



Online Rights Canada

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Updated on November 22, 2005

What is (L)Awful Access?



Bill C-74, the [Modernization of Investigative Techniques Act](#) (MITA), was introduced by the Liberals shortly before the election call. It would have allowed law enforcement agencies to obtain identifying information about you without a warrant. Even worse, it would have forced communications providers to build surveillance back-doors into the hardware that routes our phone calls, Internet traffic, and more. With the election call, Bill C-74 is dead. However, it may well be re-introduced (with a new number) in the new Parliament.

The sponsoring department, Public Safety and Emergency Preparedness Canada (PSEPC) provides [background information](#) on the bill on its website. In brief, the bill requires two things:

1. Telecommunications service providers ("TSPs") must build into their new systems intercept capability so that police can intercept communications without facing technical obstacles. Small TSPs have a three-year grace period, and there are whole and partial exemptions for charities, educational institutions, libraries, and other such bodies. The Minister can order a TSP to comply more quickly or broadly than otherwise required, in which case the Minister must compensate the TSP.
2. TSPs must also respond to written demands by designated law enforcement officials for "subscriber data" (name, address, telephone number, email address, IP address), even though such demands are not accompanied by judicial authorization (search warrants and interceptions generally require prior judicial authorization).

While all such requests must be accompanied by at least one individual identifier (e.g., IP address), there is no requirement for reasonable grounds to suspect criminal activity, which is the normal requirement for search warrants. All that is required is that the request be related to a duty or function of the law enforcement agency.

Moreover, while records must be kept of all requests, and internal audits must be conducted regularly to ensure compliance, there is no mandatory external audit or review of law enforcement use of these new powers. Existing oversight agencies (e.g., Privacy Commissioners and the Security Intelligence Review Commission) are relied upon to audit police requests for and use of subscriber data, at their discretion.

Civil liberties and privacy advocates have grave concerns about this legislative proposal. In particular, they have noted that "subscriber data" has significant privacy value insofar as it can personalize a great deal of very sensitive personal information that would otherwise be anonymous, and that it deserves to be better protected against inappropriate and unnecessary access. They have also expressed serious concerns about the rebuilding of communications networks so as to create an architecture that facilitates surveillance.

For more detailed information on this issue, please see [CIPPIC's resources on Lawful Access](#). To take action on this issue, sign ORC's petition to stop unwarranted surveillance: [Go To Petition](#)

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