

UK: GCHQ/MI5 admit illegally spying on millions

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The domestic spy agency MI5 and the Government Communications Headquarters (GCHQ) intelligence gathering unit have been forced to admit in court that they are acting illegally in their use of bulk data, gathered by intruding into the lives of millions of innocent people. MI5 “has been unlawfully retaining innocent people’s data for years.”

Their admissions were the result of a court case brought by the civil rights organisation Liberty. The basis of Liberty’s case against the spy agencies is that government surveillance practices breach human rights law.

By early 2018 the government had been forced to accept that clauses of the Investigatory Powers Act (IPA, also known as the Snoopers’ Charter) would have to be changed to be in accordance with European human rights legislation. But it also redefined what was meant by “serious crime” in order to give the spy agencies as much leeway as possible.

The IPA was the government’s response to the fact that US National Security Agency whistle-blower Edward Snowden had made it public knowledge that Britain’s security services were colluding in illegal mass surveillance and collecting of data.

GCHQ worked with the NSA on PRISM, monitoring internet communications via Google, Yahoo, etc., and ran Tempora, storing most internet communications made via fibre-optic cables since 2011. The UK, as one of the “five eyes,” had access to Xkeyscore, an analytical tool that allows for collection of almost all internet activity.

GCHQ’s MILKWHITE program of storing data on people’s metadata from the usage of smartphone apps was made available to MI5, as well as the Metropolitan Police and other forces and no doubt the international spy agency MI6.

Rather than ending this illegal behaviour, the government response was to widen the spy agencies’ remit by means of the IPA. The IPA makes legal a level of intrusion into the lives of innocent people that was not deemed necessary in the course of two world wars, the troubles in Ireland and other domestic crises.

It has now been confirmed that from the day the IPA became law, the activities of the spy agencies continued to operate outside its boundaries and are therefore illegal. This was supposedly “concealed” for years from the Investigatory Powers Commissioner’s Office (IPCO), which is charged with overseeing their activities.

The IPCO claims that warrants for bulk data gathering would have been withheld had it been told in advance that the spy agencies were acting illegally. However, this claim is made suspect both by the fact that warrants are still being authorized and that the extent of the illegality and who is responsible are still being hidden.

The usual claims are made that these details could not be revealed without impeding the agencies’ targeting of serious crime, even though it is not serious criminals whose rights have been infringed but millions of innocent people.

MI5 knew it was breaking the law for three years before informing those charged with its oversight. It claimed to have lost control of its data storage operations and that there were “ungoverned spaces” on its computers on which it apparently did not know what was being held.

Home Secretary and failed Tory leadership contender Sajid Javid bizarrely claimed that the law-breaking was reason to have confidence that everything was as it should be: “It is of course paramount that UK intelligence agencies demonstrate full compliance with

the law. In that context, the interchange between the commissioner and MI5 on this issue demonstrates that the world leading system of oversight established by the Act is working as it should.”

The investigatory powers commissioner, Lord Justice Fulford, whose position was created to give the snoopers’ charter a thin veneer of “independent” oversight, similarly claimed that he was “reassured that MI5 has taken immediate steps to introduce a series of mitigating actions in the light of that thorough review ...”

Liberty condemned the government and spy agencies for refusing to disclose details of the breach, what information had been put at risk and for how long. Megan Goulding, a lawyer representing Liberty, said the case showed how “fatally flawed the oversight system for security services is.”

“In creating the snoopers’ charter, the UK government has attempted to legitimise the most sweeping and intrusive mass surveillance powers to be found anywhere in the democratic world. These powers allow the state to collect the messages, location and browsing history of innocent, ordinary people” without any grounds for targeting them.

Martin Chamberlain QC explained that the IPA “provides for a wide expansion of bulk secret surveillance powers” which breached the European Convention on Human Rights protecting privacy and freedom of expression. He warned of the “inherent dangers” of bulk hacking powers, by which the intelligence services could take “remote control of a device, for example, to turn mobile phones with cameras into recording devices ...”

Vulnerabilities built into software to allow law enforcement access cause “real and significant risks” that third parties could exploit.

All claims that judicial oversight would curtail the spy agencies when the IPA was passing through Parliament were for public consumption only. Sir James Eadie QC, representing the government, said in a written submission, “The powers under challenge are of critical importance to, and are effective in securing, the protection of the public from a range of serious and sophisticated threats arising in the context of terrorism, hostile state activity and serious/organised crime.”

Recent experience has shown to the contrary that the authorities look the other way when confronted with

not just threats, but the targeting of ordinary people by terrorists and others whose presence is repeatedly used to justify the introduction of a police state surveillance apparatus. The claims of “hostile state activity” by foreign powers are largely inventions of the government and their agencies, used to justify the ever-increasing powers of the state apparatus and the drive to militarism and war.



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