



**Australian
Privacy
Foundation**

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4 December 2013

Public Statement

Australian Spy Agencies Spook Australians Investigation and Control Essential

The smoke keeps getting thicker.

During the last fortnight, the activities of Australian spy agencies have upset neighbouring countries. This week, there are credible reports that Australian spy agencies spy on Australians as well, on a massive scale.

Worse, they apparently even thought it was okay to gift bulk data to other countries. This puts the data completely beyond Australian control, and undermines national sovereignty.

It's unclear if all of the agencies' activities are legal – and, if they are, then it calls into serious doubt the appropriateness of the laws that are meant to protect Australians against excessive behaviour by its own spies.

The national security agencies whose interests are looked after by the Attorney-General's Department have always had close friends in the Parliament. But even their own Committee has now lost confidence in them.

The Australian Privacy Foundation joins the rapidly growing chorus that's calling for the following:

- (1) a substantial, independent review of surveillance activities
- (2) visible action by the Inspector-General of Intelligence and Security, the Human Rights Commissioner, and the Australian Information and Privacy Commissioners, on behalf of the public
- (3) the creation of meaningful controls over the behaviour of national security agencies, that are sufficient, and sufficiently transparent, that Australians can trust them
- (4) the removal of the civilian information security advisory group from ASD, and conversion of ASD into a controlled military and national security Signals Intelligence Agency

Reviews are under way in the USA, and it appears likely that the UK and Canada may shortly follow suit. Australians need their interests protected as well.

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Australian Privacy Foundation

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Investigation and Control Essential**

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Background Paper

New revelations in The Guardian this week have greatly increased concerns that Australian intelligence services are not just targeting threats to the country, but are unjustifiably gathering and leaking data about all Australians (1).

An Opinion Piece by one of the world's leading international human rights lawyers (and APF Advisory Panel member) Geoffrey Robertson QC argues that some aspects of the activities even appear to breach the limited legal protections that are supposed to apply (2).

A comprehensive inquiry is needed into the collection of data on Australians' communications. APF joins the calls for such an Inquiry to be established in Australia (3, 4, 5). Similar calls for formal Inquiries have been made in the UK (6), and the US has reviews already under way as a result of previous revelations of serious excesses by its intelligence agencies.

The statutory appointees who should be taking a lead in this matter on behalf of the Australian public should awaken from their slumbers, and play a visible role in the debate. The most prominent absentees are the Inspector-General of Intelligence and Security, the Human Rights Commissioner, and the Information and Privacy Commissioners.

The document that has come to light refers to 'metadata'. This is a vague term that means different things in different circumstances. It may be that the content of our conversations is not being captured and released. But the 'metadata' about our conversations discloses a great deal about us all – far more than the original telephone call metadata, which recorded only "time start / time end / call to / call from" information (8).

Drawing on documents from the Snowden cache, The Guardian concludes that "DSD [now ASD] can share bulk, unselected, un-minimised metadata" as long as there is no "intent" to "target an Australian national". "Unintentional collection [which still collects data on Australians] is not viewed as a significant issue."

Translated, that means that who you call, email and chat with, and when and how often you're in contact with them, and what you search for on the Internet, and what links you click on web-pages and in emails, may be gathered, and then given away to foreign countries.

This lack of restraint compares with the greater caution about such "unminimised" data from Canadian and US equivalents in the so-called 5-Eyes spy club (which also includes New Zealand and UK). Those countries' intelligence services at least appear to make efforts to "minimise" the collection and sharing of data about those countries' citizens, because of the privacy risks involved.

Australian intelligence agencies, led by the Attorney General's Department, have demonstrated themselves to be so untrustworthy and compulsively secret that they have even lost the support of their own parliamentary intelligence committee. In June, that Committee declined to back their request for long term retention of communications data without warrant or other effective controls (7).

In these circumstances, the necessary response is the conduct of an independent and sufficiently open inquiry into the collection, use and disclosure of data about Australians' communications.

A great many signs point to the need to have a full and open inquiry in order to establish how we got into this mess, and what can be done to get the behaviour of intelligence agencies back under democratic control.

The reasons include:

- the agencies are avoiding effective parliamentary oversight and the intent of national security laws
- the agencies have failed to implement even the limited protections applied by their US and Canadian counterparts
- the community of five countries' intelligence agencies apparently conduct 'data laundering' among themselves in order to bypass such local protections as do exist
- no compelling, evidence-based case justifying the substantial human rights threats involved in these programs has ever been produced
- such controls and legal protections as exist are hidden and don't work, when the public expects them to be transparent and effective

The APF's Meta-Principles are directly relevant to such an Inquiry. A copy is attached.

(1) Revealed: Australian spy agency offered to share data about ordinary citizens

Ewen MacAskill, James Ball and Katharine Murphy

theguardian.com – Monday 2 December 2013 11.20 AEST

<http://www.theguardian.com/world/2013/dec/02/revealed-australian-spy-agency-offered-to-share-data-about-ordinary-citizens>

(2) The privacy of ordinary Australians is under serious threat

Geoffrey Robertson

theguardian.com – December 2, 2013

<http://www.theguardian.com/commentisfree/2013/dec/02/privacy-australians-surveillance-metadata>

(3) New revelations increase pressure for surveillance inquiry

Senator Scott Ludlum

Media Release – 2 December 2013

<http://scott-ludlum.greensmps.org.au/content/media-releases/new-revelations-increase-pressure-surveillance-inquiry>

(4) Call for urgent curbs on rampant phone/email snooping and sharing

Senator Nick Xenophon

Media Release – 2 December 2013

<http://www.nickxenophon.com.au/media/releases/show/call-for-urgent-curbs-on-rampant-phoneemail-snooping-and-sharing/>

(5) Australians deserve a surveillance oversight inquiry

Electronic Frontiers Australia – 2 December 2013

<https://www.efa.org.au/2013/12/02/surveillance-inquiry/>

(6) Edward Snowden revelations prompt UN investigation into surveillance

UN's senior counter-terrorism official says revelations 'are at the very apex of public interest concerns'

Nick Hopkins and Matthew Taylor

The Guardian – Tuesday 3 December 2013

<http://www.theguardian.com/world/2013/dec/02/edward-snowden-un-investigation-surveillance>

(7) Inquiry into potential reforms of National Security Legislation

Joint Parliamentary Committee on Intelligence and Security

24 June 2013

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pjcis%2Fnsi2012%2Freport.htm

(8) Metadata: is it simply 'billing data', or something more personal?

Oliver Laughland

theguardian.com – Monday 2 December 2013 18.27 AEST

<http://www.theguardian.com/world/2013/dec/02/metadata-should-it-be-dismissed-as-billing-data-or-is-it-personal-material>



**Australian
Privacy
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The association that campaigns for privacy
protections

Meta-Principles

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APF's Meta-Principles for Privacy Protection

APF has worked on a wide variety of issues over more than a quarter-century. Its Policy Statements and its Submissions reflect the following set of ground rules, or meta-principles, which APF submits must be generally applied.

1. Evaluation

All proposals that have the potential to harm privacy must be subjected to prior evaluation against appropriate privacy principles.

2. Consultation

All evaluation processes must feature consultation processes with the affected public and their representative and advocacy organisations.

3. Transparency

Sufficient information must be disclosed in advance to enable meaningful and consultative evaluation processes to take place.

4. Justification

All privacy-intrusive aspects must be demonstrated to be necessary pre-conditions for the achievement of specific positive outcomes.

5. Proportionality

The benefits arising from all privacy-intrusive aspects must be demonstrated to be commensurate with their financial and other costs, and the risks that they give rise to.

6. Mitigation

Where privacy-intrusiveness cannot be avoided, mitigating measures must be conceived, implemented and sustained, in order to minimise the harm caused.

7. Controls

All privacy-intrusive aspects must be subject to controls, to ensure that practices reflect policies and procedures. Breaches must be subject to sanctions, and the sanctions must be applied.

8. Audit

All privacy-intrusive aspects and their associated justification, proportionality, transparency, mitigation measures and controls must be subject to review, periodically and when warranted.

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