



MINISTRY OF NATIONAL SECURITY

Interception of Communications Act, Chapter 15:08

2012 ANNUAL REPORT

For the period January, 2012 – December, 2012

Prepared by the Hon. Minister of National Security
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Preface

1. This 2012 Annual Report is prepared pursuant to section 24 of the Interception of Communications Act, Chapter 15:08 (“the IoCA”). Section 24 provides that the following information shall form the substance of this report:
 - a. The number of warrants applied for to intercept communications;
 - b. The number of warrants granted by the Court;
 - c. The number of warrants applied for and granted under section 11 of the IoCA;
 - d. The average period for which warrants were granted;
 - e. The number of warrants refused or revoked by the Court;
 - f. The number of applications made for renewals;
 - g. The number and nature of interceptions made pursuant to the warrants granted;
 - h. The offences in respect of which warrants were granted, specifying the number of warrants given in respect of each of those offences;
 - i. The number of persons arrested whose identity became known to an authorised officer as a result of an interception under a warrant;
 - j. The number of criminal proceedings commenced by the State in which private communications obtained by interception under a warrant were adduced in evidence and the number of those proceedings that resulted in a conviction;
 - k. The number of criminal investigations in which information obtained as a result of the interception of a private communication under a warrant was used although the private communication was not adduced in evidence in criminal proceedings commenced by the State as a result of the investigation;

1. The number of prosecutions commenced against persons under sections 6,7,8,17,19 and 21 and the outcome of those prosecutions;
 - m. A general assessment of the importance of the interception of private communications for investigation, detection, prevention and prosecution of offences in the State; and
 - n. Any other matter the Minister considers necessary.
2. For ease of reference, information required to be provided under section 24 of the IoCA [save and except matters under section 24(m)-(n)] have been presented in this report through three (3) separate tables illustrative of the respective activities of the three (3) authorised officers identified in section 2 of the IoCA. In this regard, Table A represents the activity of the Commissioner of Police, Trinidad and Tobago Police Service, Table B, the Director, Strategic Services Agency and Table C, the Chief of Defence Staff, Trinidad and Tobago Defence Force.
3. A general assessment of the importance of interception of private communications for the investigation, detection, prevention and prosecution of offences by the State, appears under the heading “General Assessment” in this report and includes other matters, which are considered necessary.
4. This report contains a brief examination of the legal framework that pertains to the IoCA under the heading “Overview” whilst an introduction to this Report appears at page 5.
5. Finally, closing remarks to this Report are found under the heading “Conclusion”.

6. This Report was statutorily due in 2013 by my predecessor, who lamentably neither prepared nor laid same before both Houses of Parliament as required by the IoCA. It is therefore my pleasure to lay this Report before both Houses of Parliament in keeping with section 24 of IoCA.

Edmund Dillion
Maj. Gen (Ret'd)
Minister of National Security

Introduction

7. The role of interception of communications as a tool for law enforcement in the fight against crime continues to evolve with the advent of technological advancements and the sophistication of criminal activity. In this regard, the interception of communications, whilst traditionally utilised as a method for detecting and preventing crime, is entering a new phase where, in some instances, it forms the crux of a prosecution. In the region, this point is vividly illustrated in *R v. Adidjah Palmer, Lenburgh McDonald and Nigel Thompson [HCC 104/12]*.

8. Notwithstanding the undeniable benefits in the fight against crime, the activities under the IoCA continue to strike a necessary balance between the privacy of citizens and the legitimate aims of law enforcement. This balance is achieved in the IoCA firstly by permitting only the Commissioner of Police, Director of the Strategic Services Agency and the Chief of Defence Staff to carry out lawful intercepts. Accordingly, the activities of these three officials render them liable to prosecution if not in accordance with the IoCA.

9. It is to be noted that the regulation of interception of communications in the Commonwealth is relatively new with enactments first appearing in the United Kingdom in 1985 and in Australia in 1979. Though in Trinidad and Tobago the IoCA has been in force for nearly seven (7) years, law enforcement continues to make great strides in its application to crime fighting.

Overview

10. The IoCA, can be found in its entirety at the Appendix to this Report. It was introduced in the House of Representatives and the Senate, respectively, on November 12th, 2010 and November 29th, 2010, where it received the full support of both Houses of Parliament. The IoCA was passed on December 1st, 2010 and assented to on December 3rd 2010. Pursuant to Legal Notice No. 294 of 2010, the IoCA was proclaimed with an operative date of December 17th, 2010.
11. The IoCA, in its long title, is described as “An Act to provide for and about the interception of communications, the acquisition and disclosure of data relating to communications, the acquisition of the means by which electronic data protected by encryption or passwords may be decrypted or accessed and other related matters”. The IoCA therefore seeks to regulate and facilitate the interceptions of communications for law enforcement purposes, on the one hand, whilst balancing the privacy of individuals on the other hand
12. The IoCA clearly specifies the circumstances under which lawful interception can take place, *to wit*:
- a. under the authority of a warrant;
 - b. by an authorised officer:
 - i. in the interest of national security;
 - ii. for the prevention or detection of certain offences;
 - iii. to safeguard the economic wellbeing of the State;
 - iv. to give effect to international mutual assistance agreements;

- c. where there is reasonable grounds for believing that a person consents to the interception;
 - d. as an ordinary incident in the provision of telecommunication services;
 - e. if the communication is not private;
 - f. the communication is a stored communication and is acquired in accordance with any other law; and
 - g. the interception is of a private telecommunications network and is done by a person who has a right to control the operation or use of the network.
13. Pursuant to section 6(1) of the IoCA, the interception of communications transmitted over a telecommunications network is prohibited, subject to the exceptions listed in paragraph 12 above.
14. The IoCA contains several provisions governing warrants, particularly sections 8 and 11, with guidance provided on their:
- a. issuance;
 - b. revocation;
 - c. renewal;
 - d. scope of authority conferred by warrants;
 - e. execution; and
 - f. the manner in which the information gathered is to be used.
15. There are a number of offences created under the IoCA as follows:
- a. unauthorised interception of communications [seven years imprisonment and a fine of five hundred thousand dollars *see section 6(1)*];

- b. possession, sale, purchase or manufacture of interception devices or components [five years imprisonment and a fine of two hundred and fifty thousand dollars *see section 7(1)*];
- c. unauthorised disclosure of a warrant [three years imprisonment and a fine of fifty thousand dollars *see section 8(6)*];
- d. failure to provide assistance [a fine of one million dollars *see section 13(3)*];
- e. failure to comply with a disclosure order [one year imprisonment and a fine of one hundred thousand dollars *see section 16(7)*];
- f. an authorised officer knowingly contravening matters related to a disclosure order [two years imprisonment and a fine of two hundred thousand dollars *see section 16(9)*];
- g. unauthorised disclosures [five years imprisonment and a fine of three hundred thousand dollars *see section 18(9)*];
- h. failure to destroy records or information [seven years imprisonment and a fine of five hundred thousand dollars *see section 20(7)*]; and
- i. various offences [terms of imprisonment vary from two-three years and fines from one hundred thousand-two hundred and fifty thousand dollars *see section 23*]

General Assessment

16. Due to the extensive use of violence (sometimes with lethal consequences) by modern criminals, especially members of organised crime groups, against individuals perceived to be assisting law enforcement, traditional methods of gathering intelligence, such as the insertion of human sources and surveillance operatives, have proven quite dangerous and put the lives of operatives at risk. It is in this context that the interception of private communication provides legal, remote, wide ranging and non-detectable access to evidence which links criminals to their nefarious activities in a manner that would otherwise prove difficult or even impossible to accomplish.
17. Interception of communications also facilitates the early detection of criminal conspiracies. This has enabled law enforcement to exercise an enhanced duty of care by allowing intended victims to be warned and facilitates the institution of measures to prevent and suppress the occurrence of a number of planned serious crimes including homicides. It is expected that this tool will continue to be used by the authorised officers as part of their arsenal in curbing and minimizing criminal activity and crime as a whole.
18. Prosecutions initiated, though pending, also seem poised to benefit from the interception of private communications and present an opportunity for the legal framework and operations of the authorised officers to stand the scrutiny of the judicial process. In the region, the case of *R v. Adidjah Palmer, Lenburgh McDonald and Nigel Thompson [HCC 104/12]* presented such an opportunity for Jamaica in 2014.

19. For the year 2012, law enforcement initialized the regime under the IoCA for the interception of private communications through warranted intercepts. Interception of private communications, in this regard, were sought and granted in relation to drug trafficking and gang activity.

Table A

Commissioner of Police, Trinidad and Tobago Police Service	
The number of warrants applied for to intercept communications	Four (4)
The number of warrants granted by the Court	Four (4)
The number of warrants applied for and granted under section 11 of the IoCA	Nil (0)
The average period for which warrants were granted	Ninety (90) days
The number of warrants refused or revoked by the Court	Nil (0)
The number of applications made for renewals	Nil (0)
The number and nature of interceptions made pursuant to the warrants granted	Speech: 125,963 (through *SSA) Data: 31,183 (through *SSA) Data: 2 [Service Provider(s)]
The offences in respect of which warrants were granted, specifying the number of warrants given in respect of each of those offences	Drug Trafficking: Three (3) Gang Activity: One (1)
The number of persons arrested whose identity became known to an authorised officer as a result of an interception under a warrant	Nil (0)
The number of criminal proceedings commenced by the State in which private communications obtained by interception under a warrant were adduced in evidence and the number of those proceedings that resulted in a conviction	Nil (0)
The number of criminal investigations in which information obtained as a result of the interception of a private communication under a warrant was used although the private communication was not adduced in evidence in criminal proceedings commenced by the State as a result of the investigation	Four (4)
The number of prosecutions commenced against persons under sections 6,7,8,17,19 and 21 and the outcome of those prosecutions	Nil (0)

*Director, Strategic Services Agency

Table B

Director, Strategic Services Agency	
The number of warrants applied for to intercept communications	Nil (0)
The number of warrants granted by the Court	Nil (0)
The number of warrants applied for and granted under section 11 of the IoCA	Nil (0)
The average period for which warrants were granted	Nil (0)
The number of warrants refused or revoked by the Court	Nil (0)
The number of applications made for renewals	Nil (0)
The number and nature of interceptions made pursuant to the warrants granted	Speech: 125,963 (for *CoP) Data: 31,183 (for *CoP)
The offences in respect of which warrants were granted, specifying the number of warrants given in respect of each of those offences	Nil (0)
The number of persons arrested whose identity became known to an authorised officer as a result of an interception under a warrant	Nil (0)
The number of criminal proceedings commenced by the State in which private communications obtained by interception under a warrant were adduced in evidence and the number of those proceedings that resulted in a conviction	Nil (0)
The number of criminal investigations in which information obtained as a result of the interception of a private communication under a warrant was used although the private communication was not adduced in evidence in criminal proceedings commenced by the State as a result of the investigation	Nil (0)
The number of prosecutions commenced against persons under sections 6,7,8,17,19 and 21 and the outcome of those prosecutions	Nil (0)

*Commissioner of Police, Trinidad and Tobago Police Service

Table C

Chief of Defence Staff, Trinidad and Tobago Defence Force	
The number of warrants applied for to intercept communications	Nil (0)
The number of warrants granted by the Court	Nil (0)
The number of warrants applied for and granted under section 11 of the IoCA	Nil (0)
The average period for which warrants were granted	Nil (0)
The number of warrants refused or revoked by the Court	Nil (0)
The number of applications made for renewals	Nil (0)
The number and nature of interceptions made pursuant to the warrants granted	Nil (0)
The offences in respect of which warrants were granted, specifying the number of warrants given in respect of each of those offences	Nil (0)
The number of persons arrested whose identity became known to an authorised officer as a result of an interception under a warrant	Nil (0)
The number of criminal proceedings commenced by the State in which private communications obtained by interception under a warrant were adduced in evidence and the number of those proceedings that resulted in a conviction	Nil (0)
The number of criminal investigations in which information obtained as a result of the interception of a private communication under a warrant was used although the private communication was not adduced in evidence in criminal proceedings commenced by the State as a result of the investigation	Nil (0)
The number of prosecutions commenced against persons under sections 6,7,8,17,19 and 21 and the outcome of those prosecutions	Nil (0)

Conclusion

20. The continued availability of interception of communication to law enforcement is vital to underpin the crime reduction goals of the Government of Trinidad and Tobago. In this regard, the Government of Trinidad and Tobago will ensure that every effort will be made to facilitate the legitimate and independent activities of the authorised officers under the IoCA that further this goal.

21. It is anticipated that, in years to come, the interception of communication will continue to be a fundamental tool in the investigation, detection, prevention and prosecution of offences that will be buttressed by other unconventional methods of intelligence gathering and evidence collection.

22. The Government of Trinidad and Tobago will continue to also support a fair balance between the privacy of individuals and the legitimate activities of law enforcement under the IoCA.

APPENDIX