

CAYMAN ISLANDS



Information and Communications Technology Authority Law

**INFORMATION AND COMMUNICATIONS
TECHNOLOGY AUTHORITY
(INTERCEPTION OF
TELECOMMUNICATIONS) REGULATIONS**

(2018 Revision)

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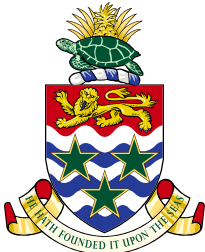
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PART 1 - PRELIMINARY

Citation

1. These Regulations may be cited as the Information and Communications Technology Authority (Interception of Telecommunications) Regulations (2018 Revision).

Definitions

2. In these Regulations —

“**ICAC**” means the Interception of Communications Audit Committee established under regulation 17;

“**intercept**” includes monitoring and interrupting; and

“**message**” means a communication sent, delivered, received or transmitted, or intended to be sent, delivered, received or transmitted by telecommunication and includes any information that enables the identification of the origin and destination of the communication and the date and time it was transmitted or received.

Application

3. These Regulations do not apply to the interception of messages on a telecommunication system provided by an employer to an employee.

**PART 2 - INTERCEPTION OF TELECOMMUNICATION
MESSAGES****Governor may authorise interception**

4. In exercise of the power conferred under section 75(2)(a), the Governor may issue a warrant authorising any person employed by the Royal Cayman Islands Police Service to intercept a message in relation to a matter or person for the purposes of gathering intelligence for purposes specified in regulation 5.

Grounds of interception

5. (1) The Governor may only issue a warrant —
- (a) in the interests of national security;
 - (b) for the purpose of preventing or detecting serious crime;
 - (c) to avert an imminent threat to human life;
 - (d) in circumstances coming within the scope of international mutual assistance agreements; or
 - (e) to safeguard the economic well-being of the Islands,
- and if he is satisfied that the interception of the message is proportionate to the ends sought to be achieved by intercepting the message and the information sought to be obtained cannot be obtained by other less intrusive means.
- (2) A warrant shall be addressed to the Commissioner, who may authorise an employee of the Royal Cayman Islands Police Service to execute the warrant.
- (3) In this regulation “serious crime” includes —
- (a) an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; and
 - (b) an offence where the conduct —
 - (i) involves the use of violence;
 - (ii) results in substantial financial gain; or
 - (iii) is conduct by a large number of people in pursuit of a common purpose.



Oral applications and grants

6. (1) Where there is imminent threat to life and it is not practicable to make a written application for a warrant, an oral application supported by grounds orally given may be made and an oral warrant may be issued to last for twenty four hours but the period may be extended by a written warrant issued upon a written application.
- (2) A written application following an oral warrant shall otherwise comply with all the requirements of these Regulations and, in addition, reduce to writing the grounds orally given but shall in all other respects be treated as if no oral warrant had before been issued.

Governor may consult Attorney General

7. The Governor may, in the exercise of his powers under these Regulations, consult the Attorney General.

Contents of warrant

8. A warrant shall contain —
- (a) the facts constituting the grounds for requesting the warrant;
 - (b) details of the person or premises, if known, to which the request relates and how that person or premises are relevant to the request;
 - (c) a description of the messages to be intercepted;
 - (d) details of the communications service provider;
 - (e) supporting evidence of urgency, where an application is said to be urgent; and
 - (f) an assurance that all material intercepted will be handled in accordance with safeguards established by the Government or the Royal Cayman Islands Police Service.

Destruction of intercepted communication and related communications

- 8A. The Commissioner of Police shall ensure that arrangements are in place for the destruction of any communication intercepted under a warrant, any copies made of such communication and all related communications data, as soon as the intercepted communication is no longer needed for the purposes of regulation 9(3).

Exclusion of matters from legal proceedings

9. (1) Subject to paragraph (3), no evidence shall be adduced, question asked, assertion or disclosure made or other thing done in, for the purposes of, or in connection with, any legal proceedings or proceedings under the *Commissions of Enquiry Law (1997 Revision)* which, in any manner —

- (a) discloses, in circumstances from which its origin in anything falling within subsection (2) may be inferred, any of the contents of an intercepted communication or any related communications data; or
 - (b) tends (apart from any such disclosure) to suggest that anything falling within subsection (2) has or may have occurred or is going to occur.
- (2) In this section “intercepted communication” means any communication intercepted in the course of its transmission by means of a telecommunication system.
- (3) Nothing in this regulation prohibits a disclosure of any information that continues to be available for disclosure if it is confined to a disclosure to —
 - (a) a person conducting a criminal prosecution, for the purpose of enabling that person to determine what is required of the person as a prosecutor in order to secure the fairness of the prosecution; or
 - (b) a judge of the Grand Court or a magistrate in a case in which the judge or magistrate —
 - (i) is satisfied that the exceptional circumstances of the case make the disclosure essential in the interests of justice; and
 - (ii) orders the disclosure to be made to such judge or magistrate alone.

Unauthorised disclosures prohibited

- 9A.** (1) No person to whom this section applies shall make an unauthorised disclosure to another person.
- (2) A person makes an unauthorised disclosure who discloses any of the following matters in relation to a warrant issued under regulation 5 —
- (a) the existence or contents of the warrant;
 - (b) details of its issue, renewal or modification;
 - (c) the existence or contents of any requirement to provide assistance in giving effect to the warrant;
 - (d) the steps taken in pursuance of the warrant or a requirement referred to in subparagraph (c); or
 - (e) any material obtained under the warrant.
- (3) This regulation applies to the following persons —
- (a) public officers;
 - (b) persons employed by, or for the purposes of, a police force;
 - (c) telecommunications operators and persons employed or engaged for the purposes of their telecommunications business; and
 - (d) any person to whom any of the matters referred to in paragraph (2) have been disclosed under a warrant.



- (4) For the purposes of this regulation, the following disclosures are authorised —
 - (a) a disclosure authorised by the warrant, by the person to whom the warrant is addressed or by the terms of any requirement to provide assistance in giving effect to the warrant;
 - (b) a disclosure made to the ICAC or the Police Public Complaints Authority for the purposes of facilitating the carrying out of any of their functions; and
 - (c) a disclosure, other than a disclosure made with a view to furthering any criminal purpose, made —
 - (i) by a legal adviser in contemplation of, or in connection with, any legal proceedings, for the purposes of those proceedings;
 - (ii) by a professional legal adviser to the adviser's client or the client's representative in connection with the adviser giving advice to the client or representative about the effect of these Regulations; or
 - (iii) by the client or representative referred to in subparagraph (c)(ii) to a professional legal adviser in connection with a matter referred to in that subparagraph.
- (5) Nothing in paragraph (4) affects the operation of regulation 9.

Offence of making unauthorised disclosure

- 9B.** (1) Any person who makes an unauthorised disclosure contrary to regulation 9A commits an offence and is liable —
- (a) on summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of 6 months; or to both; or
 - (b) on conviction on indictment, to a fine of twenty thousand dollars or imprisonment for a term of two years or to both.
- (2) In proceedings against any person under this regulation in respect of any disclosure, it is a defence for the person to show that they could not reasonably have been expected, after first becoming aware of the matter disclosed, to take steps to prevent the disclosure.

Channelling of requests to Governor: Within the RCIPS

- 10.** A request for permission to intercept a message shall be directed to the Commissioner of Police who, if satisfied that such request might meet the grounds upon which the Governor may grant the request, may convey it to the Governor together with such modifications and comments as he may wish to make.

Channelling of requests to Governor: From Immigration and Customs

11. (1) Requests from the Department of Immigration, the Department of Customs and Her Majesty's Prison Service shall be channelled to the Commissioner of Police subject to such internal procedures as the Chief Immigration Officer, the Collector of Customs and the Director of Prisons, respectively, may administratively institute.
- (2) Requests from the Department of Immigration, the Department of Customs and Her Majesty's Prison Service shall be handled by the Royal Cayman Islands Police Service in such manner as the Commissioner of Police may administratively institute.

Duration of warrant

12. A warrant shall be valid for the period stated on the warrant but such period shall not exceed three months.

Renewal of warrant

13. A warrant may continue to be renewed so long as the same criteria for issuance of the warrant in the first place are applied.

Modification of warrant

14. The Governor may modify the details of a warrant issued either in his or her own discretion or upon request by the Commissioner of Police, who may be moved in that regard in the same way as he is in the issuance of an original warrant.

Need or otherwise of warrant to be kept under review

15. Without limiting the powers of the Governor in relation to any warrant, the Commissioner shall ensure that the need or otherwise of any warrant is kept under review.

PART 3 – PRISONS**Monitoring of prisoners' telecommunications**

16. (1) Nothing in these Regulations interferes with the duty of the Director of Prisons to intercept telecommunications to, from or among prisoners for the good order of the prison.
- (2) It is declared for purposes of clarification that the right of prisoners to communicate with their attorneys in confidence shall continue to be enjoyed by all prisoners to the extent existing before entry into force of these Regulations.



PART 4 – AUDIT

Establishment of audit committee

- 17.** (1) The Governor in Cabinet shall appoint a committee to be known as the Interception of Communication Audit Committee, whose function shall be to conduct audits of interceptions carried out under these Regulations.
- (2) The ICAC shall consist of the following persons —
- (a) a retired Judge who shall be the chairperson; and
- (b) three Justices of the Peace.
- (3) Members of the ICAC shall serve at the pleasure of the Governor in Cabinet.
- (4) The ICAC shall adopt its own rules of procedure.

Conduct of audit

- 18.** (1) The ICAC shall conduct an audit of all interception equipment and data records at least once every six months to determine whether interceptions were conducted in accordance with these Regulations.
- (2) The Commissioner of Police shall disclose or provide to the ICAC access to interception equipment, data records and such documents and information as the ICAC may require for the purpose of enabling it to carry out its functions under these Regulations and, for the purposes of this regulation, data records do not include the recordings of the conversations or a transcript thereof.

Confidentiality

- 19.** Members of the ICAC shall sign a confidentiality agreement with the Governor, which shall prohibit the disclosure to unauthorised persons of information obtained during the audit process.

Report

- 20.** The ICAC shall, through the Chairperson, present a written report to the National Security Council no later than 30 days after an audit is complete.

Publication in consolidated and revised form authorised by the Cabinet this 13th day of March, 2018.

Kim Bullings
Clerk of the Cabinet