

Andrew Parker's BBC interview shows continuing weaknesses in how UK security services are scrutinised

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By Democratic Audit UK

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*Last month, MI5 Director General Andrew Parker appeared on BBC Radio 4 to make the case for intelligence agency powers in advance of the forthcoming Investigatory Powers Bill. **Andrew Defty** argues that while new surveillance legislation is needed, a robust regulatory framework will also be required to produce effective intelligence and a more secure society. To achieve this balance, security agencies need to be subject to more frequent, rigorous and open scrutiny than the occasional curated media appearance.*



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Public statements by heads of the British intelligence and security agencies are still rare enough to attract considerable attention. Moreover, representatives of the intelligence agencies do not step into the spotlight without good reason. The recent interview with Andrew Parker, the Director General of the Security Service (MI5) on [BBC Radio 4's Today](#) programme was, therefore, significant for a number of reasons.

While much has been made of the fact that this was the first live interview with a serving head of a British intelligence agency, it is just the latest manifestation of a strategy of openness which began in the mid-1990s. However, public speeches by intelligence chiefs, the creation of websites for the agencies and the publication of official histories have often been more about information control than opening the agencies up to wider public scrutiny. Moreover, it is important to remember that the intelligence agencies have a long-established and often mutually beneficial relationship with the British media. Stories about the world of espionage are guaranteed to attract an audience, while agreeing to allow selected journalists privileged access has provided the agencies with an open channel through which to place material in the public domain. In an [inquiry](#) conducted by the Intelligence and Security Committee in 2004, it was revealed that a number of media outlets have journalists 'accredited' to the intelligence agencies, and receive briefings 'about matters relevant to the Services.' Indeed, the day after Mr. Parker's appearance on the *Today* programme, [newspaper reports](#) based on 'security sources' confirmed the scale of the terrorist threat outlined by Parker, and added further details about the nature of that threat.

Avowable public statements, such as Parker's radio appearance and the interview with the incoming head of

GCHQ, Robert Hannigan, which appeared in the [Financial Times](#) earlier this year, are to be preferred to private briefings of carefully selected journalists. However, this interview, which included the customary question about James Bond, is just one form of scrutiny. There are some who would argue that if the agencies are serious about subjecting themselves to public scrutiny then they should be prepared to appear, in public, before parliamentary select committees. The carefully choreographed public appearance of intelligence agency heads before the Intelligence and Security Committee (ISC) last year was a welcome development, although it [did not inspire confidence](#) in the rigour of the ISC's approach. It is to be hoped that further, and perhaps more challenging, public sessions will take place in the current parliament. However, a number of select committees including the Home Affairs Committee and the Joint Committee on Human Rights have had their requests to interview representatives of the intelligence agencies denied. These refusals seem less understandable in the context of media interviews with intelligence agency heads. When parliamentarians complain, as they often did in interviews for [our research](#), that the intelligence agencies are not prepared to speak to parliament, they often add with some justification, 'but they're quite happy to talk to journalists.'

As has been widely reported, Mr Parker's appearance on the *Today* programme was designed to make the case for intelligence agency powers in advance of the forthcoming Investigatory Powers Bill. The principal legislation governing the interception of communications, the [Regulation of Investigatory Powers Act](#) (RIPA) was passed in 2001, long before most of the current means of electronic communications were envisaged. Since the revelations of Edward Snowden, a series of legal challenges and inquiries have shed light on the extent to which the agencies have sought to stretch the interpretation of the existing legislation, while attempts to provide a new legislative framework have been piecemeal and far from successful. The Home Secretary's attempt to bring forward a new and expansive [Communications Data Bill](#), the so-called 'snoopers' charter', stalled during the last Parliament when the Liberal Democrats withdrew their support. [The Data Retention and Investigatory Powers Act](#), 'emergency' legislation introduced in July 2014 in response to a European Court of Justice ruling that the process whereby intelligence agencies' required access to phone and internet records was incompatible with EU law, was itself ruled unlawful in July of this year in a case brought by the Labour MP, Tom Watson, and the Conservative MP, David Davis. In two recent landmark cases, the [Investigatory Powers Tribunal](#) ruled that the bulk collection of communications data had been unlawful up to December 2014 when the practice was revealed and that the communications of civil liberties groups including Amnesty International had been unlawfully intercepted. In June, a detailed review of investigatory powers, by the Government's independent reviewer of terrorism legislation [concluded that](#):

RIPA obscure since its inception, has been patched up so many times as to make it incomprehensible to all but a tiny band of initiates. A multitude of alternative powers, some of them without statutory safeguards, confuse the picture further. This state of affairs is undemocratic, unnecessary and – in the long run – intolerable.

The forthcoming legislation seems likely to put back onto a statutory footing activities which have recently been ruled unlawful. It is also likely to reform the regulatory framework under which the agencies operate, although whether it will take forward all of the innovative proposals for oversight made in the investigatory powers review remains to be seen.

To some extent Parker sought to respond to these difficulties by explaining the nature of the threat and the challenges facing the agencies in monitoring terrorist communications. While he refused to be drawn on the question of what new powers the intelligence agencies might want, he did make it clear that the agencies do not feel that the current arrangements provide them with all of the powers they need, noting that the agencies, 'can no longer obtain under proper legal warrant the communications of people they believe to be terrorists.'

Moreover, while he repeatedly responded that it was 'for parliament to decide', it is important to remember that legislation will be tabled by the government not parliament, and we should not assume that Mr Parker's reticence means the agencies do not have a view on this issue, or that they are not making their views forcefully known behind the scenes in Whitehall. Moreover, public interventions such as this are likely to be invoked and may well be persuasive when parliament comes to debate the issue. It will also be interesting to see, when the bill is introduced,

whether the Home Secretary is more forthcoming about what the intelligence and security agencies have said to her about the powers they now need. If she does, then members might do well to remind her that when it comes to debating civil liberties the views of the public and their democratic representatives in parliament should weigh more heavily than those of the agencies authorised to spy on them.

There is a broad consensus on the need for new legislation. The government and the agencies would clearly like to have a new legal mandate for covert interception to enable the agencies to carry out the kind of surveillance which they clearly feel is necessary for the maintenance of national security, while civil liberties groups, and to some extent those responsible for overseeing the agencies, would like to see a new regulatory framework which plugs the gaps in the current arrangements. These two objectives are by no means mutually exclusive. Effective oversight can, indeed should, lead to more effective intelligence and a more secure society, in a way that simply deferring to the agencies will not. If this is to be achieved, Mr Parker and his successors will need to be subject to more frequent, rigorous and open scrutiny, and less questions about James Bond.

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