

REPORTERS WITHOUT BORDERS

FOR FREEDOM OF INFORMATION

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**Contribution by Reporters Without Borders (RSF),
a non-governmental organization with special consultative status,
on freedom of the media and information in the United Kingdom**

Threats to the confidentiality of sources

The state of freedom of the media and information in the United Kingdom is worrying, particularly as regards to the confidentiality of sources. Algeria is ranked 38th out of 180 countries in RSF's 2016 World Press Freedom Index, four places lower than its position in the 2015 Index.

The British media have for years been concerned about protecting their sources from the police, who are accused of abusing their powers. The authorities get their powers from the Regulation of Investigatory Powers Act (RIPA), adopted in 2000. It lets them monitor electronic communications without prior permission from a judge.

The Bureau of Investigative Journalism (BIJ), a British NGO that does investigative reporting, has asked the European Court of Human Rights to review the RIPA, under which the British intelligence agency known as Government Communications Headquarters (GCHQ) is able to spy on journalists. The BIJ says interception of electronic communications threatens the ability of journalists to protect their sources and is therefore incompatible with European legislation, which recognizes the right of journalists to keep their sources confidential.

The "Save Our Sources" campaign launched by the *Press Gazette* in 2012 (which has been supported by some 100 editors and 1,600 journalists) resulted in the adoption of amendments that helped to protect journalists' sources. But media trust in the authorities has sunk to a new low because the government is promoting a new bill that would increase surveillance powers and because there has been an increase in violations of freedom of information.

This crisis of confidence is being fed by the attitude that seems to prevail among the British authorities, who tend to think that "journalists and reporters representing all types of news media represent a potential threat to security", as an internal GCHQ memo published by the *Guardian* in 2015 put it.

Examples of violations

1- *The Times* reported that, in March 2014, Vodafone provided the police with the phone records of more than 1,700 employees of News UK – the company that publishes the *Times*, *Sunday Times* and *Sun* – including many journalists. As the police had requested the call records of just one journalist, the provision of all this data was due to "human error," Vodafone said. The request was made under the RIPA in October

2013 by police officers working on “Operation Elveden,” an investigation into suspected illegal payments to public officials by journalists working for News International, renamed News UK after the *News of the World* phone hacking scandal. The police could have repaired the mistake by immediately deleting the data and alerting Vodafone and News UK, but they did not do so.

2- In October 2015, the police used the UK’s Terrorism Act to seize the laptop of Secunder Kermani, a reporter for the respected *BBC* current affairs programme *Newsnight* who had been investigating jihadis of British origin for several months. The police obtained an order from a judge in order to take his computer and conduct a thorough analysis of his communications with a jihadi in Syria.

3- There was an outcry in 2015 when it was revealed that the police had obtained the communications data of 82 journalists during the previous three years without reference to a judge, with the aim of identifying their sources within the police.

4- David Miranda, the partner of former *Guardian* columnist Glenn Greenwald, was arrested at Heathrow Airport in 2013 while in possession of a hard drive with files linked to documents obtained by Edward Snowden. British judges ruled that his detention and the seizure of computer material was legal under the Terrorism Act. Miranda appealed against this decision and a UK appeal court acknowledged in 2016 that the Terrorism Act was incompatible with the European Convention on Human Rights.

Current threats: the bill designed to replace the RIPA

RSF is concerned about a bill drafted by British Prime Minister Theresa May when she was home secretary that would allow the police and intelligence agencies to intercept, gather and store the communications of tens of millions of people including journalists and their sources.

Called the Investigatory Powers Bill (IPB) and intended to replace the RIPA, its provisions are all the more disturbing because the authorities would not be systematically required to give prior notice to journalists when planning to obtain their communications data or hack into their devices.

It has already been approved by the House of Commons and is currently before the House of Lords. If it gets the upper house’s approval, any amendments would then be debated by the entire parliament and it could take effect in January 2017. Referring to the IPB in March 2016, the UN special rapporteur on privacy, Joseph Cannataci, voiced alarm about the prospect of “disproportionate, privacy-intrusive measures such as bulk surveillance and bulk hacking.”

RSF’S RECOMMENDATIONS

The right to privacy of all citizens including journalists and their sources is enshrined internationally in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights. Article 19 of both documents also enshrines freedom of expression. As Frank La Rue, the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression, has said, protection of privacy is the corollary of freedom of expression.

The UN Human Rights Council recognized the right to online freedom of expression in a 2012 resolution and has reaffirmed it several times since then. It also said that the rights recognized in the physical world should be recognized online as well, regardless of frontiers.

Tasked with enforcing the European Convention on Human Rights (to which the UK is party), the European Court of Human Rights has upheld the “protection of journalistic sources” as “one of the basic conditions for press freedom.” Without such protection, the court said, “sources may be deterred from assisting the press in informing the public on matters of public interest (...) the vital public-watchdog role of the press

may be undermined, and the ability of the press to provide accurate and reliable information be adversely affected.”

RSF therefore asks:

- The British authorities
 - To respect the right to the protection of journalists’ sources, which is recognized by such bodies as the European Court of Human Rights.
 - To stop treating journalists as a “potential threat to security” and to regard them instead as guarantors of a free, open and pluralist society and as the only ones able to preserve security in the long term.
 - To guarantee the right to privacy of journalists and their sources both online and offline.
- British Members of Parliament
 - To reject the Investigatory Powers Bill in its current form.
 - To propose amendments guaranteeing specific protection for journalists and their sources.
 - To adopt legislation that protects the right to the confidentiality of journalists’ sources.

REPORTERS SANS FRONTIERES

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