UK tribunal hears evidence of mass surveillance

Robert Stevens
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A five-day hearing before the UK's Investigatory Powers Tribunal (IPT) on the operations of Britain's Government Communications Headquarters (GCHQ) spying operations concluded July 18.

Civil liberties and human rights organisations, including Privacy International, Amnesty International, Liberty and the US Civil Liberties Union, brought the legal case before the Tribunal. They are attempting to establish whether GCHQ's massive state surveillance operations are a violation of British and international law.

Among the first of the revelations made public through leaks from National Security Agency whistleblower Edward Snowden was that GCHQ operates a vast spying system known as Tempora. The British government's position is to "neither confirm nor deny" its existence.

Privacy International reported that the Tribunal would be seeking to determine, on the basis of agreed "hypothetical facts", the following issues: "If the 'Tempora' mass communications surveillance programme exists, whether it violates the rights to privacy and freedom of expression enshrined in Articles 8 and 10 of the European Convention on Human Rights" and "If the UK government has access to intelligence collected by the [United States] under its PRISM and UPSTREAM programmes, whether that violates Arts 8 and 10 ECHR."

The group is seeking "A declaration that the Tempora operation under which there is blanket interception, search and storage of data passing through fibre optic cables is unlawful and contrary" to established law, "an order requiring the destruction of any unlawfully obtained material" and an "injunction restraining further unlawful conduct."

The Tribunal was the first occasion since the Snowden revelations that officials from the UK intelligence agencies have appeared in public to answer allegations against them and have been required to state their position on mass surveillance programs.

Dubbed "the UK's most secretive court", the IPT is a thoroughly undemocratic body. It was created under the Regulation of Investigatory Powers Act (RIPA) 2000 and consists of 10 senior barristers. While the latest Tribunal was open to the public, it has always previously met in secret and is not even required to make a determination on a complaint.

The RIPA legislation, passed in 2000 by a Labour Party government, allows virtually every governmental body, department and affiliated organisation including HMRC (Revenues & Customs), to seek powers of surveillance in the "national interest," whether for security, economic or other purposes.

Since it was set up 14 years ago, the IPT has dealt with about 1,500 complaints, but is yet to uphold a single one against any of the UK's intelligence agencies. IPT decisions are not made public and cannot be appealed to a higher authority.

Privacy International's claim also demands clarity on, and an acknowledgement of, the extent of collaboration between GCHQ and the NSA's surveillance systems.

The group said it was seeking to challenge two matters: "First, the soliciting and/or receipt of private information about those located in the UK from US authorities (Ground 1) and secondly, the interception of vast quantities of electronic data on fibre 2 optic cables leaving the UK and the sharing of that data with US authorities (Ground 2)."

Its Statement of Grounds notes that Snowden has revealed the existence of the NSA's Prism system and the "close involvement of UK authorities in the

programme."

It adds, "The scope of the programme is extraordinary, giving the NSA access to the emails, communications, documents, videos and web histories of vast numbers of non-US persons located outside the US including those resident in the UK."

The document highlights how the US government's Foreign Intelligence Surveillance Act (FISA) legislation gives the NSA power to spy, with impunity, on anyone who lives inside and *outside* the United States. Among those who can be subjected to surveillance in order to "acquire foreign intelligence information" is a "foreign power". What FISA section 1881a vaguely describes as a "foreign power" is, as Privacy International notes, "not only a foreign government or government-controlled entity, but also any 'foreign-based political organisation'."

It adds, "Privacy International would fall under that description." The organisation, "being headquartered in London, is made up of persons located outside of the US. Privacy International also generates a significant amount of 'foreign intelligence information'."

Describing why it would be a target for surveillance, Privacy International submitted that it occasionally undertakes "campaigning and other political activities, which involve trying to secure support for, or oppose, a change in the law or in the policy or decisions of governments." It "supports networks of research organisations and campaign groups across the world with similar goals and objectives" and "also corresponds, in private, with other political organisations and with governments and politicians in the UK and around the world. These bodies and individuals, as well as Privacy International itself, would fall within the definition of a 'foreign power' pursuant to FISA s 1801."

It continues, "As part of its activities, Privacy International *often comments on the foreign affairs of the US not least now that revelations about the US ' foreign surveillance programme are emerging* " (emphasis added).

Privacy International's activities would, without a doubt, single it out for monitoring by the NSA, and this information would most certainly be shared with GCHQ. "Through their access to the US programme, including Prism, UK authorities are able to obtain private information about UK citizens, or those otherwise resident in this country, without having to comply with any of the requirements of RIPA," said the group.

Privacy International continues, "There is no requirement that obtaining the information is necessary to protect US, let alone UK, national security interests or to prevent serious crime. The communication can relate to legitimate political activities of those who seek to discuss, criticise or influence US foreign policy."

All this has dire and far-reaching consequences for democratic rights. What applies to Privacy International applies to *any* oppositional political organisation, including the *World Socialist Web Site* and the Socialist Equality Party.

The government used the Tribunal to defend its nefarious activities. A statement issued to the IPT by Charles Farr, the director general of the Office for Security and Counter-Terrorism, said that every UK citizen who uses services including Google, Facebook, Twitter and YouTube can be monitored by the security agencies, on the basis that these were deemed to be "external communications." This was also the case for emails to or from non-British citizens abroad.

A written submission from James Eadie QC, on the government's behalf, defended the skulduggery exposed by Snowden. Eadie wrote that it was necessary to "intercept a substantially greater volume of communications and then apply a selection stage to identify the communications in question."

Stating that monitoring "external communications" was "needed for the purposes of national security," he said the claimants "must accept some form of interception regime that permits substantially more communications to be intercepted than are actually being sought."

Despite the mountain of documentation that Snowden has released into the public domain, Eadie attempted to ridicule the claimants—writing that their case was based on "extreme, and at times outlandish, factual assertions about the scope, scale and nature of US and UK interception programmes and intelligence sharing."