Who Can Access Metadata?

Since 1979, the number of agencies that can access telecommunications has expanded. Interception and stored communications warrants to access the content of telecommunications can be applied for in the investigation of serious offences (see s105.1 TIA Act) – only law enforcement agencies have access to these warrants.

Access to metadata, however, has been much more widespread and can be used by many different government agencies in a broader range of investigations such as:

- the enforcement of a criminal law
- the enforcement of a law to impose a pecuniary(s) penalty
- for protecting public revenue

Organisations such as the RSPCA and local councils have been granted the power to self-authorise access to metadata. The cost of accessing the data prohibits widespread surveillance – many opponents of mandatory retention of metadata argue that access to metadata should be limited only to law enforcement agencies.

How often is metadata accessed and by who?

The following data is from the TIA Act Annual Report for 2014/15:

<table>
<thead>
<tr>
<th>Enforcing Criminal Law</th>
<th>Law Enforcement Agencies</th>
<th>Commonwealth Agencies</th>
<th>State or Territory Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of authorisations made by a Law Enforcement Agency</td>
<td>344,587</td>
<td>8,653</td>
<td>1,020</td>
</tr>
<tr>
<td>No. of authorisations made by a Commonwealth Agency</td>
<td>1,352</td>
<td>983</td>
<td>773</td>
</tr>
<tr>
<td>No. of authorisations made by a State or Territory Agency</td>
<td>2,457</td>
<td>3,246</td>
<td>2,197</td>
</tr>
<tr>
<td>Total</td>
<td>358,596</td>
<td>5,748</td>
<td>5,453</td>
</tr>
</tbody>
</table>

*The TIA Act Annual Report is released annually and contains details about law enforcement agencies’ ability to authorise the access to metadata. The report shows the number of authorisations made by each agency, see: the Attorney General’s Department website, the full report shows data on the number of authorisations made by a State or Territory Agency.

Metadata and the Rule of Law

This resource presents information about law reform to access telecommunications data (known as metadata under the Telecommunications (Interception and Access) Act 1979 (Cth)) – what it is, how it is used and who is authorised to use it.

The rapid development of telecommunications technology is a law reform issue because there is a need to ensure that law enforcement and intelligence agencies have sufficient powers to investigate and prevent crime.

The rule of law requires that agencies have powers to enforce the law. These powers need to be controlled, monitored and held accountable in their use. This is to make sure what the power can do can be used by many different government agencies, and that a balance is maintained between having appropriate investigative powers, and the rights of the individuals.

What is Metadata?

Metadata is part of a communication that describes who, what, when and how of a communication. It does not include the content of the communication itself.

To investigate crime and protect national security government agencies have powers to access telecommunications data (the legal term being metadata), known as metadata (the term everyone uses).

Metadata is usually created whenever a person sends or receives a communication over a phone or internet service. Consider the content and metadata for some common types of telecommunications:

<table>
<thead>
<tr>
<th>Communication</th>
<th>Content</th>
<th>Metadata</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone call</td>
<td>Name and phone number of the person who made or sent the call/message</td>
<td>time of call, duration of call, location of call/message</td>
</tr>
<tr>
<td>SMS Message</td>
<td>The text of the message</td>
<td>the location of the device making the call</td>
</tr>
<tr>
<td>Email</td>
<td>The text of the email and documents attached to it</td>
<td>time of message sent, the email address from which the email was sent</td>
</tr>
</tbody>
</table>

Further reading and resources on this topic and other rule of law issues are available at: www.ruleoflaw.org.au/education/metadata/

**Further reading:**


**Important Terminology:**

- The TIA Act – Telecommunications (Interception and Access) Act 1979 (Cth) is the Australian Law which controls who can access telecommunications, and makes it an offence to access them unlawfully.
- Telecommunications data = metadata
- Tekno = a company offering phone theft prevention services
- Law enforcement agency = a government body which investigates/prevent crime.
- Intelligence agency = a government body which investigates/intelligence/collects intelligence.
- Security of the Commonwealth and the Territories from acts of terrorism = national security.
- Security of the Commonwealth and the Territories from espionage = intelligence.

- The manager of the project, Elizabeth Bowring said, “As the manager of the project, I have a responsibility to ensure that the project is successful. This means engaging with key stakeholders and ensuring that the project is completed within the specified timeframe. The project team is working hard to achieve this goal.”

- “The project team has been working hard to complete the project on time. We have been able to identify and address any issues in a timely manner. This has helped us to complete the project on time.”

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Issues with Data Retention

Data retention creates tension within the concept of the rule of law. The role of law requires that the law should be enforced – if law enforcement does not have appropriate powers to investigate crime, justice can be done. However, the fact that an enormous amount of data is kept for two years about any Australian who uses a telecommunications service, and that access to that power is self-authorized by government agencies raises the concern that government might have access to all people's data, not just those who are suspected of involvement in a crime.

Currently, it is not possible for law enforcement to monitor all people at all times – this would be very expensive, and is not permitted under the current legislation.

Although the TIA Act contains many safeguards for people’s privacy, and has a degree of transparency through reporting requirements – this does not mean that further changes or expansion of powers over metadata should not be questioned.

The role of law demands constant scrutiny of how government uses its power – this is how we can live in a free society, while having government agencies that use powers appropriately, according to the law.