BULK COLLECTION: SYSTEMATIC
GOVERNMENT ACCESS TO
PRIVATE SECTOR DATA

PRINCIPLES FOR OVERSIGHT AND
ACCOUNTABILITY

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The Privacy Projects Systematic Access Project:

• Begun in 2011
• Workshops in Washington, London (2), Montreal, Brussels

• Participation:
  • Data Protection Authorities
  • Security services
  • Telecommunications and Internet companies
  • Academics
  • Civil society
13 Country Reports

- Australia
- Brazil
- Canada
- China
- France
- Germany
- Korea
- India
- Israel
- Italy
- Japan
- UK
- US
Thematic Papers

• Comparative Analysis
• The US Supreme Court and Data Privacy
• International Law
• International Human Rights
• Organizational Accountability
• Independent Oversight in Europe
• Transparency
• Privacy Protection in Latin America
• The Impact of Encryption
• Mutual Legal Assistance – Stakeholders and Reform
Key Findings

• Increase worldwide in government demands for data held by the private sector

• Existing legal structures provide an inadequate foundation for the conduct of systematic access

• Despite progress in some countries, transparency about systematic surveillance programs is weak

• Data protection laws include exceptions for access for regulatory, law enforcement, and national security purposes

• Relatively little discussion of the complex questions regarding application of human rights to trans-border surveillance or relating to citizens of other countries
Core Human Rights Principles

• Legality
• Proportionality
• Accountability
Legality

- «In accordance with law»
- Accessible and foreseeable
- Necessary in a democratic society
- Authorization
Proportionality

• Purpose
• Scope
• Justification
• Use and disclosure
• Time limits
Accountability

- Transparency
- Oversight
- Redress
Oversight

• Comprehensive
  • Executive, legislature, judiciary, plus specialized body or officer
  • Prior, ongoing, and retrospective
  • Both lawfulness and effectiveness

• All stages of the intelligence cycle
• Some independent elements
• Authority to declare a measure unlawful and to provide redress
• Incorporate the adversary principle
• Adequate resources
Information Accountability

• Organizational commitment
  • Internal policies consistent with external criteria
• Tools and training
• Internal oversight, reviews, external verification
• Transparency and individual participation
• Means for remediation and external enforcement
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Fred H. Cate and James X. Dempsey, editors (Oxford University Press, 2017)