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UK; Data retention and access consultation farce

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In March the Home Office issued two consultation papers, one on the retention of communications d access to communications data. The deadline for responses is 3 June. The latter came about after the tried to rush through a Statutory Order giving over 1,039 public authorities the right to request comm after widespread objections by civil society this was withdrawn on 18 June 2002.
The former, on data retention, dates from the passing of the Anti-Terrorism, Crime and Security Act 2001. Section 103 says that the Home Secretary has to issue a consultation paper before the governm voluntary Code of Practice by statutory instrument. It has taken the Home Secretary 16 months to is consultation paper. The ATCS Act says that the Home Secretary can order mandatory data retention scheme does not work (Section 104). However, Section 105 limits this power to two years from the Act which will be 13 December 2003 - the Code is unlikely to be operative by this date so the Home have to put through another statutory instrument extending his powers for another two years (Sectio This begs the obvious questions: In December 2001 the ATCS Act was rushed through parliament o that the new powers were urgently needed to combat "terrorism" - does this mean that the security, i police agencies do not have access to communication data to combat "terrorism" or does it mean the the powers they need? Does excessive delay not tell us that data retention is more to do with combat general than terrorism?

The retention of data - what the Act says
Under the Act the Home Secretary can issue a code of practice (voluntary or mandatory) as is neces
(a) for the purpose of safeguarding national security: or
(b) for the purpose of prevention or detection of crime or the prosecution of offenders which may re indirectly to national security" (Section 102.3, emphasis added)
The Act is thus unequivocal, the Home Secretary can lay down a Code for the retention of communi which is directly or indirectly related to "national security".
What the government is trying to do is to extend this legal definition to cover crime in general and i some agencies to those who deal with health and safety, trading standards and local authority agenci Home Office officials try to argue that the Home Secretary made it clear during the debate on the A would apply to crime in general. What the Home Secretary may have said during the debate has no l legal situation, it is what the Act says that counts. Moreover, if every statement by every governmer the passage of legislation had legal standing the courts would be in chaos.
Whatever the spin and glossy consultation document says the government is assuming that the telec industry will cooperate and that the unlawful practice of accessing communications data for law enf general will become the norm.

Consultation - data retention
The consultation paper on data retention under the ATCS Act admits that powers are only available the purpose of "national security" and related crimes but then refers to crime in general throughout.
"Home Office does not consider" that data retained for the purposes of national security "and not fo reason, should prevent the police or other public authorities having access to that data when they ca proportionate need for it" - ignoring the fact that "proportionate" is only relevant where an underlyir the first place.
The Information Commissioner (the re-named Data Protection Commissioner) who was consulted s by saying that in relation to data protection (as distinct from the underlying law) access would not a "unlawful.. but that it may be in certain circumstances". The Commissioner's advice to communicati providers is that they should notify their office that they are processing data for the purpose of natio crimes directly or indirectly associated (citing the text of s.102.3 of the ATCS Act) which can hardl faced with a legal challenge. The Home Secretary, David Blunkett, has apparently assured the indus stand side-by-side with them if they face any data protection or human rights legal challenges - whi meaningless unless the Home Secretary is also sued.

Under the draft Code of practice subscriber information and telephony data (date, time, location etc) for 12 months and e-mail data for 6 months.

Consultation - access to communications data
Powers to access communications data is defined as traffic data (including location of the users of n service data and subscriber data (names, addresses etc) under Chapter II of Part 1 of the Regulation Powers Act 2000 (see Statewatch vol 10 no 1).
Access under RIPA 2000 referred to current, "real-time" (as a conversation is happening for exampl surveillance - and not to data retention which only became an issue under the ATCS Act 2002.
The reason the Statutory Order was withdrawn last year was because it was revealed that some 1,03 authorities would have the right to request access to communications data. The consultation paper s access for a number of authorities such as the Office of Fair Trading, the Immigration Service and S Office but is utterly silent on exactly how many authorities will have these powers under a so-called list still includes all local authorities in the country, only parish councils (who have few powers any excluded). A list of potential authorities is provided on an obscure Home Office page (see below) w not just for some dubious justifications but because it shows that hundreds of thousands of requests communication data are already being made by agencies even though there is no legal power to do s those agencies directly specified in RIPA 2000 like the police).
What is evident from the detailed information is that you cannot have hundreds of agencies authoris demand access to communications data. The paper is much exercised to find a mechanism to author obvious option is judicial authorisation but this would be a "burdensome duty on the courts", anothe Interception of Communications Commissioner (see below) which the Home Office favours.
Another option not considered is that all intrusions into privacy are serious and that access to comm should be subject to the same level of authorisation as telephone-tapping and mail opening, that is b the Home Secretary. However, correspondence released by Privacy International (PI) suggests this t meaningless. In a letter to Simon Davies, Director of PI, Jonathan Sedgwick, Private Secretary to th Secretary, explained the way the current Home Secretary authorises telephone-tapping and mail-ope No less than "four levels of officials" look at a new application before it is put to the Home Secretar substitute for the Secretary of State's own consideration". And how does the Home Secretary "consi 1,400-plus new warrants a year?
For David Blunkett, applications are presented orally and an official is on hand to answer any questi have on an application
If it were not so serious it is a procedure that would lend itself to a comedy sketch. Official: "Minist 50 terrorism, 30 drugs, 25 cyber-crime and 12 from the USA" Blunkett: "Are there any problematic "Not this time Minister" Blunkett: "OK. What's next on the agenda?"
"Independent oversight" is to be provided by the Interception of Communications Commissioner wh likely to engender public confidence. The holders of this post, and the Tribunal to which members o complain about surveillance, were created under the 1985 Interceptions of Communications Act (no RIPA 2000) have never in the eighteen years of their existence upheld a complaint.
The paper ends with the following extraordinary observation that where "intrusion into privacy is pc people are aware of this and oversight is in place:
Those who then engage in conduct, knowing from information placed in the public domain, that as a their privacy is liable to compromise, accept the risk to their privacy
1. List of agencies: (www.homeoffice.gov.uk/crimpol/crimreduc/regulation/ part1/pas.htm 2. Views on both consultation papers should be sent, by 3 June, to: commsdata@homeoffice.gsi.gov.uk. 3. The two consultation papers are available on the Statewatch www.statewatch.org/news/2003/mar/11comm.htm 4. To people who want to write to their commun (ISPs, phone and mobile providers) PI have prepared three "template" letters demanding full details held, see: www.statewatch.org/news/2003/may/10data.htm