

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's briefing on Part 7 of the Investigatory Powers Bill for Committee Stage in the House of Commons

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About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at
<http://www.liberty-human-rights.org.uk/policy/>

Contact

Bella Sankey
Director of Policy
Direct Line: 020 7378 5254
Email: bellas@liberty-human-rights.org.uk

Rachel Robinson
Policy Officer
Direct Line: 020 7378 3659
Email: rachelr@liberty-human-rights.org.uk

Sara Ogilvie
Policy Officer
Direct Line: 020 7378 3654
Email: sarao@liberty-human-rights.org.uk

Silkie Carlo
Policy Officer (Technology & Surveillance)
Direct Line: 020 7378 5255
Email: silkiec@liberty-human-rights.org.uk

Sam Hawke
Policy Assistant
Direct Line
Email: samuelh@liberty-human-rights.org.uk

1. This is Liberty’s briefing on Part 7 of the Investigatory Powers Bill for Committee Stage debate in the House of Commons. In common with our recommendations for other bulk powers contained in the Bill, Liberty recommends that the powers in Part 7 be removed from the Bill.
2. Part 7 provides the Agencies with powers to acquire ‘bulk personal datasets’ (BPDs). This power does not currently exist. BPDs are essentially databases held either by the private or public sector and are defined in the Bill by reference to their nature “as a set of information that includes personal information relating to a number of individuals where the nature of the set is such that it is likely that the majority of the individuals are not, and are unlikely to become, of interest to the intelligence service.”¹ They cover manual and electronic records. Personal data is given a broad definition – it has the same meaning as the *Data Protection Act 1998* but also includes data relating to deceased individuals. Private misuse of a bulk dataset will be an offence, subject to up to 12 months imprisonment.
3. Acquisition, retention and examination of these databases will be governed by a warrant system similar to that for bulk interception and bulk hacking. Warrants are issued by the Secretary of State on application from the three Agencies and the process mirrors the framework in place for warrants for other bulk powers in Part 6. Judicial involvement is limited to the flawed judicial review model.
4. “Class warrants” concern applications for *descriptions* of personal data – for example, ‘health data’ or ‘travel data’. Under the terms of the Bill, this is the default type of BPD warrant. Both the ISC² and the Joint Committee³ recommended that Class Bulk Personal Datasets be removed from the Bill – yet they remain. The ISC reported that the “*acquisition, retention and examination of any Bulk Personal Dataset is sufficiently intrusive that it should require a specific warrant*”.⁴
5. ‘Specific bulk warrants’ can be applied for (a) where the requesting agency wants to request a bulk dataset that doesn’t fall within a class described in a class BPD warrant or (b) where it does fall within a class warrant but where the intelligence agency at any time considers that it would be “appropriate” to seek a specific BPD warrant. Specific BPDs may apply to the most sensitive type of databases – such as mental health hospital data,

¹ Investigatory Powers Bill 2016, Clause 174

² *Report of the draft Investigatory Powers Bill* – The Intelligence and Security Committee, 9 February 2016; Recommendation F

³ *Report of the Joint Committee on the Draft Investigatory Powers Bill*, 11 February 2016, Recommendation 42

⁴ *Report of the draft Investigatory Powers Bill* – The Intelligence and Security Committee, 9 February 2016; Recommendation F

or patient identifiable FGM data. Applications must include a description of the dataset to which it relates and an explanation of the operational purposes for which the intelligence service wishes to examine it. Specific BPD warrants may also authorise obtaining, retaining and examining bulk personal datasets that do not exist at the time the warrant is issued but may “reasonably be regarded as replacements” for the a dataset that has been sought.

6. There is an unjustifiable lack of information as to the nature of BPDs, and the way in which the data is used. Despite the requirement of a warrant for human examination of BPDs, the little available information indicates that BPDs are routinely electronically analysed. The ‘Impact Assessment’ for BPDs explains that they are ‘*held on one or more analytical systems*’ and that the ‘*Agencies use BPDs to identify subjects of interest*’.
7. The Home Office attempted to further its case for ‘bulk personal datasets’ in supplementary written evidence to the Joint Committee on the Draft Bill, giving examples of the types of datasets obtained (firearms licenses, travel data, electoral roll, telephone directory) and the purposes for which they may be used (protecting major events, preventing terrorist access to firearms, identifying foreign fighters, and targeting “*potential agents*”). The Impact Assessment for BPDs, also explains that they are analysed to “*identify subjects of interest*”. However, the examples of datasets obtained are somewhat misleading, as the electoral roll and telephone directory are publicly available. Whilst it is rational that intelligence agencies have access to firearms licenses and certain types of travel data involving conflict zones, the power to collect BPDs is almost unlimited and in practice involves far more expansive and intrusive, yet entirely secret, databases on millions of people. These vast, potentially population-level databases are integrated to produce profiles so intrusively detailed that they enable the Agencies to “*understand a subject of interest’s behaviour and connections*”.⁵ This indicates a deeply disturbing practice of data hoarding and further intrusive data mining to speculatively identify “*potential agents*” and generate “*subjects of interest*”.⁶ Identifying subjects of interest without evidence of criminality is highly likely to involve discrimination and appears to be more characteristic of an authoritarian regime than a democracy.
8. Agencies’ acquisition of BPDs was only avowed by the ISC in March 2015. In its report, the ISC disclosed limited information about BPDs:

“Bulk Personal Datasets may relate to the following types of information:

⁵ Supplementary written evidence to the Joint Committee on the draft Investigatory Powers Bill (IPB0165) – Theresa May, December 2015; p.14

⁶ Ibid.

- a. i)***;
- b. ii)***;
- c. iii)***;
- d. iv)***
- e. v)***”

And that, “As of mid-2014:

- f. SIS held *** Bulk Personal Datasets;
- g. MI5 held ***; and
- h. GCHQ held ***”

9. As regards the content and nature of BPDs, the ISC set out that:

“These datasets vary in size from hundreds to millions of records. Where possible, Bulk Personal Datasets may be linked together so that analysts can quickly find all the information linked to a selector (e.g. a telephone number or *) from one search query.”**⁷ And the datasets **“may include significant quantities of personal information about British citizens”**.⁸ Apparently **“None of the Agencies was able to provide statistics about the volume of personal information about British citizens that was included in these datasets”**.⁹ The Director General of MI5 has also cryptically explained to the ISC: **“there are datasets that we deliberately choose not to reach for, because we are not satisfied that there is a case to do it, in terms of necessity and proportionality.”**¹⁰

Sensitive information is apparently held in the datasets including an individual’s religion, racial or ethnic origin, political views, medical condition, ***, sexual orientation, or any legally privileged, journalistic or otherwise confidential information.¹¹ The ISC notes in passing that the Agencies may share the datasets with overseas partners.¹² Each

⁷ *Privacy and Security: a modern and transparent legal framework* - Intelligence and Security Committee, March 2015, para 156.

⁸ *Privacy and Security: a modern and transparent legal framework* - Intelligence and Security Committee, March 2015, para 158.

⁹ *Ibid*, footnote 142.

¹⁰ *Ibid*, para 162.

¹¹ *Ibid*, para 163.

¹² *Ibid*, para 163.

Agency reported that they had disciplined – or in some cases dismissed – staff for inappropriately accessing personal information held in these datasets in recent years.¹³

10. The acquisition of bulk private and sensitive data on the UK population by the intelligence agencies is a new and radical development. There is currently no legal authority for the Agencies to acquire these datasets. As the ISC diplomatically put it, “*the rules governing the use of Bulk Personal Datasets are not defined in legislation*”.¹⁴ However, Government claims that BPDs can be, and irrespective of the new Bill will continue to be, acquired by using the Security Services Act 1989 and the Intelligence Services Act 1994.¹⁵ This means that Government uses surveillance capabilities, such as hacking and interception, to obtain mass datasets from private companies or public bodies, as avowed in a recent document.¹⁶ It also hints that it buys mass datasets from the private sector.¹⁷
11. No argument is even attempted that BPDs are necessary or proportionate for Article 8 HRA purposes. The ISC reported that the Agencies told them that BPDs are an “*increasingly important investigative tool*” to “*enrich*” information obtained through other techniques. “Enriching” and “relevant” does not meet the legal threshold for lawfulness.
12. In recent litigation, Privacy International has received disclosure of internal documents which demonstrate the worrying way in which bulk personal datasets are misused.¹⁸ Initial analysis of these documents reveals that security service staff had been using datasets to conduct searches to: look up addresses in order to send birthday cards, check passport details in order to arrange personal travel, and checking details of family members for personal reasons. This shows that extremely intrusive datasets are being used for casual and personal purposes that in no way meet a test of necessity or proportionality, and with contempt for the collateral privacy invasions doing so creates. It also makes clear the scope and ease with which huge databases can be abused. Documents also show that there was a clear understanding within the services that “*there is no public expectation that the service will hold or have access to this information in bulk.*”
13. **Part 7 should be removed from the Bill.** There is no compelling operational case for the Agencies to collect, process and link personal data on the entire UK population. It is

¹³ Ibid, para 163.

¹⁴ Ibid, para 157.

¹⁵ Supplementary written evidence to the Joint Committee on the draft Investigatory Powers Bill (IPB0165) – Theresa May, December 2015; p.14

¹⁶ *Operational Case for Bulk Powers* – Home Office, March 2016 p.44

¹⁷ Guide to Powers and Safeguards, para 71.

¹⁸ <https://privacyinternational.org/node/843>

in principle a deeply offensive proposition. Current law allows data to be transferred across the private and public sector to further national security and the prevention and detection of crime. The Agencies therefore already have gateway powers to obtain information on those it identifies as being subjects of interest.

Sara Ogilvie

Silkie Carlo