PRIVACY INTERNATIONAL

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Policy Briefing – UK Intelligence Sharing Arrangements

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A new Privacy International report based on an international collaborative investigation carried out by 40 NGOs in 42 countries has found alarming weaknesses in the oversight arrangements that are supposed to govern the sharing of intelligence between state intelligence agencies, including in the UK. Privacy International urges governments to enact urgent reforms and improve public understanding about the scope of intelligence sharing and the safeguards and oversight currently in place.

Background

Governments share intelligence in various ways, including the exchange, by default, of all raw intelligence, as well as methods and techniques related to the acquisition of such intelligence. Pursuant to an intelligence sharing arrangement, a government might, inter alia:

- Access "raw" (i.e. unanalysed) information, such as internet traffic intercepted in bulk from fibre optic cables by another government
- Access information stored in databases held by another government or jointly managed with another government
- Receive the results of another government's analysis of information, for example, in the form of an intelligence report

It is essential that appropriate legal safeguards and oversight mechanisms exist to regulate intelligence sharing. Intelligence sharing constitutes an interference with the right to privacy and must therefore be subject to safeguards that are well-established in international human rights law, including adequate oversight. Without appropriate safeguards, states can use intelligence sharing to 'outsource' surveillance, bypassing domestic constraints on their surveillance activities. Unregulated intelligence sharing can also contribute to or facilitate serious human rights abuses, such as unlawful arrest or detention, or torture and other cruel, inhuman or degrading treatment.

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UK Intelligence Sharing

UK intelligence agencies share large amounts of intelligence with foreign agencies under various arrangements. The most important, the Five Eyes alliance (made up of the UK, US, Canada, Australia and New Zealand), was formed shortly after World War II. A 1956 version of the governing agreement – the UK-US Communication Intelligence Agreement ("UKUSA Agreement") – is the most recent version of the agreement to have been made public. It allows Five Eyes agencies to share, by default, any raw intelligence and also techniques related to the acquisition of such intelligence. Communications technologies as well as the nature of signals intelligence have changed dramatically since 1956.

Over the last few years, information about the nature and scope of the information shared pursuant to the Five Eyes alliance has been disclosed to the public. The media has revealed, for example, that data flowing through undersea cables that land in the UK are intercepted by GCHQ and made accessible to the NSA, and also that GCHQ has access to a database containing the content and metadata of hundreds of millions of text messages collected by the NSA. 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.

The UK also allow US intelligence agencies to collect intelligence from within the UK on military bases, including in support of special operations involving lethal force.

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. In February 2015, the IPT found this practice unlawful because the rules governing such sharing were secret. It found, however, that the government's disclosure of internal secret guidance during the proceedings was sufficient to render the practice lawful moving forward.

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 sets a poor example with respect to regulating intelligence sharing. As with the Draft Code above, the Act focuses on 'requests' to exchange intelligence with foreign partners and does not address other forms of intelligence sharing. The Act also fails to provide adequate safeguards or oversight of intelligence sharing. It does not address, for instance, whether international and domestic legal constraints applying to direct surveillance apply equally to information obtained through intelligence sharing. It continues to leave the public substantially in the dark as to the circumstances in which intelligence agencies will share information and the procedures governing such sharing.

In a 2017 YouGov poll carried out by Privacy International, 78% of British people said 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 existing intelligence sharing agreements – including the text of the current version of the UKUSA Agreement.

- Make public all relevant rules and policies governing intelligence sharing.

- Amend the Investigatory Powers Act to establish sufficient safeguards and oversight related to intelligence sharing to require, *inter alia*:

    - All intelligence sharing agreements to be subject to approval by both executive and legislative bodies, and to be presumptively public;

    - Intelligence sharing agreements to permit oversight bodies to have access to information provided to and received from a foreign partner;

    - That international and domestic legal constraints that apply to direct surveillance by intelligence agencies also apply equally to information obtained through intelligence sharing arrangements;

    - Prior independent authorisation for sharing intelligence with a foreign partner;

    - Transparency as to the circumstances in which intelligence agencies will share information and the procedures governing such sharing, including limiting sharing to where it is in accordance with law, necessary and proportionate, and articulating the process for authorising sharing;

    - Regular audits, by its oversight bodies, of how foreign partners store, manage and use the information that has been shared, and examination of financial resources allocated to intelligence sharing, including for providing equipment and training to foreign partners.

For more information contact info@privacyinternational.org or +44(0) 20 3422 4321.

Privacy International is a registered charity based in London that works at the intersection of modern technologies and rights.
We shine a light on overreaching state and corporate surveillance, with a focus on the sophisticated technologies and weak laws that enable serious incursions into our privacy. We investigate, litigate, advocate and educate, all with one aim - for people everywhere to have greater security and freedom through greater personal privacy.