

Commissioner on Interception of Communications and Surveillance Annual Report 2006

Summary

The Interception of Communications and Surveillance Ordinance ('the Ordinance') came into force on 9 August 2006 and the Chief Executive appointed Mr Justice WOO Kwok-hing as the Commissioner on Interception of Communications and Surveillance ('Commissioner') on the same date to take effect on 17 August 2006. The appointment was for a period of three years. The Commissioner's first annual report ('report'), ie Annual Report 2006, covers the period from the commencement of the Ordinance to 31 December 2006. The following is a summary of the report.

The Commissioner's main function is to oversee the compliance by the law enforcement agencies ('LEAs') as specified in the Ordinance (ie Hong Kong Police Force, Customs and Excise Department, Immigration Department and Independent Commission Against Corruption) and their officers with the statutory requirements in relation to interception of communications and covert surveillance, and to conduct reviews to ensure full compliance with the requirements of the Ordinance by LEAs so that the privacy of persons in Hong Kong will have appropriate protection. For his other functions, please see Chapter 2 of the report.

Right upon his assumption of office, the Commissioner felt that some members of the media and the public seemed to consider that the panel judges and the Commissioner were appointed to assist LEAs in their conducting interception and covert surveillance in disregard of the privacy of persons in Hong Kong. This view, which is contrary to the clear objective of the Ordinance, might have been caused by the title of the Ordinance and that of the Commissioner. Had the Ordinance been named, for example, as the Protection against Unlawful Interception of Communications or Surveillance Ordinance and his post been called the Commissioner on Protection against Unlawful Interception of Communications or Surveillance, the misunderstanding would have been eliminated.

The Ordinance makes specific reference to legal professional privilege ('LPP') and journalistic material for particular caution when interception and covert surveillance are to be authorized and carried out. In all the cases reported to the Commissioner by the LEAs during the report period, there was not a single case where LPP information or journalistic material had ever been obtained.

During the report period, a total of 526 authorizations (including fresh and renewed authorizations) were issued. Among them, 449 were judges' authorizations for interception, 30 were judges' authorizations for Type 1 surveillance and 47 were executive authorizations (ie authorizations granted by the designated authorizing officers of the LEAs) for Type 2 surveillance.

During the report period, a total of 67 applications were refused (including 35 applications for interception, 29 applications for Type 1 surveillance and 3 applications for Type 2 surveillance).

There was no application for emergency authorizations.

During the report period, a total of 177 persons were arrested as a result of or further to interception or covert surveillance carried out pursuant to prescribed authorizations.

During the report period, the Commissioner received three reports, involving four incidents of irregularities, from heads of LEAs made pursuant to section 54 of the Ordinance. They related to one Type 2 surveillance and three interception cases. Please refer to Chapter 10 of the report for details.

During the report period, a total of 19 applications for examination were received. Save for one of these applications that was subsequently not pursued by the applicant, the Commissioner carried out examination for the remaining 18 applications. For these applications, five concerned suspected cases of interception and one alleged surveillance. The other 12 related to a combination of both. After making enquiries with the necessary parties, the Commissioner found all these cases not in the applicants' favour. Under the Ordinance, the Commissioner was not

allowed to provide reasons for his determination.

Having reviewed the provisions of the Ordinance and the practical aspects of its operation, the Commissioner made a number of recommendations to the Secretary for Security and the heads of LEAs under sections 51 and 52 of the Ordinance during the report period. These recommendations included amendments to forms adopted by the LEAs to improve the content and wording, enhancement of the procedures and practices between the LEAs and panel judges and of data submission by LEAs to the Commissioner for audit. The Commissioner also pointed out parts and areas of the Ordinance that were unclear or subject to different interpretations. Please see Chapters 9, 11 and 13 of the report for details.

During the report period, the overall situation was satisfactory. The Commissioner did not detect any deliberate breach of the provisions of the Ordinance by any LEAs or their officers. Besides, the panel judges were stringent in their considerations of the applications by the LEAs.

The Commissioner expresses his gratitude to the Panel Judges' Office, the Security Bureau, the LEAs, the communications services providers and other concerned parties and looks forward to their continued assistance and support.

The report has been uploaded onto the webpage of the Secretariat, Commissioner on Interception of Communications and Surveillance (<http://www.sciocs.gov.hk>) for access by the members of the public.