

News Release

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New Police Powers Unnecessary, say Privacy Advocates

Under new legislation introduced by the federal government yesterday, internet and telephone companies would be required to give police certain subscriber information upon request, without any justification or warrant. This proposal violates fundamental civil liberties, say privacy advocates.

Bill C-74, the *Modernization of Investigative Techniques Act*, was introduced in Parliament yesterday by the Minister of Public Safety and Emergency Preparedness, Anne McLellan. In addition to requiring telecom companies to make their systems "intercept capable" so that police are not technically barred from implementing lawful interceptions, the bill would give police warrantless access to basic subscriber data such as name, address, telephone number, email address, and IP address.

According to the government, "subscriber information is often required at the beginning of an investigation or for general policing duties. In these circumstances, the police may not be able to get a warrant given the little information available to them, and the time it would take in order to gather the necessary information for a warrant, where it is possible, can be critical to an investigation."

But some question whether the police should have access to subscriber information without reasonable and probable grounds to believe that it is related to criminal activity, the normal prerequisite for search warrants.

"In the internet age, obtaining subscriber data is in the nature of a search", said Philippa Lawson, Executive Director and General Counsel of the Canadian Internet Policy and Public Interest Clinic (CIPPIC). "In many cases, police will have a great deal of highly sensitive and potentially incriminating information about an anonymous person that they found on the Internet. By linking that information to a subscriber name, they will have gone from knowing nothing about a person to knowing a great deal of information about that person (or someone else who used that person's account). Internet subscribers deserve the same protections against unreasonable searches in the online context as they do in the traditional offline context."

The government says that it is just standardizing practices, given that service providers are currently permitted (but not required) to subscriber data to police without a warrant.

"That is true", says Lawson, "but some service providers quite rightly refuse to provide subscriber information unless the police have a warrant. This is the appropriate approach, given the potentially devastating implications to innocent individuals of police investigations that are not properly justified. If history has taught us anything, it is surely that we must keep our state security forces in check."

Bill C-74 contains a number of safeguards against abuse of subscriber data requests, including the requirement that they can be made only by "designated officials" and only in performing a duty or function of the respective law enforcement agency. Lawson says that these safeguards are not good enough:

"The duties and functions of police services are very broad. Why not limit these requests to justifiable situations, such as where the police have reasonable grounds to believe that an offence has been or will be committed? By leaving it so open-ended, the government is inviting the kind of abuse based on prejudices and phobias that we saw happen with the RCMP in the 1970s and that we are now seeing with the Arar case in 2005."

Lawson also criticizes the bill for having no effective oversight mechanisms. "If they are going to do away with judicial authorization, then at least they should require external audits by an independent body."

The bill requires "regular" internal audits, but does not mandate any external auditing of police requests for subscriber data.

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