



State Comptroller
of Israel

Use of Technological Tools for Law Enforcement Purposes—Wiretapping and Communications Data

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Abstract

Background

Over the past decade, the Israel Police has markedly enhanced its technological capabilities for information collection to effectively execute its mission and responsibilities. During this period, there has been a notable increase in the use of various technological instruments by the police for wiretapping and the extraction of communications data¹. The tools available to the police for this purpose include audio listening devices, tools for intercepting information transmitted between computers, and tools for acquiring communication data. Some of these instruments are installed on endpoint devices, thereby enabling access to information stored in them, and to real-time data transmitted from them via computer communications, without the knowledge of the surveillance targets.

At the heart of law enforcement agencies' use of technological tools lies the complex and sensitive challenge of striking a balance between the need to safeguard public safety and enforce the law, and the obligation to uphold individual rights, particularly the right of every person to privacy. In contemporary society, where sophisticated technological tools offer novel avenues for information gathering and investigation, there is a need for regulation, as well as heightened oversight and control. The inappropriate application of these tools is liable to undermine public confidence in governmental institutions, whereas regulatory gaps that limit the use of such tools are likely to compromise the personal safety of the citizen and undermine the state's capacity to combat crime effectively.

This report summarizes a comprehensive examination of the use of technological tools, focusing on the activities of key law enforcement agencies: the Israel Police, the Attorney General's Office, and the State Attorney's Office within the Ministry of Justice, as well as the interactions among them. The audit was also conducted under the authority of the State Comptroller to undertake systemic audits of state representatives in legal proceedings.

This audit report includes a thorough and systematic analysis of the processes involved in the use of the technological tools—from the legislative and legal regulatory processes, through the application for judicial authorization, the installation of the tools, and the obtaining and use of communications data, to the oversight and control of the use of these tools by the Israel Police, the Attorney General's Office, and the State Attorney's Office.

¹ Acquisition of Communications Data.

Throughout the audit, various technological tools employed by the police were examined, pertinent police databases were analyzed, and thousands of documents from the police and the Ministry of Justice were reviewed. Furthermore, a practical assessment of the methods used to operate the technological tools and their corresponding documentation procedures was conducted.

The findings arising from the audit conducted by the Office of the State Comptroller have revealed deficiencies and weaknesses pertaining to the use of technological tools by the Israel Police, as well as regarding its interface with the Attorney General's Office and the State Attorney's Office on these matters. The findings point to systemic shortcomings that necessitate rectification to ensure adherence to fundamental principles concerning the manner in which law enforcement agencies exert their powers and authorities. The primary systemic deficiencies are as follows:

Absence of Adequate Legal Regulation—The deployment of technological tools and the performance of operations related to wiretapping and the use of communications data lack appropriate legislative and legal grounding necessary for these activities. The absence of regulatory frameworks has resulted in two principal outcomes: first, the employment of tools that severely infringe upon privacy without the authority for their use being delineated in primary legislation; second, a reduced ability on the part of the police to fully utilize these tools in its enforcement efforts aimed at combating crime.

Problematic Work Practices within the Police—The adoption of methodologies that circumvent established processes, coupled with the implementation of work practices that are not grounded in standardized procedures, has led to the execution of prohibited actions during the exercise of police powers, throughout the stages from submission of the request to the use of communications data or outputs of wiretapping. In the absence of regulation, it was found that impermissible installations had been carried out, prohibited information had been collected, and prohibited outputs had been produced and used.

Difficulties in Operational Interfaces between the Israel Police and the Ministry of Justice—Certain findings within the report pertain to the police's exercise of its powers, while others relate to the legal guidance provided by officials in the Attorney General's Office within the Ministry of Justice, as well as the operations of the State Attorney's Office. These findings are interconnected, evidenced by a vulnerability manifested in the failure to transfer sufficient information from the police to the Ministry of Justice, alongside the Ministry's failure to take proactive steps to obtain information about the full capabilities of the technological tools.

Professional Weakness in the Fields of Technology and Law—At the root of a considerable portion of the report's findings is a professional weakness stemming from the lack of personnel within the Attorney General's Office, the State Attorney's Office, and the legal counsel to the Police, who have the requisite technological expertise for addressing the core areas examined in the report.

Looking ahead, it should be noted that in recent years, the police and the Ministry of Justice have initiated measures to rectify the deficiencies. However, these corrective actions must be completed, which necessitates, among other requirements, coordinated governmental efforts involving the police, the State Attorney's Office, and the Attorney General's Office at the Ministry of Justice. Among these efforts, legislative amendments should be promoted, enhanced control mechanisms should be developed, procedures and operational processes should be clarified, and greater inter-organizational transparency and accountability within law enforcement agencies should be established, when using sensitive technological tools.

It should be emphasized that the report is not designed to evaluate enforcement actions related to specific investigative cases but rather to conduct a systemic examination of the police's use of technological tools for

enforcement purposes and to identify patterns requiring correction or improvement. The audit findings reveal systemic deficiencies and the necessity for comprehensive and fundamental improvements in the operations of law enforcement agencies; thus, the report does not contain findings concerning individual officeholders. Consequently, the report aims to facilitate systemic reform rather than be used as a means for attacking any particular officeholder. I consider it appropriate to clarify these matters, particularly in light of the public debate that has been ongoing in recent years regarding the law enforcement system in Israel.

At a time when the country is facing complex crime challenges and security threats, and in view of the public debate surrounding legal and enforcement issues, the importance of striking a balance between the need to safeguard public safety and enforce the law and the obligation to uphold individual rights, especially the right of every person to privacy, has become even more pronounced.

The importance of state audit and its work derives from the Basic Law: State Comptroller, which accords it autonomy and complete independence from the executive branch. This autonomy is fundamental to ensuring that audits are conducted free from intimidation and external influence, and that the State Comptroller reports and renders an account to both the Knesset and the public. It should be pointed out that the Office of the State Comptroller conducted the audit on this matter concurrently with the work of an internal examination team within the Ministry of Justice, as well as alongside the activities of a government commission of inquiry that has yet to finalize its work. The operations of each of these entities have independent and distinct value.

State audit devotes considerable attention to the interrelationships and coordination among the audited entities, including issues that the government manages at a broad, state level, and processes that have evolved within the government over time. In this respect, state audit, which conducts systemic audits, is distinct from internal audit. These operational characteristics were similarly reflected in this audit report, whose findings are being made public. Additionally, the audit extensively investigates decision-making processes within the audited entities; the same applies to this audit report. It should be emphasized that, in accordance with the methodology traditionally employed in state audit, this audit did not evaluate the substance of policy, nor did it seek to supplant the discretion of the executive authority; rather, it examined whether the policy-making process was conducted in compliance with the law and in alignment with principles of administrative propriety.

I express my gratitude to the staff of the Office of the State Comptroller for their professional and meticulous efforts in the preparation of this report, which was undertaken under complex conditions while upholding the highest professional standards.

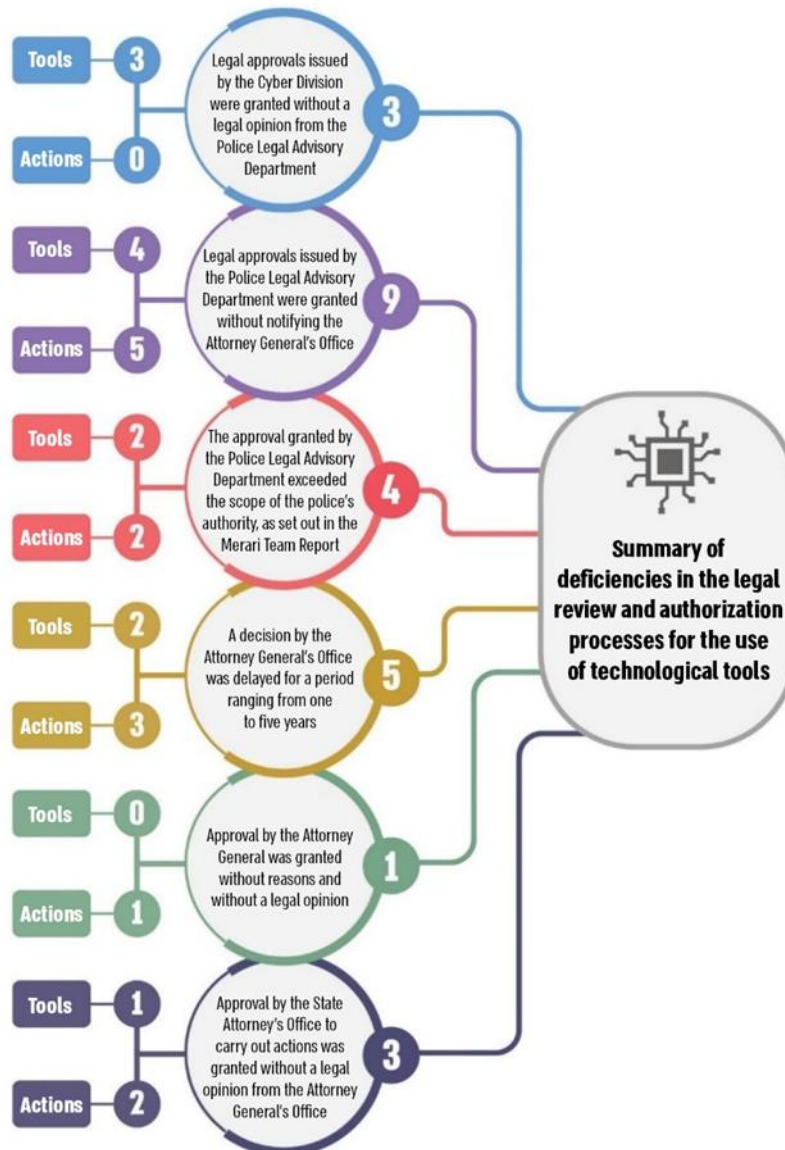
Throughout the report's preparation, the state continued to confront numerous challenges across various sectors. I sincerely hope that the findings and recommendations contained within the report will aid in fortifying state institutions and enhancing public trust in them. I cannot conclude these introductory remarks without expressing my hope and prayer for the safe return of the last hostage, Master Sergeant Ran Gvili, an officer of the *Yasam* [police counter-terror] unit, for the success of our soldiers on the various fronts, for the recovery of the wounded, and for peaceful and quiet days ahead for all residents of the State of Israel.

Roadmap for the Report

Audit Objectives	▪ To examine whether the police's use of technological tools, as well as its activities in the fields of wiretapping and communications data, were carried out lawfully. ▪ To examine whether the Ministry of Justice fulfilled its role with respect to oversight of police activity in the fields of wiretapping and communications data, and the use of technological tools. ▪ To examine the balance between police actions and the protection of individual rights, with particular emphasis on the rights of defendants and the right to privacy. ▪ To identify gaps between the police powers established in legislation regarding the use of technological tools to obtain wiretapping outputs and communications data, and the police's actual capabilities in practice. ▪ To examine the legal framework governing police powers and the tools used by the police in these fields. ▪ To examine the effectiveness of police supervision and control mechanisms in the fields of wiretapping and communications data. ▪ To identify courses of action to promote the legislative amendments required to regulate police capabilities and activities.
Topics Examined	▪ The legal regulation of the use of technological tools. ▪ The process for submitting applications for wiretapping, installation of technological tools, collection of wiretap outputs, and the production and use of wiretap materials. ▪ The granting of administrative permits to obtain communications data in urgent cases. ▪ Police supervision and control in the fields of wiretapping and communications data. ▪ Destruction of wiretap materials. ▪ Oversight by the State Attorney's Office in the fields of wiretapping and communications data within the framework of evidentiary privilege over investigative materials.
Audit Period	February 2022–August 2023 (intermittently).

Audited Entities	▪ Israel Police (Intelligence Division and Cyber Division within the Investigations and Intelligence Directorate). ▪ Ministry of Justice (the Attorney General's Office and the State Attorney's Office).
Audit Methodology	▪ Analysis of data from police databases in the fields of wiretapping and communications data regarding activities carried out in the years 2019–2021. ▪ Analysis of several cases in which the police used technological tools as part of wiretapping. ▪ In preparing this report, the State Comptroller's Office was assisted by external consultants with expertise in the subject matter of the report. The State Comptroller wishes to thank retired Judge Ms. Nava Ben-Or, Mr. Adi Ein-Dar, formerly a legal adviser to a security agency; and Mr. Y.K., for his advice on cyber and database matters.
Previous Audits	▪ State Comptroller, Annual Report 41 (1991), "Wiretapping and Its Use by the Police," pp. 340–358; ▪ State Comptroller, Annual Report 54B (2004), "Wiretapping," pp. 279–304; ▪ State Comptroller, Opinion on Wiretapping in Criminal Investigations (2010).

Summary of the Deficiencies Identified in the Legal Review and the Process for Obtaining Legal Approvals



Summary

This audit report examines the effects of the increasing use of technological tools by the Israel Police, with a focus on wiretapping and communications data, inter alia, in **accordance** with the operational approach that has taken shape within the police over the past decade. The report **addresses** a wide range of technological tools with complex capabilities; hundreds of thousands of applications, judicial orders, and administrative permits granting the police authority to act in these fields; thousands of installations of technological tools on endpoint devices for wiretapping purposes; the collection and production of millions of wiretapping outputs; hundreds of thousands of actions undertaken to obtain and use communications data; and dozens of discussions held over the years within the police and the Ministry of Justice on these matters. As a result of all of the above, the report relates to hundreds of investigation files and intelligence matters handled by the police in recent years.

In a democratic society, the police are the central authority responsible for law enforcement and for safeguarding the security of the citizens of the State of Israel. They are continuously engaged in a struggle against criminal and terrorist actors who endanger public safety and national security and exploit technological advancement for malicious purposes. The police are required to combat crime through various means, including intelligence gathering, the conduct of investigations, the formulation of evidence, and cooperation with the prosecution in the preparation of indictments. The legal advisory bodies to the Government within the Ministry of Justice, including the Attorney General, constitute the professional authority tasked with assisting the police in establishing the legal foundation for their activities, and with ensuring compliance with legal requirements and applicable limitations. The State Attorney's Office and the Police Prosecution Division form the legal pillar of the fight against crime, through the management of complex criminal proceedings, particularly proceedings against organized crime groups.

Consideration of this audit report should be aligned with its purpose: to assist law-enforcement authorities in conducting a systemic and in-depth examination of their work, in order to strengthen the democratic foundations underlying police powers, enhance public trust in these institutions, promote systemic and professional improvement in this area, and ensure the propriety of law-enforcement activities when technological tools are used in the fields of wiretapping and communications data.

As part of the audit, the work processes, oversight mechanisms, and systemic conduct of the Israel Police, the legal advisory bodies, and the State Attorney's Office were examined. The report reviews processes conducted within these bodies since 2009, a period during which both senior and junior officeholders changed. As noted, the purpose of the report is to examine the matter in a systemic and in-depth manner; accordingly, it does not focus on specific officeholders, but rather on deficiencies in organizational structure, work processes, cooperation mechanisms, and the ongoing functioning of the bodies concerned. The report's recommendations therefore reflect this approach.

It should be stressed that the findings and gaps identified in this audit report do not detract from the high regard for the officers and commanders of the Israel Police, who act with personal and professional dedication, around the clock and throughout the year, to protect the security of the citizens of Israel and the State of Israel and to enforce the law; nor do they detract from the dedication and professionalism of the Attorney General's Office and the State Attorney's Office, which likewise act to uphold and enforce the law.

In December 2020, the State Comptroller of Israel decided to include this audit report, concerning the police's use of technological tools for enforcement purposes, in the State Comptroller's Office work program for 2022. Approximately one year later, following media reports alleging that the police were using a technological tool to obtain information in excess of what is permitted under the Wiretapping Law, the Attorney General of Israel (at the time) decided, in January 2022, to establish an examination team—the Merari Team. In addition, in August 2023, the Government decided to establish a government commission of inquiry, chaired by Moshe Drori, to examine the matter.

This audit report lays additional foundations relating to the subject under review that had not been examined prior to the present audit:

1. Technological tools that had not previously been examined were reviewed.
2. Procedures for submitting applications for wiretapping or for communications data were examined.
3. Additional instances of prohibited actions were identified in the areas of installation, use of prohibited outputs, and their production.
4. Oversight and supervision procedures in the fields of wiretapping and communications data were examined.
5. Processes for preparing legal opinions within the police and within the legal advisory bodies to the Government in the Ministry of Justice were examined.
6. Processes of legal and legislative regulation of police powers in the fields of installation and collection of outputs were examined.
7. Activities involving the installation of technological tools on endpoint devices of interception targets and the collection of interception outputs through technological tools were examined.

This audit report identified numerous fundamental and significant audit findings concerning the work of the Israel Police and the legal advisory bodies to the Government within the Ministry of Justice. These findings, and the recommendations derived from them, are presented in detail in the body of the report and in this summary. However, several systemic failures and gaps may be identified that have a direct bearing on core principles governing the manner in which law-enforcement authorities exercise their power and their authority, and on the proper balance between the police's duty to combat crime and its obligation to minimize, to the greatest extent possible, infringement of the right to privacy. The principal systemic gaps are set out below:

1. Absence of legislative and legal regulation—The use of technological tools, actions in the fields of wiretapping, and the use of communications data without adequate anchoring of the requisite statutory and legal basis for such activity.
2. Deficiencies in legislative advancement processes—Some of the report's findings point to prolonged delays in the provision of legal opinions and in the advancement of legislation until its submission to the legislature. The root of this phenomenon lies in the absence of regulation of work processes, including the lack of proactive management actions and engagement by the Attorney General's Office and by the Police Legal Advisory Department in appropriate cases; the absence of established timetables for the preparation of legal opinions and the submission of legislative drafts; and the failure to conduct follow-up on missed deadlines in the few instances in which such timetables were set. The importance of regulating the work processes of the legal advisory bodies is heightened in light of the infringement of the right to privacy that occurs in the course of handling wiretapping, the use of communications data, and the use of technological tools.
3. Problematic work practices within the police—The adoption of circumventing practices that bypass the proper process at various stages of the exercise of police powers in these fields, from the application stage through to the use of communications data or wiretapping outputs. These practices reduce the need for internal command approvals within the police, approvals from the State Attorney's Office, the Attorney General's Office, and the courts, and at the same time diminish internal and external oversight mechanisms over police actions.
4. Difficulties in the working interfaces between the Israel Police and the Ministry of Justice—Some of the report's findings relate to the police's use of its powers; others relate to the legal guidance provided by the legal advisory bodies to the Government within the Ministry of Justice, and still others relate to the work of the State Attorney's Office. These findings are interconnected, as they stem from an underlying weakness in the interaction and coordination between these bodies. This weakness is reflected, on the one hand, in the failure to transfer sufficient information from the police to the Ministry of Justice, and, on the other hand, in the absence of proactive efforts by the Ministry of Justice to obtain information regarding the full capabilities of the technological tools in use.
5. Professional weakness in the technological and legal domains: A significant portion of the report's findings is rooted in a professional weakness arising from the lack of personnel with the specialized expertise required by the Attorney General's Office, the State Attorney's Office, the Police Legal Advisory Department, and the Cyber Division, for addressing the core issues examined in this report. This specialized expertise rests on a dual professional foundation: legal and technological, and requires formal and practical training conducted on an ongoing and sustained basis.

At the time of publication of this report, the State of Israel is in the midst of a war against enemies seeking its destruction, and, simultaneously, a range of civil issues are the subject of profound and contentious debate within Israeli society, including matters relating to the law-enforcement system and the justice system. The purpose of this audit report is to shed light on the complexity involved in the use of technological tools and draw attention

to gaps identified in the activities of the police and the Ministry of Justice that require corrective action. In this context, it is important to emphasize the understanding that the purpose of this document is correction, improvement, and enhancement of the functional frameworks operating in this field, thereby contributing to the strengthening of the performance and standing of law-enforcement authorities and oversight bodies, which for many years have borne a central and vital role in Israeli society. The practical implementation of this understanding will ensure the strengthening of the police's ability to fulfill its role in combating crime while maintaining restraint in the exercise of its powers and safeguarding individual rights. It will also enhance the capacity of the State Attorney's Office and the Attorney General's Office to oversee police activity in this field.

The Minister of Justice, the Minister of National Security, the Attorney General, the State Attorney, the Commissioner of Police, and the Head of the Investigations and Intelligence Division must ensure the correction of the deficiencies identified in this report. Addressing these deficiencies will serve the interests of the police and the Ministry of Justice alike—and, above all, the citizens of the State of Israel.