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New law gives privacy protection to individuals' communications records

[Formosa Transnational - Taiwan](#)

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In January 2014 the Taiwanese legislature amended the Communications Protection and Monitoring Act. Pursuant to the amendment, a prosecutor must obtain an order from a competent court in order to gain access to an individual's communications records and identification information stored by a telecommunications service provider or an internet service provider (ISP). To obtain a court order permitting access to an individual's communications records, the prosecutor must prove before the court that an individual has carried out or been involved in a serious crime and that his or her communications records and identification information are relevant to and necessary for the prosecutor's investigation into this matter.

Previously, the Communications Protection and Monitoring Act required a prosecutor to obtain a court warrant only when the prosecutor wished to wiretap an individual's communications. In other words, no warrant or court order was required if the prosecutor or the police wished to acquire from a telecommunications service provider an individual's communications records - that is, information including:

- the numbers of callers and recipients of telephone calls;
- the time, location and length of telephone calls; and
- the individual's email and internet protocol addresses.

As such, it was long-established practice that when the police began to investigate a criminal matter, they would obtain the suspect's communications records from telecommunications service providers or ISPs. Based on the telecommunications records, the police could better understand the activity carried out by that individual in a particular period.

However, this practice was potentially inconsistent with a decision of the grand justices of the Judicial Yuan (the Constitutional Court). In 2007 the grand justices declared in Interpretation 631 that the Taiwanese Constitution requires that the government obtain prior judicial authorisation before wiretapping an individual's communications. Moreover, the grand justices stated that in addition to the confidentiality of the content of communications, constitutional protection of an individual's communication privacy includes the freedom to choose whether, with whom, when and how to communicate with others. By so ruling, the grand justices implied that the constitutional protection of communications privacy extends to an individual's communications records. Accordingly, if the police obtains an individual's communication records without warrant, the police may have infringed that person's constitutional right to communications privacy.

By requiring a court order before a prosecutor can access an individual's communications records, the amendment will substantially change usual police practice. The new law will become effective on June 29 2014. From that date, in most cases prosecutors and the police will have to obtain a court order before requesting telecommunications service providers or ISPs to produce customers' communications records. Meanwhile, telecommunications service providers and ISPs should pay attention to requests from prosecutors request to produce customers' communications records - any disclosure inconsistent with the new law will subject the service providers to privacy infringement liability.

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