

Britain's GCHQ given free rein to continue mass surveillance

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Britain's Government Communications Headquarters (GCHQ) has been found guilty of carrying out seven years of illegal surveillance by the Investigatory Powers Tribunal (IPT).

The case was brought by a number of human rights organisations, including Privacy International, Liberty and Bytes for All, which questioned whether surveillance data collected by GCHQ from the US National Security Agency (NSA) Prism intercept system, since it was created in 2007, was legal.

The complaint was brought after former NSA contractor Edward Snowden revealed that GCHQ infiltrates all the communications in and out of the British Isles by tapping transatlantic cables and has warrantless access to NSA databases, which include the data of all UK citizens. By using Prism (an external system), the intelligence services were able to circumvent the Regulation of Investigatory Powers Act (RIPA) 2000 legislation, which requires intelligence officials to get a warrant from a minister before performing a wiretap in Britain.

However, the ruling makes no one in the intelligence services accountable for wrongdoing. More importantly, it declares the same sort of surveillance legal since December 2014 on a technicality—that the government had revealed that hitherto secret “safeguards” existed.

The findings basically state that surveillance was okay, but the problem was the government hadn't told anyone about the safeguards. The IPT has manipulated the court case to make the GCHQ-NSA data sharing lawful and made a mockery of the RIPA legislation.

The new ruling says that “prior to the disclosures made and referred to in the Tribunal's Judgment of 5 December 2014 and this judgment the Prism and/or Upstream arrangements contravened Articles 8 or 10 of

the European Convention on Human Rights, but now comply.”

Article 8 concerns the right to private and family life and article 10 refers to freedom of expression.

A GCHQ spokesman welcomed the latest ruling, declaring, “We are pleased that the court has once again ruled that the UK's bulk interception regime is fully lawful. It follows the court's clear rejection of accusations of ‘mass surveillance’ in their December judgment.

“Today's IPT ruling reaffirms that the processes and safeguards within the intelligence-sharing regime were fully adequate at all times—it is simply about the amount of detail about those processes and safeguards that needed to be in the public domain.”

A government spokesperson agreed, saying, “Overall, the judgment this morning is that the UK's interception regime is fully lawful.... What they said was that there should be more about the rules that should be disclosed publicly.... They are not questioning in this judgment that the safeguarding of privacy was in any way jeopardised and the judgment will not require GCHQ to change in anyway what it does.”

The human rights organisations and the *Guardian*, which broke the Snowden revelations, have talked up the IPT decision. Since the IPT was set up in 2000, they say, it has dealt with about 1,500 complaints, but this is the first time a complaint has been upheld.

Privacy International deputy director Eric King said the IPT decision “confirms to the public what many have said all along—over the past decade, GCHQ and the NSA have been engaged in an illegal mass surveillance sharing program that has affected millions of people around the world.”

Privacy International and others are now calling for the deletion of data—but only that collected before

December 2014—and an appeal to the European courts. *Guardian* journalist Trevor Timm called the IPT ruling “stunning” and wrote that the case “was just the first of potentially dozens of cases that will come before the court...and many of which will hopefully force the court to address the illegality of the actual mass spying conducted by GCHQ on a regular basis.”

Timm also called “for a re-examination of the British government’s deplorable actions against the *Guardian* and others “who have merely reported on the Snowden stories.”

By the end of his article, the sense of euphoria had died down. He stated, “It remains to be seen how the court will react, if at all, to future cases. But this should be a warning for both the UK government and the media: the law and even the most obsequious of courts are not on your side. Your citizens aren’t either.”

“[M]ore work needs to be done,” he added. “The only reason why the NSA-GCHQ sharing relationship is still legal today is because of a last-minute clean-up effort by the government to release previously secret ‘arrangements’.”

Liberty legal director James Welch said much the same thing, adding, “We now know that, by keeping the public in the dark about their secret dealings with the NSA, GCHQ acted unlawfully and violated our rights. That their activities are now deemed lawful is thanks only to the degree of disclosure Liberty and the other claimants were able to force from our secrecy-obsessed government.”

Despite the IPT case, the “secrecy-obsessed government” and intelligence services have declared their intention to press ahead with the clampdown on democratic rights. Following his appointment as the new director of GCHQ in November, one of the first acts of Robert Hannigan was to demand major technology companies including Facebook and Twitter deepen their cooperation with GCHQ or face legislation compelling them.

Following the terror assaults on the *Charlie Hebdo* office in Paris and a Jewish supermarket, in which 17 people were killed, demands have been made for yet more powers. The former head of Britain’s intelligence agency MI5, Lord Evans, claimed that existing anti-terror legislation was “no longer fit for purpose” and that new laws were “vital” to enable the state to monitor the Internet.

Prime Minister David Cameron has pledged that if the Conservatives return to power after the May General Election, they will speed up plans for a “snoopers’ charter” Communications Bill giving the intelligence agencies the power to access encrypted communications.

Britain’s Intelligence and Security Committee, consisting of nine senior members of parliament and peers, is also to announce “very radical” reforms of existing anti-terror provisions so as to grant the intelligence agencies new powers to intercept e-communications.



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