

Constitution Unit Public Seminar Series

Regulating Surveillance

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Chaired by Robert Hazell (Director, Constitution Unit)

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<http://www.ucl.ac.uk/constitution-unit/events/2009/seminars/surveillance.htm>

Regulating Surveillance

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Presentation at the Constitution Unit

University College London

29 April 2009

The Report

House of Lords Select Committee on
the Constitution, Second Report of
Session 2008-09, Surveillance:
Citizens and the State, HL 18-I and
18-II

Our Roles

Specialist Advisers

Disclaimer: Our remarks should not be taken as representing the opinions of the Constitution Committee or of any of its members

The Report

Background and events of concern

Written and oral evidence, 2007-08

Visit to Canada and the USA

Discusses especially visual surveillance and
government databases

44 Recommendations

Government to respond

Lords debate to follow

The Recommendations

‘We regard privacy and the application of executive and legislative restraint to the use of surveillance and data collection powers as necessary conditions for the exercise of individual freedom and liberty. Privacy and executive and legislative restraint should be taken into account at all times by the executive, government agencies, and public bodies.’ (paragraph 144)

relating to the commissioners (11)

relating to the National DNA Database (4)

relating to CCTV (2)

for legislation and the legislative process (6)

other specific actions for the Government (16)

relating to Parliament (3)

relating to all public and private sector organisations (1)

Recommendations relating to the commissioners

Information Commissioner (ICO):

- more powers (inspections and fines)

- human rights remit

- government requirement to consult over policy

- role in ascertaining public trust

- role in scrutinising and approving Privacy Impact Assessments (PIAs)

 - role in advising Parliament about surveillance and data

- role in reviewing law on consent to use personal data

- role in raising public awareness

Chief Surveillance Commissioner, Interception of Communications Commissioner

- more flexible inspection regime, consulting ICO

- better-known Investigatory Powers Tribunal

Recommendations relating to the National DNA Database

limited retention of profiles, and compliance with the
European Court of Human Rights' decision in
the case of *S. and Marper*

no universal DNA database

better transparency about consent, and removal of
volunteers' samples at the close of an inquiry

new legislative framework for NDNAD, and regulatory
oversight

Recommendations relating to CCTV

independent appraisal of the existing research evidence on the effectiveness of CCTV in preventing, detecting and investigating crime

statutory regime for the use of CCTV by both the public and private sectors, with legally binding codes of practice, a system of complaints and remedies, and oversight by the Office of Surveillance Commissioners and the Information Commissioner's Office

Recommendations for legislation and the legislative process

mandatory encryption of personal data; avoid Internet connection of personal-data systems

review of administrative procedures for authorisations under the Regulation of Investigatory Powers Act (RIPA) 2000

reconsideration of local authorities' RIPA powers and their exercise

rationalising the inspection regimes of 3 RIPA commissioners

higher priority to post-legislative scrutiny of surveillance statutes by a new Joint Committee

Other specific actions for the government (I)

greater agency learning about human rights, necessity and proportionality

judicial oversight of surveillance, and availability of compensation

citizen-oriented identification systems

enhanced role for Ministry of Justice (MoJ) data protection minister

examine feasibility of having MoJ lawyers in other departments to consider implications of data protection-related policies

better certification of Human Rights Act (HRA) 1998-compatibility of legislation

reporting to Parliament on changes in organisational cultures, leadership, accountability, transparency, training and awareness

better training of officials for exercising RIPA powers, and more consistent determinations of necessity and proportionality

Other specific actions for the government (II)

- peer-review of Manual of Protective Security
- better safeguards and restrictions on surveillance and data handling
- review of procurement processes in order to incorporate 'privacy by design'
- improve the independent gathering of public opinion on surveillance and data-processing issues
- help citizens to understand privacy implications of surveillance and data processing
- apply Citizens' Inquiry technique to surveillance and data-processing initiatives
- better design of Information Charter, and reporting to Parliament on its use and public response
- further development of public engagement and dialogue, and reporting to Parliament on requirements placed on departments for this
- involve non-governmental organisations in shaping policies having significant implications for privacy

Recommendations for Parliament

committee scrutiny of progress on data handling

Merits of Statutory Instruments Committee to test for necessity and proportionality all secondary legislation extending surveillance and data processing powers, and to alert the House where there are doubts

establish new Joint Committee on surveillance and data powers of the state, drawing on outside research, and scrutinising proposed legislation that would expand surveillance and data-processing powers

Recommendation relating to all public and private sector organisations

consider the likely effect on individual privacy before adopting any
new surveillance or personal data-processing system

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