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# Briefing – UK-US Intelligence Sharing Arrangements

*Urgent transparency is needed regarding the UK's intelligence sharing arrangements with the United States, which allows UK and US agencies to share, by default, any raw intelligence and methods and techniques related to the acquisition of such intelligence. In a recent YouGov poll, three quarters of Britons said that they want the UK Government to tell the public what safeguards govern these arrangements. Privacy International urges the Government to improve public understanding about the scope of intelligence sharing with the US and the safeguards and oversight currently in place.*

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## Background

While the 2015 National Security Strategy and Strategic Defence and Security Review has referenced an "intelligence sharing partnership" with the US, details about the scope of these arrangements as well as the relevant safeguards and oversight mechanisms are currently not publicly available.

The original UK-US Communication Intelligence Agreement ("UKUSA Agreement") - drafted shortly after World War II - allows UK and US agencies to share, by default, any raw intelligence and *methods and techniques related to the acquisition of such intelligence*.[i] A 1955 revision of the UKUSA Agreement is the most recent version of the agreement to have been made public. Both communications methods as well as the nature of signals intelligence have changed dramatically since 1955.

Over the last few years, information about the nature and scope of the surveillance conducted pursuant to the Five Eyes alliance has been disclosed to the public. The media has revealed, for example, that the NSA, together with GCHQ, acquired the contact lists and address books from hundreds of millions of personal email and instant-messaging accounts as well as webcam images from video chats of millions of Yahoo users.[ii] It has further revealed that the two agencies have cooperated to tap and extract data from the private fibre optic cables respectively connecting Yahoo and Google data centres, located around the world.[iii]

The media has disclosed that, in addition to joint surveillance operations, the UK and US also grant each other broad access to the signals intelligence they each gather. For instance, it has revealed that the NSA has access to data flowing through undersea cables that land in the UK and intercepted by GCHQ and that GCHQ has access to a database containing the content and metadata of hundreds of millions of text messages collected by the NSA.[iv] It has further revealed that the UK and US (as well as a number of other countries) each have access to a network of servers storing information acquired under various programs operated by their respective intelligence agencies.[v]

More recently, it has been reported that the current intelligence sharing arrangements between the UK and the US also allow US intelligence agencies to collect intelligence and

operate from within the UK, including in support of special operations involving lethal force.[vi] It is still not publicly known whether the acquisition of intelligence by US agencies operating within the UK on military bases is subject to UK law governing intelligence gathering.

***Investigatory Powers Tribunal Proceedings***

In light of some of these disclosures, Privacy International (together with nine other human rights and civil liberties NGOs) brought a challenge to the legality of UK-US intelligence sharing before the Investigatory Powers Tribunal (IPT) in 2013. During the proceedings, the Government alluded to secret internal guidance governing intelligence sharing, but has consistently refused to make them publicly accessible or subject to parliamentary scrutiny.

The Government presented this secret guidance to the IPT in a closed hearing, following which it disclosed a "note" containing no heading and just a few paragraphs of text, which appear to summarise some of the arrangements. It remains unclear, however, whether the note is an actual policy, part of a policy, a summary of a policy, or a summary of submissions made by the Government in the closed hearing. It is also unclear whether the note sets out an approach that the Government considers binding or is simply a description of desirable practices. Finally, it is unclear who drafted or adopted the note (and under what legal authority) or who has the power to amend it. The date on which the arrangements came into force is unknown. It is equally unknown if the arrangements have ever been altered or amended.

The note also only governs UK "receipt" of intelligence gathered by the US, but not when and how the UK shares information in the opposite direction. The note's use of the word "receipt" leaves unclear whether it also covers joint operations or UK direct access to US raw intelligence, as opposed to a more formal handover of information from the US to the UK.

***The Investigatory Powers Act***

When the Investigatory Powers Bill was announced, the Home Secretary said that it was about "strengthening the safeguards, and establishing a world-leading oversight regime," but the Act fails to provide any details about safeguards or oversight regarding intelligence sharing.

In a YouGov poll carried out by Privacy International, 78% of British people say they do not trust the US President Donald Trump to only use surveillance powers for legitimate reasons. There is widespread concern that Trump will also use his powers for personal gain. Three quarters of Britons want the UK Government to tell the public what safeguards exist to stop Trump from misusing their data.

**Recommendations**

- Make public full details regarding the scope of these arrangements – including the text of the current version of the UKUSA Agreement – as well as the relevant safeguards and oversight mechanisms.

- Make public subsequent revisions to the UKUSA Agreement as well as other instruments constituting agreements to exchange intelligence between the UK and the US.

- Initiate a full public inquiry into the UK's intelligence sharing arrangements with the US, which should examine the sufficiency of existing safeguards and oversight and whether UK-provided intelligence has played a role in US actions implicating human rights, such as US special operations and targeted killings.

- Amend the Investigatory Powers Act to place safeguards and oversight related to intelligence sharing into primary legislation.

- Make public information about whether the acquisition of intelligence by US bases in the UK is subject to UK or US law governing intelligence gathering.

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Privacy International is committed to fighting for the right to privacy across the world. Founded in 1990, Privacy International was the first organisation to campaign at an international level on privacy issues. We advocate for strong national, regional, and international laws that protect privacy; conduct research to catalyse policy change; and raise awareness about technologies and laws that place privacy at risk to ensure that the public is informed and engaged.

[i] In 2010, the US National Security Agency ("NSA") and GCHQ declassified the original UKUSA Agreement, along with a series of other documents relating to its formation, implementation and alteration. *See* The National Archives, *Newly released GCHQ files: UKUSA Agreement*, June 2010, https://www.nationalarchives.gov.uk/ukusa/. For more detailed background information on the UKUSA Agreement, see Privacy International, *Eyes Wide Open*, 26 Nov. 2013, available at https://www.documentcloud.org/documents/3217301-Annex-to-Letter-From-PI.html.

[ii] Barton Gellman & Ashkan Soltani, *NSA collects millions of e-mail address books globally*, Washington Post, 14 Oct. 2013, available at https://www.washingtonpost.com/world/national-security/nsa-collects-millions-of-e-mail-address-books-globally/2013/10/14/8e58b5be-34f9-11e3-80c6-7e6dd8d22d8f_story.html?utm_term=.3c6dbcf1775a; Spencer Ackerman & James Ball, *Optic Nerve: Millions of Yahoo Webcam Images Intercepted by GCHQ*, The Guardian, 28 Feb. 2014, available at https://www.theguardian.com/world/2014/feb/27/gchq-nsa-webcam-images-internet-yahoo.

[iii] Barton Gellman & Ashkan Soltani, *NSA Infiltrates Links to Yahoo, Google Data Centers Worldwide, Snowden Documents Say*, Washington Post, 30 Oct. 2013, available at https://www.washingtonpost.com/world/national-security/nsa-infiltrates-links-to-yahoo-google-data-centers-worldwide-snowden-documents-say/2013/10/30/e51d661e-4166-11e3-8b74-d89d714ca4dd_story.html?utm_term=.b9376dca702f.

[iv] Ewen MacAskill et al., *GCHQ Taps Fibre-Optic Cables for Secret Access to World's Communications*, The Guardian, 21 June 2013, available at https://www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa; James Ball, *NSA Collects Millions of Text Messages Daily in "Untargeted" Global Sweep*, The Guardian, 16 Jan. 2014, available at https://www.theguardian.com/world/2014/jan/16/nsa-collects-millions-text-messages-daily-untargeted-global-sweep.

[v] Morgan Marquis-Boire et al., *XKEYSCORE: NSA's Google for the World's Private Communications*, The Intercept, 1 July 2015, https://theintercept.com/2015/07/01/nsas-google-worlds-private-communications/; Glenn Greenwald, *XKeyscore: NSA Tool Collects Nearly Everything a User Does on the Internet*, The Guardian, 31 July 2013, available at https://www.theguardian.com/world/2013/jul/31/nsa-top-secret-program-online-data.

[vi] Ryan Gallagher, *Inside Menwith Hill: The NSA's British Base at the Heart of U.S. Targeted Killing*, The Intercept, 6 Sept. 2016, https://theintercept.com/2016/09/06/nsa-menwith-hill-targeted-killing-surveillance.