

Commissioner on Interception of Communications and Surveillance

Annual Report 2024

Executive Summary

1. The Interception of Communications and Surveillance Ordinance (Cap. 589) ('the Ordinance' or 'ICSO') came into force on 9 August 2006 and was amended in June 2016. Pursuant to section 49 of the Ordinance, Mr Yeung Chun Kuen, GBS, the Commissioner on Interception of Communications and Surveillance ('Commissioner') submitted his fourth annual report, i.e. Annual Report 2024, to the Chief Executive on 26 June 2025. The report covers the period from 1 January to 31 December 2024. The following is a summary of the report.

2. The Commissioner's main functions are to oversee the compliance by 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 together with their officers with the statutory requirements in relation to interception of communications and covert surveillance; and to conduct reviews to ensure full compliance by the LEAs with the relevant requirements of the Ordinance, the Code of Practice ('COP')

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

issued by the Secretary for Security under section 63 of the Ordinance and the prescribed authorizations.

3. During the report period, of a total of 1,092 prescribed authorizations (including fresh and renewed authorizations) issued pursuant to written applications, 1,054 were panel judge's authorizations for interception, 34 were panel judge's authorizations for Type 1 surveillance and four were executive authorizations for Type 2 surveillance issued by designated authorizing officers of the LEAs concerned. These authorizations included 15 cases that had been renewed more than five times. Besides, there was one authorization for Type 2 surveillance that was granted pursuant to an oral application and confirmed in writing within 48 hours from the issue of the authorization. No oral application for interception or Type 1 surveillance was made by the LEAs.

4. During the report period, all applications for interception, Type 1 surveillance and Type 2 surveillance were allowed. There was no application for emergency authorization.

5. A total of 211 persons were arrested in 2024 as a result of or further to interception or covert surveillance carried out pursuant to prescribed authorizations.

6. The Ordinance makes specific reference to legal professional privilege ('LPP') and journalistic material ('JM') for particular caution when interception or covert surveillance is to be authorized and carried out. The Ordinance stipulates that no interception of telecommunication service of a lawyer used to provide legal advice to clients and no covert surveillance at his office or residence may be authorized unless the lawyer or the premises concerned is involved in a serious crime or a threat to public security or that the communication concerned is for the furtherance of a criminal purpose. The COP also provides that the LEAs should notify the Commissioner of covert operations that are likely to involve LPP information or JM as well as other cases where LPP information or JM has been obtained.

7. 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 it subsequently transpires that there is anything which may affect the assessment, the officer concerned has to promptly notify the panel judge of the altered LPP assessment by way of an REP-11 report; or, in the case of a Type 2 surveillance operation, to notify the authorizing officer by way of an REP-13 report. If an LEA becomes aware that the subject of interception or covert surveillance has been arrested and the LEA considers that the operation should continue, the LEA shall submit to the relevant authority a section 58 report assessing the effect of the arrest on the likelihood that any LPP information would be obtained by continuing the interception or covert

surveillance. The concerned LEA is required to give the Commissioner a similar notification of each of such occurrences in order to apprise the Commissioner promptly with updated information on this important matter.

8. For 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.

9. In the Commissioner's review of the cases that were likely to involve information protected by LPP ('LPP cases'), 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 audit trail reports, etc. would be checked and the protected products would be examined.

10. One case of heightened LPP likelihood received in 2022 was on-going beyond 2023 and the authorized operations of the case were discontinued in 2024. The Commissioner had reviewed the case and did not find any irregularity.

11. 34 LPP cases reported in 2023 were on-going beyond 2023 and the authorized operations of 32 cases (including two cases of obtaining LPP information and 30 cases of heightened/assessed LPP likelihood) were discontinued in 2024. The Commissioner had completed the review of these 32 cases in the report period and nothing untoward was revealed. Details of the Commissioner's reviews of these cases are set out in Chapter 4 of the report. The remaining two cases of heightened/assessed LPP likelihood are still on-going beyond the report period and they will be dealt with in the next annual report.

12. In the report period, LEAs submitted notifications, in accordance with the COP, on 67 new LPP cases, of which 21 cases were assessed at the time of application that the operations sought to be authorised would likely obtain information subject to LPP and there was no subsequent change of the assessment. For the remaining 46 cases, the LEAs submitted REP-11 or section 58 reports to the panel judge on the subsequent change in circumstances relating to LPP involvement or such likelihood. These 46 cases included one case of obtaining LPP information, one of suspected obtainment of LPP information and 44 of heightened likelihood of obtaining LPP information. For all the LPP cases where the operations were either assessed to have a likelihood of obtaining LPP information at the grant of the prescribed authorizations or allowed to continue after such likelihood was reported heightened, the panel judge had imposed additional conditions in the authorizations

concerned.

13. Of the 67 new LPP cases, the authorized operations for 44 cases were discontinued by the end of the report period and the Commissioner had completed their reviews. There was one case of obtainment of LPP information. The Commissioner considered that LPP information had been inadvertently obtained by the LEA concerned. Details of the Commissioner's reviews of these 44 cases are given in Chapter 4 of the report. The authorized operations for the remaining 23 cases are still on-going beyond the report period, they will be dealt with in the next annual report.

14. As regards JM, two cases with heightened likelihood of obtaining JM reported in 2023 were still on-going beyond 2023 and the authorized operation of one of these two cases was discontinued in 2024. The Commissioner had completed the review of the case in the report period and did not find any irregularity. For the remaining case, it is still on-going beyond the report period and it will be dealt with in the next annual report.

15. In the report period, the Commissioner received notifications on one new case of suspected obtainment of JM and four new cases with heightened likelihood of obtaining JM, of which the authorized operations for two cases of heightened likelihood of obtaining JM were discontinued by the end of the report period.

The Commissioner had completed the reviews of the two cases and did not find any irregularity. The authorized operations for the other three cases are still on-going beyond the report period and they will be dealt with in the next annual report.

16. The Commissioner selected from the weekly reports, on the basis of the information provided therein or randomly, interception and surveillance products of other cases for examination. During the report period, on the said basis of selection, interception products of 741 selected authorizations and surveillance products of 20 selected authorizations were examined by the Commissioner.

17. Various forms of checking, including the examination of interception/ surveillance products in respect of specific cases (such as LPP and JM cases) and selected authorizations and examination of all the relevant documents and records, were conducted in the report period. Seven cases of non-compliance/irregularity/incident were revealed as detailed in Chapter 6 of the report. There was no sign of abuse of surveillance devices for any unauthorized purposes. Regarding surveillance devices for non-ICSO purposes, there was one case of loss of a surveillance device during the year, the details of which are set out in Chapter 3 of the report.

18. For the seven cases of non-compliance/irregularity/incident mentioned in Chapter 6 of the report, in which two of them involved

reports submitted under section 54 of the Ordinance, the Commissioner did not find any deliberate disregard of the statutory provisions or the COP, or any ulterior motive or ill will on the part of the officers involved. 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. Overall, the LEAs have taken great care in the performance of their ICSO-related duties and their enthusiasm and professionalism are highly appreciated. With the system enhancements and tightening up of workflow and procedures, the number of rare and occasional cases of irregularities due to inadvertence, hopefully, will be further reduced in the future.

19. During the report period, no disciplinary action against any LEA officer concerned was taken for cases mentioned in Chapter 6 of the report.

20. The Commissioner has set out in Chapter 8 of the report an assessment of the overall performance of the LEAs and their officers in their compliance with the relevant requirements of the ICSO in 2024. 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 cases. The duration of the prescribed authorizations was justified and reflected the

operational requirement for the proper investigation of the serious crimes in question.

21. The LEAs were also observed to have recognised the importance of protecting information which might be subject to LPP and 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. 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 their duties, and in tightening up measures to minimise the risk of obtaining LPP information inadvertently are much appreciated.

22. The Commissioner is pleased to see that in the report period, the LEAs continued to adopt a cautious approach in handling ICSO-related matters and took initiative to review the workflow and tighten up procedures for better operation of the ICSO regime. Besides, system enhancements were implemented whenever necessary to prevent technical mistakes and to avoid human errors. The Commissioner is satisfied with the overall performance of the LEAs.

23. During the report period, five applications for examination were received. Of these applications, one alleged interception and four claimed a combination of interception and covert surveillance operations.

After making all necessary enquiries, the Commissioner found all the five cases not in the applicants' favour and accordingly notified the applicants of his findings in writing. Under the Ordinance, the Commissioner is not allowed to provide reasons for his determination. 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. 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.

24. Section 48 of the Ordinance obliges the Commissioner to give notice to the relevant person when the Commissioner discovers any interception or covert surveillance carried out by an officer of any of the four LEAs covered by the Ordinance without a prescribed authorization. However, section 48(3) provides that the Commissioner shall only give 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. During the report period, no notice pursuant to section 48 of the Ordinance was issued.

25. In the report, the Commissioner expressed his 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 him to properly discharge his oversight and reviewing functions under the ICSO. The Commissioner looks forward to the continuous support and cooperation of all the parties involved in facilitating his work under the ICSO.

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