been a case of interception or surveillance carried out by an officer of a department without the authority of a prescribed authorization and informing the relevant person of his right to apply for an examination [section 48(1)]	0	0

Table 10

**Broad nature of recommendations made by the Commissioner
under sections 50, 51 and 52 [section 49(2)(d)(vi)]**

Recommendations made by the Commissioner		Interception/ Surveillance	Broad nature of recommendations
Reports to the Chief Executive on any matter relating to the performance of the Commissioner's functions [section 50]	Nil	Not applicable	Not applicable
Recommendations to the Secretary for Security on the COP [section 51]	Nil	Not applicable	Not applicable
Recommendations to departments for better carrying out the objects of the Ordinance or the provisions of the COP [section 52]	Nil	Not applicable	Not applicable

Table 11

Number of cases in which information subject to legal professional privilege has been obtained in consequence of any interception or surveillance carried out pursuant to a prescribed authorization [section 49(2)(d)(vii)]

	Number of cases <small>Note 8</small>
Interception	1
Surveillance	2

Table 12

Number of cases in which disciplinary action has been taken in respect of any officer of a department according to any report submitted to the Commissioner under section 42, 47, 52 or 54 and the broad nature of such action [section 49(2)(d)(viii)]

Case number and nature of operation	Brief facts of case	Broad nature of the disciplinary action
Not applicable	For the report period, no disciplinary action was taken in respect of any officer under this category.	Not applicable

Note 8 The three cases of obtaining LPP information were outstanding LPP cases in 2022 with the reviews completed in 2023.

7.2 In accordance with section 49(2)(e) of the Ordinance, the Commissioner is required to give an assessment on the overall compliance with the relevant requirements during the report period. Such assessment and the reasons in support can be found in Chapter 8.

CHAPTER 8

REVIEW OF COMPLIANCE BY LAW ENFORCEMENT AGENCIES

Overall compliance

8.1 As set out in section 40 of the Ordinance, the functions of the Commissioner are to oversee the compliance by the LEAs and their officers with the relevant requirements and to conduct reviews. It is stipulated under section 49(2)(e) of the Ordinance that the Commissioner shall set out in the annual report an assessment on the overall compliance with the relevant requirements during the report period. My assessment of the overall performance of the LEAs and their officers in their compliance with the relevant requirements of the ICSO in 2023 is set out below.

Preparation of applications

8.2 The first and foremost of the requirements under the Ordinance is that any statutory activity can only be lawfully and properly conducted by an officer of an LEA pursuant to a prescribed authorization granted by a relevant authority. Whether a prescribed authorization should be granted is expressly based on the necessity and proportionality principles i.e. the interception or covert surveillance is necessary for, and proportionate to, the purpose sought to be furthered by carrying it out upon balancing the relevant factors against the intrusiveness of the interception or covert surveillance on any person who is the subject of or may be affected by the interception or covert surveillance; and considering whether the purpose sought to be furthered by carrying out the interception or covert surveillance can reasonably be achieved by other less intrusive means.

8.3 During the report period, all 1,111 applications for interception and 46 applications for covert surveillance were granted by the relevant authorities.

8.4 In general, the LEAs were observed to have continued to adopt a cautious approach in preparing their applications for interception and covert surveillance operations. In applying for prescribed authorizations, they provided sound justifications for the proposed duration based on the operational requirement of individual case. The average duration of the prescribed authorizations, though longer than before, was justified and better reflected the operational requirement for the proper investigation of the serious crimes in question.

Reviews by the Commissioner

8.5 There were different ways to review the LEAs' compliance with the requirements of the Ordinance in respect of interception and covert surveillance as set out in paragraph 2.16 of Chapter 2 and paragraph 3.18 of Chapter 3. These included checking of the weekly reports submitted by the LEAs and the PJO, and examination of the contents of the LEA files and documents as well as the protected products during visits to the LEAs. Where necessary, the LEA concerned would be requested to respond to queries. For interception operations, counter-checking the facilities intercepted with non-LEA parties and through other means would be done. For covert surveillance operations, the records kept by the surveillance device recording system of the LEAs would also be checked.

8.6 In the report period, the interception/covert surveillance operations were in general conducted pursuant to prescribed authorizations granted by the relevant authorities and the additional conditions imposed. No unauthorized interception or surveillance was detected. A few cases of irregularity/incident are reported in Chapter 6.

There was no sign of abuse of surveillance devices for any unauthorized purposes.

Handling of LPP and JM cases

8.7 The COP obliges the concerned LEA to notify the Commissioner of cases that are likely to involve LPP information or JM. The Commissioner is also timeously alerted to cases involving or possibly involving LPP information or JM through the examination of the weekly reports submitted by the LEAs, with sanitised copies of the relevant REP-11/REP-13 reports on any material change in circumstances after the issue of a prescribed authorization including changed LPP and JM risks.

8.8 Through the examination of protected products, I am able to check the veracity of the gist of the communications or information stated in the REP-11/REP-13 reports and whether there were any communications or information subject to LPP or with JM that had been accessed by the LEA officers but not reported to the relevant authority.

8.9 In 2023, 76 new LPP and two JM cases were reported. Except 34 LPP and two JM cases which were still on-going beyond the report period, review of 42 LPP cases had been completed. Of the 42 LPP cases, except for the one related to the incident mentioned in Cases 6.1 of Chapter 6, nothing untoward was found. There was one case on suspected obtainment of information subject to LPP as detailed in paragraphs 4.23 and 4.24 of Chapter 4. In that case, at the grant of the relevant prescribed authorization, the interception operation was assessed as having no likelihood of obtaining LPP information. One day, the LEA concerned listened to a call and considered that LPP information was contained therein. It submitted to the panel judge an REP-11 report on the obtainment of alleged LPP information. The panel judge allowed the prescribed authorization to continue with additional conditions imposed. The interception operation was later discontinued. The

review of the case was completed. I had listened to the call and considered that the information concerned was not LPP information.

8.10 With regard to the 28 on-going LPP and JM cases reported in the Annual Report 2022, the authorized operations for one case with heightened likelihood of obtaining JM and 26 LPP cases (including one case of obtaining LPP information, two of obtaining information suspected to be subject to LPP and 23 of heightened/assessed LPP likelihood) were discontinued in 2023. I had completed the review of these cases in the report period. Nothing untoward was revealed. For the two cases of obtaining information suspected to be subject to LPP, I confirmed that LPP information was obtained by the LEA inadvertently. As for the remaining one case of heightened LPP likelihood, it is still on-going beyond the report period and it will be dealt with in the next annual report.

8.11 The LEAs were observed to have recognised the importance of protecting information which might be subject to LPP. They continued to adopt a very cautious approach in handling these cases. They made realistic assessments of the likelihood of obtaining LPP information during covert operations as required by the Ordinance. I appreciated the continued and tireless efforts of the LEAs concerned in reminding their officers to be vigilant when they encountered situations indicating heightened LPP likelihood in the course of performing interception monitoring duties, and in tightening up measures to minimise the risk of inadvertently obtaining information subject to LPP.

Non-compliance, irregularities or incidents

8.12 Under section 54 of the Ordinance, the head of an LEA is required to submit a report to the Commissioner if he considers that there may have been any case of failure to comply with any relevant requirement of the Ordinance, irrespective of whether the failure is due to the fault of the LEA or its officers or not. LEAs are also required to report to the

Commissioner cases of irregularity or even simply incidents. Hence, all cases of possible non-compliance are brought to the attention of the Commissioner for timely examination and review. Furthermore, whenever necessary, the LEAs are required to provide a report, clarification or explanation for anything unusual detected in the course of examination of documents and protected products by the Commissioner. In 2023, there were four cases of irregularity/incident as reported in Chapter 6.

8.13 For all these cases, I did not find any deliberate disregard of the statutory provisions or the COP nor have we found any ulterior motive or ill will on the part of the officers involved. The officers of the LEAs were nevertheless reminded that they should always stay alert and exercise care at different stages of the operations conducted under the ICSO.

Response from LEAs

8.14 I am pleased to note that in the report period, LEAs took initiative to tighten up procedures and guidelines for better operation of the ICSO regime and implement system enhancements whenever necessary to prevent technical mistakes and to avoid human errors.

CHAPTER 9

ACKNOWLEDGEMENT AND WAY FORWARD

Acknowledgement

9.1 I would like to express my sincere thanks to various parties including the panel judge, the Security Bureau, the LEAs and the communications services providers for the continuous support during the report period to enable me to properly discharge my oversight and reviewing functions under the ICSO.

9.2 It is obvious that the LEAs have taken great care in the performance of their ICSO-related duties and their enthusiasm and professionalism are highly appreciated. The number of rare and occasional cases of irregularities due to inadvertence, hopefully, will be further reduced in the future.

Way forward

9.3 The ICSO aims to strike a balance between the need for the prevention and detection of serious crime and the protection of public security on the one hand and the need for safeguarding the privacy and other rights of individuals on the other. Various suggestions and recommendations on the procedural matters and control mechanism put forth in previous years were well implemented by the LEAs to enhance compliance with the Ordinance and the COP. In the course of discharging my duties in overseeing the performance of the LEAs over the compliance with the requirements of the Ordinance and in performing my reviewing functions as the Commissioner, I will continue to discuss with the relevant parties and put forth recommendations to address any new problems or

issues that may be foreseen or arise in future to ensure that the highest standard of compliance by the LEAs will be observed.

9.4 I look forward to the continuous support and cooperation of all the parties involved in facilitating the work of the Commissioner under the ICSO.



26 September 2024

Mr. TANG Ping-keung, GBS, PDSM, JP
Secretary for Security
10th Floor, East Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

Dear Mr Tang,

**Annual Report 2023 by the Commissioner on
Interception of Communications and Surveillance**

The Chief Executive has, pursuant to section 49(4) of the Interception of Communications and Surveillance Ordinance (Cap. 589), directed that a copy of the Annual Report 2023 by the Commissioner on Interception of Communications and Surveillance, together with a copy of this letter, be laid on the table of the Legislative Council at its sitting on 16 October 2024. The Chief Executive has not excluded any matter from the Report under section 49(5) of the Ordinance without the agreement of the Commissioner.

I should be grateful if you would follow up with the Legislative Council Secretariat accordingly.

Yours sincerely,

(Mrs Vicki KWOK)

Private Secretary to the Chief Executive

中華人民共和國香港特別行政區行政長官辦公室

Office of the Chief Executive of the Hong Kong Special Administrative Region of the People's Republic of China

香港添馬 電話: +852 2878 3300 傳真: +852 2509 0580 電郵: ceo@ceo.gov.hk
Tamar, Hong Kong Telephone: +852 2878 3300 Fax: +852 2509 0580 E-mail: ceo@ceo.gov.hk