PRIVACY INTERNATIONAL

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Policy briefing – 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. 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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International Survey

In September 2017, Privacy International – in partnership with 40 national civil society organisations – wrote to oversight bodies in 42 countries as part of a project to increase transparency around intelligence sharing, and to encourage oversight bodies to scrutinise the law and practice of intelligence sharing in their respective countries. Over the past few months, we have received responses from oversight bodies in 21 countries.

PI's research and the responses reveal that:

- Most countries around the world lack domestic legislation to regulate intelligence sharing. Based on our research, only one country has introduced specific legislation to explicitly regulate intelligence sharing.

- Oversight bodies in nine out of 21 countries responded that intelligence agencies have no clear legal obligation to inform them of the intelligence sharing arrangements into which they enter. Only the oversight body of one country indicated that the intelligence agencies are required by law to provide them access to intelligence sharing arrangements.

- Oversight bodies in nine out of 21 countries responded that they have full or broad access to information about intelligence sharing activities. One oversight body indicated that it was prohibited from accessing such information and several others were ambiguous about the level of access that they have.

- None of the oversight bodies indicated that they have powers to authorise decisions to share intelligence, either at a general level, or in specific circumstances. In many of these countries, the process of authorising intelligence sharing appears to bypass any independent authority.

Recommendations

To Legislative Bodies:

Establish, through primary legislation, publicly accessible legal frameworks governing intelligence sharing, which require:

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

- Intelligence sharing agreements to permit information shared, including that shared by a foreign partner, to be shared with oversight bodies;

- That international and domestic legal constraints that apply to direct surveillance by intelligence agencies 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 the manner in which any foreign partners store, manage and use the information that has been shared;

- Intelligence agencies to conduct due diligence and risk assessments when sharing information; establish audit trails documenting, *inter alia*, authorisations to share information, the information shared, and the manner in which it was shared; and establish internal mechanisms by which staff may disclose concerns regarding intelligence sharing;

- Independent oversight bodies that oversee the intelligence agencies to exercise their powers with respect to intelligence sharing and to have the mandate, *inter alia*, to fully access information held by the intelligence services related to intelligence sharing, undertake investigations on their own initiative, and examine the allocation and use of financial resources for intelligence sharing, including for providing equipment and training to foreign partners;

- The executive to inform oversight bodies of all agreements to govern intelligence sharing when they are concluded or revised.

To Oversight Bodies:

- Regularly review and evaluate intelligence agencies' compliance with relevant international and domestic law: when sharing intelligence; when putting agreements in place to share intelligence; in terms of the agencies' own internal policies, due diligence and risk assessment procedures and practices related to intelligence sharing;

- Undertake regular investigations into intelligence agencies' policies and practices relating to intelligence sharing;

- Cooperate with foreign oversight bodies in states with whom intelligence is shared.

To the Executive:

- Conduct a review of the compatibility of agreements to share intelligence with international and domestic law;

- Develop written agreements to govern intelligence sharing with foreign partners;

- Share all agreements to govern intelligence sharing with oversight bodies when they are concluded or revised;

- Develop written and publicly available guidelines governing intelligence sharing.

To Intelligence Agencies:

- Develop written and publicly available internal policies on intelligence sharing that mandate compliance with domestic and international law;

- Prohibit information sharing with foreign partners where there exists a credible risk that such sharing will contribute to or facilitate the violation of human rights;

- Require and establish due diligence and risk assessment procedures for determining whether there exists a credible risk that sharing information with a foreign partner will contribute to or facilitate the violation of human rights;

- Prohibit the use of information where there exists a credible risk that a foreign agency obtained it in violation of international law;

- Report regularly to oversight bodies on, *inter alia*, authorisations to share information, the information shared, and the manner in which it was shared;

- Establish internal mechanisms by which staff may disclose concerns regarding intelligence sharing, including to oversight bodies.

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.