

Whistleblowers may bypass the media thanks to new data laws

April 13 2015, by Adam Henschke



A responsible media is cautious about what leaked information it will publish.
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The Australian Government made some concession towards journalists when the new data retention legislation was passed by both Houses of parliament last month. But that doesn't mean a journalist's metadata is protected from ever being accessed by authorities.

While much has been said about the importance of press and [media freedom](#), another important aspect so far has received far less coverage:

that seeking to discourage [media](#) involvement in reporting leaks on government practices might actually run counter to the national interest.

Public interest test

Under [the new law](#), which will come into effect in 2017, the government and opposition have agreed to a [secret warranting system](#).

Current [whistleblower laws in Australia](#) offer some protections to public servants, but others generally receive [very little legal](#) protection. Given the importance of the media to a functioning democracy, journalists are seen as deserving of special treatment.

Law enforcement or other relevant agencies will require a warrant to gain access to metadata — the information about whom a journalist has been talking with and when — and these warrants must pass a "public interest test", where a public advocate argues against the warrant.

But this must be kept secret, and should journalists report that such a warranting process is occurring, they'll face up to [two years jail time](#).

Free to publish anywhere

These new metadata laws, however, overlook the fact that traditional media sources are no longer the only method of large scale public communication.

When Wikileaks came into the public consciousness in 2006, it signalled a change in the relationship between the whistleblower and the public. Any potential [Deep Throat](#) no longer needed to go through [journalists](#) to get their information out.

Information is not something that can be controlled as it once was. Snowden, [Chelsea Manning](#) and [WikiLeaks](#) have shown just how porous informational barriers are these days, and the disgruntled insider is a huge issue for any institution that likes to keep things out of public view.

Modern history sees [many different ways](#) that people have sought to get information about perceived government malpractice, from [traditional media](#), to [spying](#), to more recent widespread release of personal information on [the internet](#).

Any changes in public policy need to recognise the importance of this new informational world, because the media can act in ways that seek to prevent the release of operational or mission sensitive information. Think here of the release the [Afghan War Diaries](#) supplied by Manning to WikiLeaks.

[Reporters Without Borders](#) and [Amnesty International](#) both criticised WikiLeaks for its failure to properly redact the names of sources in the war diaries.

The concern was that the keeping source names in the War Diaries placed lives at risk and undermined ongoing missions. Even [those](#) within [Wikileaks](#) were concerned about the lack of concern shown towards [personal information](#).

A responsible media

Compare this to the releases by Snowden, via The Guardian and others new outlets. The journalists in these circumstances sought [some feedback](#), albeit grudgingly, from [national security](#) agencies in order to [remove or redact mission-sensitive information](#).

Obviously for various governments around the world, they would prefer

sensitive information not to get out at all, as they consider that the Snowden leaks were highly detrimental to the [national interests](#) and might also have put lives [at risk](#).

If the choice is between a motivated insider passing information on to relevant journalists or simply dumping information wholesale without due care or consideration for its impact, it would seem that any sensible government would prefer to do what is possible to avoid a wholesale dump.

But the risk of a whistleblower's identity being revealed through any successful request to access data that shows who a journalist has had contact with makes the option of a wholesale dump more attractive.

This is not to pass judgement on these high profile leaks, or indeed on the responses by governments.

Rather, that in considering how they treat individual [journalists](#) and the media more widely, governments around the world are faced with a fundamentally insecure informational environment. [Journalists worldwide](#) are also feeling concerned about the possibility of maintaining the confidentiality of their sources

Seeking to discourage media in participation in the way that leaks are publicised can – in certain circumstances at least – run counter to the aims of protecting operational matters and could end up being detrimental to national security.

Of course, this whole idea runs on the notion that members of the media themselves act responsibly, and actively work with [government agencies](#) to protect mission sensitive information.

But if anything, this highlights the need for the government and the

media to be able to work together. Laws that seek to undermine the public trust in national security practices and threaten the capacity for government agencies and the media could end up driving people to leak more important information than they may have otherwise done.

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