CRISP
CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

UNIVERSITY of STIRLING
Management School

The Governance of Surveillance

Professor William Webster

2016 NZ-UK Link Foundation Visiting Professor

School of Government, Victoria University of Wellington

Centre for Research into Information, Surveillance and Privacy (CRISP)
University of Stirling

Victoria University of Wellington
Wellington, New Zealand

6 September 2016

NZUK
LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
VICTORIA
UNIVERSITY OF WELLINGTON

Introduction

Line of argument:

- Surveillance in a defining feature of modern society
- Embedded in a range of technologies and processes
- Delivers more efficient public services, better law enforcement and personalised private services
- Whilst surveillance is ubiquitous it is also opaque
- Surveillance processes are therefor abstract
- The governance of surveillance becomes paramount in modern society
- Public agencies become the guardians of personal data

NZUK LINK FOUNDATION
TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON
CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

Surveillance

What do we mean by the term surveillance:

- Processes and practices mediated by new technology
- Involves information flows, including personal data
- A defining feature of modern society
- Can be overt or covert
- Can be real-time, retrospective or predictive
- Surveillance is not just about security
- The term itself is not negative
- Surveillance is normal, unsurprising, ubiquitous and subtle
- Surveillance matters, it determines your 'life chances' and your relations with others

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

Governance

The concept of 'governance' in theory and in practice assumes:

- Governments do not govern alone
- 'Steering' not 'rowing', leading and empowering…
- The process of governing involves many vested interests
- These vested interests may be public agencies or private companies – and include citizens and service users
- Public policy and service delivery are intertwined
- Those responsible for public policy and services can be held to account
- The creation of new mechanisms to realise oversight
- Governance: processes - including institutions, rules, activities and norms - that coordinate and determine surveillance – as well as holding those undertaking surveillance to account

NZUK LINK FOUNDATION
TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON
CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

UK Surveillance Legislation

Regulation of investigatory Powers Act 2000 (RIPA)	Framework determining whether covert investigatory techniques can be used by public agencies
Intelligence Services Act 1994 (ISA) Police Act 1997 (Part III)	Authorisation/Issue of warrants for Intelligence Services/Police for interfering with property and wireless telegraphy
Freedom of Information Act 1994 (FOI)	Publication of and access to public information
Data Protection Act 1998 (DPA)	Regulates processing of personal data. Eight DP principles. Rights for citizens
Protection of Freedom Act 2012 (PoFA)	Creates new Commissioners and a legal requirement for Codes of practice
European Convention on Human Rights (ECHR)	Sets out fundamental rights and freedoms of citizens
Human Rights Act 1998 (HRA)	Enshrines ECHR in UK. All public bodies must comply with ECHR

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP
CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

UK Surveillance Institutions

Information Commissioners Office (ICO)	Rules governing processing of personal information. Encouraging compliance, investigating complaints, taking remedial action
Interception of Communications Commissioner (IoCC)	Independent oversight of the lawful interception of communications. Handles complaints.
Office of the Surveillance Commissioners (OSC)	Independent body overseas use of covert surveillance by public authorities
Intelligence Service Commissioner (ISC)	Reviews Secretary of State's use of warrants, included Intelligence Services
Investigatory Powers Tribunal (IPT)	Judicial body set up to consider complaints and Human Rights Act claims from individuals about surveillance by public bodies
Surveillance Camera Commissioner (SCC)	Encourage compliance with Code. Providing advice
Biometrics Commissioner (BC)	Reviews the retention and use by police of DNA samples, DNA profiles and fingerprints

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

And What's on the Horizon?

- In the UK Investigatory Powers (IP) Bill
  - Bulk data retention
- Implementation of the EU General Data Protection Regulation (GDPR) in 2017
- Implications of BREXIT

- In New Zealand Intelligence and Security Bill
  - Improve transparency and oversight
  - Integrate arrangements for internal and external surveillance
  - 'Extensive provision for routine access to information'

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

Beyond Formal Institutions

- Public agencies are responsible for creating governance processes relating to personal data and information processing
- Public services create, process and share significant amounts of personal data
- Increasingly this data is made available to third parties through open government initiatives
- Increasingly in an era of big data and smart cities this is done in partnership with private companies
- Information processes are difficult for citizens to interpret meaning public agencies become the guardians of our personal data as well as creators of governance structures
- A moral…legal obligation to ensure appropriate stewardship of information processes

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP
CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

Exercising Democratic Rights [1]

IRISS (Increasing Resilience in Surveillance Societies) EC research project 2012-5:

- Explore the ease accessing personal data captured by CCTV
- 10 research teams in different European countries
- 3 elements to methodology:
  - Analysis of legal frameworks for access rights
  - Locating data controllers – measured ease of locating data controllers contact details online, in person and via telephone. 327 sites visited.
  - Submitting access requests – asked data controllers to disclose personal data and provide information regarding data sharing. 184 requests submitted

[Work Package led by Norris and L'Hoiry: http://irissproject.eu]

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

Exercising Democratic Rights [2]

IRISS (Increasing Resilience in Surveillance Societies)

Headline Findings:

- 20% of data controllers could not be identified before submitting an access request
- 1 in 5 CCTV operators do not display any signage
- 43% of requests did not obtain access to personal data
- 56% of requests could not get adequate information regarding third party data sharing
- Huge divergence in practice
- In practice personal data access requests in accordance with the law in only a minority of cases

[Work Package led by Norris and L'Hoiry: http://irissproject.eu]

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

Exercising Democratic Rights [3]

IRISS (Increasing Resilience in Surveillance Societies)

Data controllers employ several key discourses of denial which restrict data subjects' ability to exercise their rights:

- Out of sight – render themselves invisible
- Out of court – incorrectly rely on legal exemptions
- Out of order – data controllers admin processes inadequate
- Out of time – time used to restrict and delay access
- Out of tune – request only accepted via narrow mechanisms
- Out of mind – requests are seen as inappropriate

[Work Package led by Norris and L'Hoiry: http://irissproject.eu]

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

CCTV Signage

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP
CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

Concluding Comments

- Surveillance processes and those processes associated with the governance of surveillance are complex and difficult for ordinary citizens to navigate
- Yet these processes are becoming critical to everyday life
- Advances in new technology will only complicate matters further, for example, in relation to consent and re-individualisation
- In the face of this complexity public agencies become the guardians of personal data and information processes
- Public agencies have an obligation to encourage public debate about surveillance in order to help determine levels and types of surveillance that are acceptable and to ensure citizens know how to enforce their rights
- It could be argued that current governance structures are inappropriate for the digital age and that new processes that encourage transparency, accountability and control are required

NZUK LINK FOUNDATION
TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON
CRISP CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY

Contact Details

Professor William Webster

E: william.webster@stir.ac.uk
NZE: william.webster@vuw.ac.nz
T: @CrispSurv
W: www.crisp-surveillance.com/
W: www.stir.ac.uk/management/

NZ-UK Link Foundation:
www.nzuklinkfoundation.org.uk/

NZUK LINK FOUNDATION

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI VICTORIA UNIVERSITY OF WELLINGTON

CRISP
CENTRE FOR RESEARCH INTO INFORMATION, SURVEILLANCE & PRIVACY