

# **Institute for Development of Freedom of Information**

INSTITUTE FOR DEVELOPMENT OF  
FREEDOM OF INFORMATION



## **2016 Statistics on Telephone Surveillance and Secret Investigation in Georgia**

**February, 2017**

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## Summary

- According to 2016 data from the Registry of Secret Investigative Actions, the number of motions of secret investigative actions (including wiretapping and secret recording of phone conversations, removal and recording of information from a communications channel, secret video and audio recording, removal and recording of information from computer systems, etc.) has increased 1.5 times as compared to 2015. The rate of granted motions has also increased from 77% in 2015 to 92% in 2016.
- In 2016, motions on wiretapping and secret recording of phone conversations constituted only 9.7% of all secret investigative actions.
- The so called “two-key” system by which the Personal Data Protection Inspector controls cases of wiretapping and secret recording of phone conversations only covered 9.7% of all secret investigative actions in 2016.
- For the first time, the number of motions on wiretapping and secret recording of phone conversations is available by courts and type of crime.
- In 2016, Tbilisi City Court has considered the most number of motions on wiretapping and secret recording of phone conversations – 299 motions. The remaining 102 motions were considered by 15 city/regional courts.
- Half of the motions on wiretapping and secret recording of phone conversations considered in 2016 were related to three articles of the Criminal Code of Georgia – fraud (70 motions, Article 180), extortion (58 motions, Article 181) and bribe-taking (57 motions, Article 338).

## Statistics of Telephone Surveillance for 2016

On January 25, 2017 the Supreme Court of Georgia published complete information about motions on telephone surveillance in 2016.<sup>1</sup> Prior to this, available statistics covered the period up to October 2016.

According to the published information, in 2016 there was a total of 401 motions on telephone surveillance, 315 of which were granted fully, and 30 were granted partially. Therefore, the percentage of granted motions has slightly increased as compared to 2015 and was 86%.

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<sup>1</sup> Available only in Georgian: <http://www.supremecourt.ge/news/id/1357>

Motions on Telephone Surveillance Received by Tbilisi City Court from the Prosecutor's Office of Georgia (Information received by IDFI from the High Council of Justice of Georgia in 2013)				
Year	Received	Granted	Partially Granted	Granted %
2011	7,195	7,187		99.86%
2012	5,951	5,939		99.80%
2013 (January - May)	1,400	1,259		89.93%
Motions on Telephone Surveillance Received by Courts of First Instance (Data proactively disclosed by the Supreme Court of Georgia)				
2014	1,074	894		83.24%
2015	373	261	45	82%
2016	401	315	30	86%

The Supreme Court of Georgia proactively publishes information about motions on telephone surveillance since 2014. Initially, this obligation was a recommendation prepared by IDFI and other non-government organizations in the frames of 2014-2015 Georgia Action Plan<sup>2</sup> of Open Government Partnership (OGP).<sup>3</sup> By completing this commitment Georgia became one of few countries worldwide where such statistics is publicly available.

At first, the statistical data published since 2014 did not include details such as type of crime and geographic location. In the 2016-2017 OGP Georgia Action Plan, the commitment was updated to include data separated by type of crime and geographic location as well.<sup>4</sup> The Supreme Court of Georgia has fulfilled the commitment and **in 2016 data on telephone surveillance is available separated by specific courts and classification of crime.**

According to the data, the highest number of motions – 299 in total – was considered by Tbilisi City Court. The remaining 102 motions were considered by 15 city/district courts, out of which the most cases were received in Batumi (22 motions), Kutaisi (19 motions) and Rustavi (13 motions).<sup>5</sup> **Half of all motions considered in 2016 were related to three articles of the Criminal Code of Georgia – fraud (70 motions, Article 180), extortion (58 motions, Article 181) and bribe-taking (57 motions, Article 338).**

<sup>2</sup> OGP Georgia Action Plan for 2014-2015 – Completed and Unfulfilled Commitments, Institute for Development of Freedom of Information, 27 April, 2016, available at: <http://bit.ly/1pKIWP2>

<sup>3</sup> Commitment 17: Proactive Publication of Surveillance Statistics, p. 24. Available at: <http://bit.ly/2kiXmqy>

<sup>4</sup> Commitment 13: Publishing phone tapping data according to the nature of the crime and geographic area, p. 26, available at: <http://bit.ly/2kFaBTu>

<sup>5</sup> Table №2. *Telephone Surveillance by types of crime*. Supreme Court of Georgia, available in Georgian at: <http://bit.ly/2kLbrdL>

<b>2016 Motions on Telephone Surveillance and Recording in Georgia by Categories of Crime</b>	
Article of the Criminal Code of Georgia	Number of Considered Motions
Article 180. Fraud	<b>70</b>
Article 338. Bribe-taking	<b>57</b>
Article 181. Extortion	<b>58</b>
Article 182. Appropriation or embezzlement	<b>18</b>
Article 194. Legalization of illegal income (money laundering)	<b>14</b>
Article 108. Murder	<b>14</b>
Article 210. Manufacturing, sale or use of forged credit cards or charge cards	<b>14</b>
Article 179. Aggravated robbery	<b>12</b>
Article 223 <sup>1</sup> . Membership of the criminal underworld; thief in law	<b>12</b>
Article 177. Theft	<b>11</b>
Article 260. Illegal manufacturing, production, purchase, storage, transportation, transfer or sale of drugs, their analogues, precursors or new psychoactive substances	<b>11</b>
Article 262. Illegal import or export of drugs, their analogues, precursors or new psychoactive substances to/from Georgia or their international transportation by transit	<b>9</b>
Article 212. Manufacturing or sale of forged money or securities	<b>9</b>
Article 109. Murder under aggravating circumstances	<b>6</b>
Article 221. Commercial bribery	<b>6</b>
Article 144. Taking hostages	<b>5</b>
Article 205 <sup>1</sup> . Concealment of property using fraudulent and/or sham transactions	<b>5</b>
Article 218. Tax evasion	<b>5</b>
Article 339. Bribe-giving	<b>5</b>
Article 187. Damage or destruction of property	<b>4</b>
Article 143 <sup>1</sup> . Human trafficking	<b>4</b>
Article 200 <sup>1</sup> . Manufacturing, sale and/or use of counterfeit excise stamps	<b>3</b>
Article 200. Release, storage, sale or transportation of excisable goods without excise stamps	<b>3</b>
Article 372. Exertion of influence on a witness, victim, expert or interpreter	<b>3</b>
Article 143. Unlawful imprisonment	<b>3</b>
Article 318. Sabotage	<b>3</b>
Article 185. Damage of property by deception	<b>3</b>
Article 214. Breach of the procedure related to the movement of goods across the customs border of Georgia	<b>3</b>
Article 223. Creation or management of illegal formations, or joining and participation in such formations, and/or implementation of other activities in favour of illegal formations	<b>3</b>

Article 315. Conspiracy or rebellion intended to change the constitutional order of Georgia through violence	3
Article 117. Intentional infliction of grave injury	3
Article 178. Robbery	2
Article 328. Joining a foreign terrorist organisation or a terrorist organisation controlled by a foreign state or supporting this organisation in terrorist activities	2
Other	18
<b>Sum:</b>	<b>401</b>

Since 2015, the proactively disclosed information also includes data about the number of duration extensions for existing motions on telephone surveillance and recording. However, the published data seems to be unreliable, since there is an inaccuracy in the 2016 data. More specifically, according to data published by the Supreme Court for the first 9 months of 2016 (January – September), 150 motions on duration extension of telephone surveillance and recording were considered (out of which 137 were granted fully and 5 partially);<sup>6</sup> while, according to data for the 12 months of 2016, there were 79 motions on duration extension, out of which 69 were granted fully, 3 partially, and 7 were not granted.<sup>7</sup>

### Registry of Actions of Secret Investigation in 2016

As a result of legislative changes, starting from August 1, 2014, the Supreme Court of Georgia also started proactively publishing registry of actions of secret investigation. The registry includes information about granted motions on telephone surveillance as well as other secret investigation. As of February 2017, only data for 4 months of 2014 (18 August – 31 December),<sup>8</sup> 2015<sup>9</sup> and 2016<sup>10</sup> are available.

According to the Criminal Procedure Code of Georgia, the types of **secret investigative actions** are as follows:<sup>11</sup>

- Wiretapping and secret recording of phone conversations.
- Removal and recording of information from:
  - **A communications channel** (by connecting to the communication facilities, computer networks, line communications and station devices).
  - **A computer system** (both directly and remotely).
  - Installation of a piece of **software in a computer system** for this purpose.

<sup>6</sup> *Motions on Telephone Surveillance and Recording in 9 months of 2016 by city/regional courts*. Supreme Court of Georgia. Available in Georgian at: <http://bit.ly/2jzx8RP>

<sup>7</sup> *Table N1. Motions on Telephone Surveillance and Recording in 9 months of 2016 by city/regional courts*. Supreme Court of Georgia. Available in Georgian at: <http://bit.ly/2kFltOu>

<sup>8</sup> *Registry of Actions of Secret Investigation according to courts of first instance from August 18 to December 31, 2014*. Supreme Court of Georgia. Available in Georgian at: <http://bit.ly/2kWp5eY>

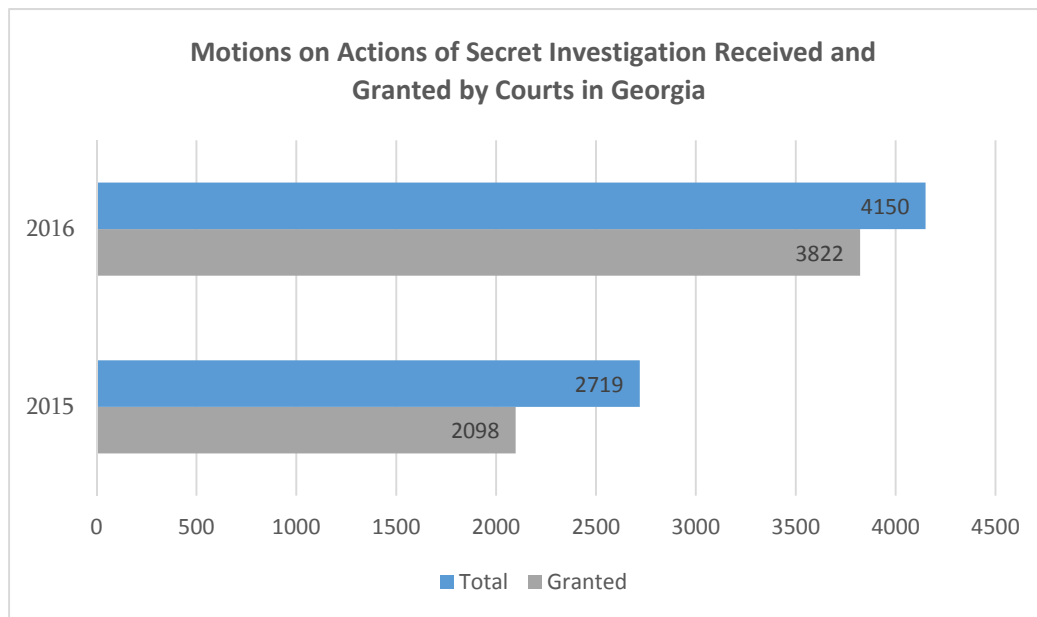
<sup>9</sup> *Registry of Actions of Secret Investigation in 2015 by city/regional courts of Georgia*. Supreme Court of Georgia. Available in Georgian at: <http://bit.ly/2kkju21>

<sup>10</sup> *Registry of Actions of Secret Investigation in 2016 by city/regional courts of Georgia*. Supreme Court of Georgia. Available in Georgian at: <http://bit.ly/2jzJskY>

<sup>11</sup> Article 143<sup>1</sup> Types of secret investigative actions.















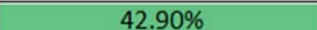


- Monitoring of post and telegraphic communications (except for diplomatic post).
- Secret video and audio recording, film and photo shooting.
- Electronic surveillance through technical means, which does not endanger human life, health or the environment.

According to 2016 data from the registry of secret investigative actions, the number of motions of secret investigative actions (including wiretapping and secret recording of phone conversations, removal and recording of information from a communications channel, secret video and audio recording, removal and recording of information from a computer system, etc.) has increased 1.5 times compared to 2015. The rate of granted motions has also increased from 77% in 2015 to 92% in 2016.



The registry of secret investigative actions also shows the annual share of telephone surveillance in the total number of secret investigative actions. **In 2016, cases of wiretapping and secret recording of phone conversations were only 9.7% of all secret investigative actions.** By region, the highest share of telephone surveillance was carried out in Tetrtskaro (42,9%), Senaki (18%) and Gurjaani (18%). In Tbilisi the share of telephone surveillance out of secret investigative actions was 10.3%. In 2015, the share of telephone surveillance among the total secret investigative actions was 13.8%. Therefore, **the so called “two-key” system, by which the Personal Data Protection Inspector controls cases of wiretapping and secret recording of phone conversations, only covered 9.7% of all secret investigative actions in 2016.**

**Secret Investigative Actions and Telephone Surveillance in Georgia in 2016**  
[www.idfi.ge](http://www.idfi.ge)

	Considered Motions on Secret Investigative Actions	Considered Motions on Telephone Surveillance	Share of Motions on Telephone Surveillance in Secret Investigative Actions
Tbilisi	2902	299	 10.30%
Batumi	207	22	 10.60%
Kutaisi	188	19	 10%
Rustavi	141	13	 9%
Zugdidi	121	6	 4.90%
Gori	110	9	 8%
Telavi	78	4	 5%
Bolnisi	67	5	 7.50%
Akhaltzikhe	60	6	 10%
Ozurgeti	48	1	 2%
Mtskheta	47	2	 4%
Poti	27	0	0%
Samtredia	13	0	0%
Senaki	22	4	 18%
Zestaponi	20	1	 5%
Khelvachauri	18	2	 11%
Khashuri	15	0	0%
tetritskaro	14	6	 42.90%
Sachkhere	12	0	0%
Gurjaani	11	2	 18%
Sighnaghi	4	0	0%
Tsageri	4	0	0%
Akhalkalaki	2	0	0%
<b>Total:</b>	<b>4131</b>	<b>401</b>	 <b>9.70%</b>

Unfortunately, the registry of secret investigative actions does not separate the data by the type of crime, which would enable additional analysis.

Proactive disclosure of statistical information about secret surveillance plays a significant role in ensuring civic control on law-enforcement agencies and the court system, as well as in increasing public trust towards existing state regulations. Therefore, ensuring accuracy of statistics is of extreme importance. Moreover, it is also important to note that the data on telephone surveillance do not include information about other secret investigative actions such as real time access to Internet traffic. **Therefore, statistics that are currently available do not give a complete picture on lawful surveillance by state authorities.**

According to the decision of the Constitutional Court of Georgia,<sup>12</sup> **the State Security Service possesses technical capacity to carry out surveillance and counterintelligence activities bypassing courts and the Personal Data Protection Inspector. Therefore, the proactively disclosed information may not reflect the real situation of secret surveillance.**

## Recommendations

1. The registry of secret investigative actions must be published according to specific actions of secret investigation (including wiretapping and secret recording of phone conversations, removal and recording of information from a communications channel, from a computer system or installation of respective software in a computer system for this purpose, monitoring of post and telegraphic communications, secret video and audio recording, film and photo shooting, electronic surveillance through technical means).
2. The registry of secret investigative actions must be published according to types of crime, which would enable the comparison of data with statistics on wiretapping and secret recording of phone conversations.
3. Statistics on wiretapping and secret recording of phone conversations must be made available in Excel format (as per commitment included in the Open Government Partnership (OGP) 2016-2017 Georgia Action Plan).
4. Statistics on duration extensions for existing motions on telephone surveillance and recording in 2016 must be verified.

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<sup>12</sup> *Regulating Secret Surveillance in Georgia (April-December, 2016)*, Institute for Development of Freedom of Information, 23 January, 2017, available at: [https://idfi.ge/en/regulating\\_secret\\_surveillance\\_in\\_georgia](https://idfi.ge/en/regulating_secret_surveillance_in_georgia)