

## With revelations still emerging about the NSA and GCHQ's online surveillance activities, **Anthony Tucker-Jones** assesses one of the worst intelligence scandals in living memory

**I**t seems that the American National Security Agency (NSA) has been plundering global communications networks as if they are buccaneers of old. Like rapacious pirates they decided that there is intelligence gold to be found in everyone's telecomms and Internet chatter. The question mark over whether the NSA's activities are completely legal is but a minor detail when it comes to protecting the US homeland and US interests overseas.

I have warned before that the so-called war against terrorism and indeed organised crime is slowly and insidiously eroding civil liberties. Guarding against evolving into a police state is becoming ever-harder, and it now transpires that the scale of the problem is simply off the scale. Safeguarding against terrorism and organised crime now impinges on many aspects of our daily lives – we live in a surveillance society. Wherever you go you are monitored in the interests of public safety and law and order.

George Orwell's classic novel, 1984, warned how totalitarianism could be justified in the name of the good of the state. The question posed was at what point does the good of the state outweigh the good of the individual? Earlier this year a 29-year old US citizen took it upon himself to warn the world that "Big Brother", or in this case Washington, is already watching the world on a scale that is frankly unimaginable. There was a time when the Central Intelligence Agency was seen as a sinister and shadowy bogeyman; now it's the turn of the NSA.

Washington's covert Prism programme has been running for six years and was established as a domestic Internet surveillance operation to function without warrants. James Clapper, US Director of National Intelligence Clapper claimed, "It cannot be used to intentionally target any US citizen, another US person, or anyone within the US." All the major Internet companies vigorously deny that they have given the US government access to their servers. The NSA, past masters at encrypted military signals interception, also routinely eavesdrops on phone calls.

It is incredible how much of an international firestorm one individual can create – but that is exactly what NSA whistleblower Edward Snowden did via The Guardian newspaper in May. No one likes airing their dirty linen



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in public – covert intelligence is supposed to remain secret. But Snowden clearly felt the US government had overstepped the mark with its programmes designed to vacuum up telephone and Internet data belonging to millions of people.

He fled to Hong Kong in Communist China and blew the whistle on the NSA's activities, which some view as illegal and wholly at odds with democratic civil liberties. The Guardian scored a major scoop but at the same time got itself into very hot water for being in receipt of stolen secrets.

America's enormous gathering of phone records and monitoring of Internet data across the board is now firmly out in the open for all to see. Mr Snowden claims he was horrified that the US government can

**Hard target: Edward Snowden's revelations have shaken trans-Atlantic relations**

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and is intercepting e-mails, passwords, phone records and credit cards – in fact anything that it is moved electronically. He says he has acted to “protect basic liberties for people around the world.”

The Whitehouse obviously sees it a little differently – he has compromised US security as well as two key intelligence-gathering operations, causing domestic and international rows of epic proportions. In the US, federal prosecutors charged Snowden with espionage and theft of government property on 14 June 2013. He now has the status of being a fugitive spy currently hosted by Washington’s old Cold War nemesis Moscow.

Clapper also brought disapproval upon himself after lying to the Senate Intelligence Committee in March. When asked if the NSA had collected data on millions

of Americans he had replied “no” and “not wittingly.” He has since claimed, rather disingenuously, that the US intelligence community is committed to respecting Americans civil liberties. It seems that, to protect these liberties, the NSA must first ride rough-shod over them.

Following the Prism intelligence leaks by Snowden, the British Parliamentary Intelligence and Security Committee (ISC) has given GCHQ (the UK’s eavesdropping centre and British equivalent of the NSA) a clean bill of health. In other words, the ISC has been reassured that GCHQ did not break British law by using US intelligence gathered via the Prism programme. Currently GCHQ’s access to the Internet is highly regulated.

From the start the UK Foreign Secretary, William Hague, contended that there was no wrongdoing, stating GCHQ is governed by the Intelligence Services Act of 1994 and Regulation of Investigatory Powers Act (RIPA) 2000. Nevertheless, it is evident that Prism has been doing exactly what the controversial UK Communications Data Bill sought to achieve. The latter wants to encompass website data.

The public generally does not widely appreciate that the UK already has extensive surveillance regulations and legislation in place. Indeed, few appreciate that there is an Interception of Communications Commissioner and an Intelligence Services Commissioner who oversee RIPA. In the UK, phone and e-mail records already have to be routinely stored for a year in case the authorities want access to them under Home Office authorisation.

Whether you consider Edward Snowden a traitor, defector or champion of civil liberties matters little; the damage is done on a scale vastly greater than Chelsea/Bradley Manning’s wikileaks. In one fell swoop Snowden soured transatlantic relations, throwing the EU into a frenzy of acrimony and potentially compromising the US-UK intelligence relationship.

The US Attorney has been faced with some extremely tough questions from the European Union. EU officials were incensed that legislation such as the US Patriot Act can oblige European companies to furnish the US with data even if it is in clear breach of national or EU law. The EU is also rightly concerned that the US has been snooping on its commercial interests.

At home, the US government is facing a lawsuit from the American Civil Liberties Union. The latter claims the NSA’s access to US telecom provider Verizon’s phone records through the Foreign Intelligence Surveillance Act (FISA) violates the first and fourth amendments that guarantees a citizen’s free speech.

At the same time, angry members of the US Senate have been seeking to force an explanation of FISA’s understanding of section 215 of the Patriot Act. The Whitehouse cites this as the legal justification for collecting its citizens phone records, along with section 702 of the 2008 FISA Amendments Act cited as the basis for the NSA’s internet monitoring under the Prism programme.

In the UK, according to the organisation “Justice”, of three million surveillance decisions made since RIPA was implemented less than 0.5 per cent have been authorised by a judge. While William Hague argued that accessing

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*GCHQ's Tempora programme provides the US with intelligence in a reciprocal arrangement*

an individual's communications needs senior government authorisation, it is hard to imagine they have individually signed off the half million annual access requests.

While GCHQ was exonerated, further embarrassment was caused to the British government when Brazilian citizen David Miranda was stopped from travelling to Brazil under Schedule 7 of the Terrorism Act 2000 on 18 August. He is the partner of the US journalist Glenn Greenwald, who has been dealing with Snowden. Schedule 7 is highly controversial and in some circles it is argued that the police have been abusing it. What is not in dispute is that Mr Miranda was stopped with 58,000 highly classified UK intelligence documents some of which are reportedly Top Secret.

Under Schedule 7, the police can stop, examine and search passengers at ports, airports and international rail terminals. Unlike other police powers to stop and search, there is no requirement for an officer to have a "reasonable suspicion" that someone is involved with terrorism before they are stopped. The Home Office says schedule 7 "forms an essential part of the UK's security arrangements" and it is for the police to decide when it is "necessary and proportionate to use these powers". But, according to the Home Office's code of practice on using Schedule 7, selecting someone for questioning should be based on "the threat posed by the various terrorist groups active in and outside the United Kingdom ... The powers must not be used to stop and question persons for any other purpose." Mr Miranda can hardly be classed as a terrorist – a spy perhaps, but not a terrorist.

David Anderson QC, the government's independent reviewer of terrorism legislation, has reported that Schedule 7 was used on 61,145 people in 2012-2013 – 12 per cent down on the previous year, and 30 per cent down

on 2009-2010. The majority of those examinations lasted less than 15 minutes, and the Home Office says more than 97 per cent of examinations last less than an hour.

Such numbers are alarming. Clearly this is something that Parliament needs to look at – otherwise the scale of the terrorist threat to the UK is enormous. Or it has to be asked whether the state has become paranoid, seeing potential terrorists round every corner. The rational answer is that Schedule 7 is being misused.

Nonetheless, the Deputy National Security Advisor, Oliver Robbins stated that Mr Miranda's actions posed a threat to UK national security. Also the High Court granted permission for the authorities to access the Snowden files being carried by Mr Miranda on the grounds of national security. It is clear Mr Miranda should have been stopped – not under counter terrorism legislation, however, but rather under the UK's counter-espionage laws, or the Regulation of Investigatory Powers Act 2000.

Mr Miranda's case is due to be heard again by the High Court. Ultimately it will be for the court to decide if Mr Miranda is an innocent man following an assessment of the files, irrespective of how and why he was stopped. He has become a casualty of the fallout from Snowden's whistleblowing.

Meanwhile Mr Snowden has been given temporary asylum in Russia after being stranded at Moscow's Sheremetyevo airport for over a month. Russian President Vladimir Putin, who has his own agenda, seems in no hurry to hand Snowden over. Washington would like him back home to stand trial as soon as possible. "Big Brother" wants his whistleblower to face the music. For the rest of us, we should be asking whether we now have to be looking over our shoulders all the time.

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