

The alternative "2002 annual report" on surveillance

The reports by the government on surveillance activities for the year 2002 are now available. In *Statewatch* vol 13 no 3/4 the latest figures for the size of the Special Branch were given together with an account of their relationship with MI5. This showed that **the Special Branch, which with MI5 forms the "political police" in the UK, has doubled in size - from 1,638 in 1978 during the Cold War and the conflict in Northern Ireland to 4,247 in 2002.**

The annual report of the Interception of Communications Commissioner for 2002 gives figures for warrants issued for the surveillance of communications and show that on a conservative estimate this has more than doubled since Labour came to power in 1997. These figures are a gross under-estimate as no figures are given for Northern Ireland, MI5 (the internal Security Service), MI6 (the external Secret Intelligence Service) or GCHQ (Government Communications Headquarters). Until the Labour government came to power in 1997 the previous highest figure for the number of warrants issued for surveillance was 1,682 in 1940 during the Second World War. In 2002 a total of 3,748 were issued/modified/or renewed.

The annual report of the Chief Surveillance Commissioner (2002-2003) reveals for the first time an overall figure for the number of agents/informers - known as "covert human intelligence sources", CHIS - were employed by the law enforcement agencies (excluding MI5 and MI6). In the year April 2002 to March 2003 **over 11,000 "covert human intelligence sources" were active.**

There have been a number of significant changes to the way that the number of warrants for telecommunications interception are presented which disguise its true extent. Prior to 1998 the highest annual number of warrants was 1,682 in 1940 during the Second World War. In 2002 the number of warrants (and "modifications") was 3,748 - and **the surveillance of telecommunications has more than doubled since Labour came to power in 1997.**

It can be simply stated that the UK population is under surveillance as never before in its history.

Intelligence Services Commissioner annual report

The annual report of the Intelligence Services Commissioner (2002) gives no figures at all. Moreover it highlights that changes brought about under the Regulation of Investigatory Powers Act (RIPA 2000) which deleted obligations from the main Acts covering MI5 (Section 4 of the Security Service Act, 1989) and MI6/GCHQ (Section 8 of the Intelligence Services Act 1994) mean that previous obligations to produce "annual reports" on their *overall* activities is now replaced by reports covering (with virtually no information) only their surveillance activities under RIPA - representing another, unreported, loss of (theoretical) democratic accountability.

The Rt Hon Lord Justice Simon Brown was appointed the Commissioner under the 1989 and 1994 Acts on 1 April 2000 and changed roles on 2 October 2000 to work under RIPA - his three-year term of office has been extended by the Prime Minister until 2006.

The annual report for 2002 contains a description of the Commissioner's role and very little (if any) detail. It does contain a definition of "covert human intelligence sources" (CHIS) as:

Covert human intelligence sources are essentially people who are members of or act on behalf of one of the intelligence services to obtain information from people who do not know that this information

will reach the intelligence service

CHIS are undercover agents or people recruited by them to spy on a group or organisation.

Like all the other Commissioners no complaints to the Tribunal, also headed by Lord Justice Mummery, were upheld.

Commissioner for surveillance

The Chief Surveillance Commissioner deals with: "all covert activities, except phone-tapping, carried out by all public authorities, except the intelligence services"

This Commissioner thus deals with covert activities excluding the interception of telecommunications and activities carried out by MI5, MI6 and GCHQ. His report covers England, Wales and Scotland under Part III of the Police Act 1997 and Parts II and III of RIPA 2000.

Number of authorisations

	Property (PI)	Intrusive (IS)	CHIS	DS
1999-0	2,459	- -	-	-
2000-1	2,567	312	-	-
2001-2	2,519 (2,956)	493 (595)	5,400	28,000
2002-3	2,511 (3,054)	475 (555)	5,900	26,400

1. PI = property interference [figures in () are real total including renewals] This is defined in Section 92 of the Police Act 1997 and involves the "entry" to or "interference with" property. These euphemisms refer to entry to a property without the knowledge of the owner in order to search it or to place a "bug" to monitor conversations or to leave behind items (see *Statewatch*, vol 6 no 6). "Authorisations" to "interfere" with property can be issued in relation to "conduct by a large number of persons in pursuit of a common purpose".

2. IS = intrusive surveillance [figures in () are real total including renewals] Intrusive surveillance is defined in Section 26 of RIPA 2000. Surveillance is "intrusive" if it involves either a surveillance device (bug and/or video) or an officer hiding in a residential premises or private vehicle (see *Statewatch*, vol 10 no 1).

3. CHIS = covert human intelligence sources recruited.

4. DS = directed surveillance. Surveillance is "directed" and not intrusive if a tracking device is attached to a vehicle or if conversations inside a home are surveilled from outside or if conversations are recorded in an open place (eg: park) (Section 26 of RIPA 2000).

The number of authorisations for "property interference" (under the Police Act 1997) in the year was 2,511 but - like for the interception of telecommunications - this figure excludes renewals. This year's report does give the figures for renewals as 543 for 2002-3 and 437 for 2001-2. The accurate figures for "property interference" are thus 2,956 for 2001-2 and 3,054 for 2002-3.

The apparent drop in the number of authorisations for "directed surveillance", from 28,000 to 26,400, is explained by a change in "practice by one authority" which authorises "operations" rather than "subjects" (people). Indeed the real figures are probably much larger because, as the Commissioner notes, "there are no rule of thumb answers as to when authorisations are required". For example, at so-called "crime hotspots" surveillance may be carried out without the naming of a particular person(s) in advance.

CHIS: Covert human intelligence sources

Covert human intelligence sources (CHIS) are mainly paid or "induced" (a possible criminal charge is threatened or

embarrassing personal information held) informers/agents who are recruited from within a target group or who are encouraged to join a group and act undercover.

The figures for CHIS are provided for the first time:

About 5,900 CHIS were recruited.. 5,400 ceased to be used; and about 5,000 were active at the end of the year. The figures for the previous year were 5,400, 4,900 and 5,400 respectively

The figures exclude CHIS recruited by MI5 or MI6 - see Statewatch vol 13 no 3/4 on the "Special Branch" which includes the practice of MI5 recruiting CHIS on behalf of the SB. The "rounded", exact, numbers - "5,000" and "5,400" - suggest that the real figures are slightly different, eg: 5,083.

However, it is the impression created by the overall figures which is misleading. The figures given for informers/agents seem implausible when the total number of police forces and agencies is taken into account. The Commissioner's brief covers 52 police forces in England, Wales, Scotland and Northern Ireland plus the National Crime Squad (NCS), the National Criminal Intelligence Service (NCIS), "HM forces in Northern Ireland, HMCE, the British Transport Police and the Ministry of Defence Police". In addition CHIS are used by eight government departments - "some make significant use of covert surveillance and CHIS powers" - local councils (who make limited use of CHIS) and national health authorities.

A more accurate figure - but still an underestimate - may perhaps be found by looking at the figure another way. The overall figures are:

	<i>CHIS Recruited</i>	<i>Ceased to be used</i>	<i>Active at year end</i>
2001-2	5,400	4,900	5,400
2002-3	5,900	5,400	5,000

This means, for example, that during 2002-3 a total of 5,900 were recruited and 5,400 were active during the year but "ceased to be used" over the same period. This would give a total of 10,300 active during a year in 2001-2 and 11,300 during 2002-3 and probably represents a more accurate picture.

Inspections

Last year the Commissioner complained of lack of staff to properly do inspections. This time he notes "modest changes to the complement" - which suggests he is not very happy. The Commissioner is responsible for inspecting 66 authorities annually, 16 authorities every other year, 441 local authorities ("as frequently as the first two categories allow") and 19 other government departments and agencies (for which no inspections are provided for). Moreover, many of these 542 authorities "have many branches or departments".

The surveillance of communications - highest ever

The annual report of the Interception of Communications Commissioner for 2002 was published in September 2003. Like the one for 2002 the report appears to show that the number of warrants issued looks to be the lowest for years. However, the true picture is quite the reverse.

On the face of it the number of warrants issued to conduct communications surveillance (telephones, mobiles and letters) fell in England and Wales in 2002 to 1,446 compared to 1,763 in 1998 and in Scotland from 292 in 2000 to 139.

Interception warrants issued in 2002:

	England & Wales	Scotland	total
1990	515	66	581
1991	732	82	815
1992	874	92	966
1993	998	122	1,120

1994	947	100	1,047
1995	997	138	1,135
1996	1,142	228	1,370
1997	1,456	256	1,712
1998	1,763	268	2,031
1999	1,734	288	2,022
2000	1,608	292	1,900
2001	1,314	131	1,445
2002	1,466	139	1,605

From these figures it would seem that warrants for the surveillance of communications (telephones etc) and mail-opening have dropped significantly after 2000.

However, from July 1998 a major change in the interpretation of the 1985 Interception of Communications Act (IOCA) meant that where previously any change to the initial warrant (eg: a person moved or changed phone numbers), known as a "modification", led to a new warrant being issued for all instances concerning serious crime. This means that in order to get *historically comparative total figures* the number of "modifications" carried out each year need to be added to the number of initial warrants. The additional figures, post July 1998, for "modifications" are:

	England & Wales	Scotland	Total
1998	172	not applied	172
1999	565	not applied	565
2000	722	not applied	722
2001	1,788	194	1,982
2002	1,885	258	2,143

Thus the correct figures for the extent of admitted communication surveillance (warrants plus modifications) is as follows:

	England & Wales	Scotland	total
1990	515	66	581
1991	732	82	815
1992	874	92	966
1993	998	122	1,120
1994	947	100	1,047
1995	997	138	1,135
1996	1,142	228	1,370
1997	1,456	256	1,712
1998	1,935	268	2,203
1999	2,299	288	2,587
2000	2,330	292	2,622
2001	3,102	325	3,427
2002	3,351	397	3,748

(see Footnote on p22)

No figures have ever been provided on Northern Ireland and these figures do not include warrants issued to MI5, MI6 and GCHQ. Until 1996 the highest annual number of warrants issued was 1,682 in 1940 during the Second World War. **Since the Labour government came to power in 1997 communications surveillance has more than doubled.**

The Commissioner says he has visited the Security Service (MI5), the Secret Intelligence Service (MI6), the National Criminal Intelligence Service (NCIS), the Special Branch of the Metropolitan Police (MPSB), Strathclyde Police, the Police Service for Northern Ireland, HM Customs and Excise, the Foreign Office, the Home Office, the Scottish Executive and the Ministry of Defence (MOD) in the course of the 2002.

However, he then notes that the figures provided only cover warrants issued by the Home Secretary and the First Minister for

Scotland - *not* those issued by the Foreign Secretary or the Secretary of State for Northern Ireland. This means that the figures provided do not include those for Northern Ireland nor those for MI6 and GCHQ (Foreign Office).

The Commissioner, like last year, is much exercised by the: "possible suspicions that some members of the public may have that their telephone conversations are being unlawfully intercepted by the security intelligence or law enforcement agencies" and states he is satisfied that:

deliberate unlawful interception of communications of the citizen does not take place

As Statewatch observed on last year's similar assertion the Commissioner "shows a touching faith in the strict implementation of the law" and has little comprehension of the historical practices of the agencies (see *Statewatch*, vol 12 no 6). It is the same touching faith that allows him to assert that when signing warrants: "the Secretaries of State do not act as a "rubber stamp""

The same naivety on the part of the Commissioner is evident in the short section on "Communications data". Under the Regulation of Investigatory Powers Act 2000 (RIPA) the Commissioner is required by Section 57 to "keep under review the exercise and performance by persons" exercising the powers of "acquisition and disclosure". The powers to retain communications data (phone-calls, e-mails, faxes, mobile phone calls and internet usage) have been the subject of major critiques by civil society (and the industry) because under the Anti-Terrorism, Crime and Security Act 2001 (ATCS) data can only be retained for purposes of "national security" not for crime in general. As a result the necessary Statutory Orders are not in place. But does this mean that communications providers are not retaining communications data and that law enforcement and security agencies are not being given access to it? Of course not.

The Home Secretary is riding rough-shod over all the objections by much of the industry and civil society because he is keen to put in place a measure which will legitimate, and make lawful, the long-standing practice of those "longer-established" communications providers who have been retaining data at the request of the law enforcement agencies (since well prior to 11 September 2001). This is confirmed in a submission by the National Criminal Intelligence Service to the Home Office on 21 August 2000:

*"certain CSPs [are] proposing to delete data after very short periods. This will rapidly undermine the **voluntary agreements** achieved so far which now appear to have an increasing fragility. (emphasis added) (Source: Recommendation 3.3.3. in the NCIS submission on Communications Data Retention Law to Home Office, 21.8.00).*

Thus communications providers have been retaining data for periods longer than is necessary for billing purposes (ie: a few weeks) under "voluntary agreements" for years.

Moreover, the same NCIS submission cited above says:

Most Police Forces and HM Customs and Excise retain such data obtained electronically on their own individual databases, in particular subscriber identities and itemised billing

An on-going practice of the law enforcement agencies (police, customs etc) plus MI5 to themselves retain communications data gathered on their own databases is not covered by any legislation. The same NCIS submission says that in the 12 months prior to August 2000 the Metropolitan Police Service alone had required access to 63,590 subscriber details and 4,256 billing accounts.

The Commissioner seems blissfully unaware of these practices.

For the first time the Commissioner visited five prisons to examine their practices and his "overall impression":

has highlighted a number of inconsistencies in the approach to interception work in prisons, and that the Prison Rules are not always strictly complied with

As usual the Commissioner reports that the "Investigatory Powers Tribunal", under the Presidency of Lord Justice Mummery, to investigate complaints has, yet again, not uphold a single complaint from the public. Indeed since the Tribunal was first set up in 1985 not a single complaint about interception has been upheld.

Footnote:

The figure for the number of initial warrants disguises the fact that i) "modifications" are excluded; ii) that the periods for warrants in the most numerous category, serious crime, have increased by 50% (initial warrant) and 100% (renewals); iii) where previously between one and five warrants were issued to communications service providers now only one is issued to cover a person or premises (which also has a knock-on effect on the number of renewals).

Sources

Statewatch, vol 7 nos 1 & 4 & 5; vol 8 nos 5 & 6; vol 10 no 6; vol 11 nos 1 & 2; vol 12 nos 1 & 3/4; vol 12 no 6

The most complete available figures for interception warrants in England, Wales and Scotland from 1937 onwards is available on the Statewatch website: www.statewatch.org/news/2003/jan/telap01.htm

Annual Report of the Chief Surveillance Commissioner for 2002-2003, HC 1062, September 2003.

Report of the Interception of Communications Commissioner for 2002, HC 1047, September 2003.

Report of the Intelligence Services Commissioner 2002, HC 1048, September 2003/

