

FBI conducted illegal spying on tens of thousands

By Joe Kay
12 March 2007

The US Federal Bureau of Investigation has collected financial and personal information on tens of thousands of people since 2003, using a special type of subpoena that does not require judicial review, according to a report by the Justice Department's inspector general. This spying was often carried out in violation of existing laws and regulations.

The report, issued on Friday in accordance with a congressional directive included in the Patriot Act reauthorization of 2006, covers the use of "national security letters" (NSLs) during the period from 2003 to 2005. A second report is due by the end of this year, covering 2005 and 2006.

Until 2001, NSLs were infrequently used by the FBI to solicit records from companies or individuals directly suspected of engaging in espionage or terrorist actions. NSL exceptions were inserted in privacy legislation, including the Financial Privacy Act of 1978 and the Electronic Communications Privacy Act (ECPA) of 1986.

The Patriot Act of 2001 vastly expanded the power of the Justice Department—a department of the executive branch—to gather records without court warrant. Section 505 of the Patriot Act allows the FBI and other agencies to issue NSLs whenever the information sought is "relevant" to an investigation relating to terrorism or espionage. The act also allowed more lower-level FBI agents to approve NSLs than had been the case previously.

By removing the requirement that the target of an NSL had to be directly suspected of espionage or terrorism, Congress gave the executive branch essentially free license to spy on anyone in the US, including US citizens. This move was part of a broader expansion of government spying, including the massive and illegal warrantless wiretapping organized by the National Security Agency, and the monitoring of antiwar groups by the Defense Department.

The inspector general's report concludes that the FBI operated outside of even the broader authority granted it by the Patriot Act.

The report first of all notes that the number of NSLs publicly reported by the government was much lower than the actual number issued. In May 2006, the Justice Department reported issuing 9,254 NSLs the previous year, but this excluded many types of NSLs, including those seeking information on

telecommunications. The IG report finds that internal FBI data show that the agency "issued approximately 8,500 NSL requests in CY [calendar year] 2000, the year prior to the passage of the Patriot Act. After the Patriot Act...the number of NSL requests increased to approximately 39,000 in 2003, approximately 56,000 in 2004, and approximately 47,000 in 2005."

In total, 143,074 letters were issued from 2003 to 2005. That is, the actual number was more than five times the number publicly reported. Each letter can request data on multiple individuals.

Even these figures understate the number of letters issued by the FBI. According to the report, the actual number of letters was approximately 17 percent more than what the FBI's internal data indicate.

The vast majority of letters were sent to telecommunications companies to obtain information on telephone calls and e-mails.

According to the report, "The percentage of NSL requests generated from investigations of US persons [citizens and residents] increased from about 39 percent of all NSL requests in CY 2003 to about 53 percent of all NSL requests in CY 2005." That is, US residents and citizens now constitute the majority of those targeted by NSL requests. In a selection of cases examined in greater detail, the investigator general found that 12 percent of cases inaccurately listed the target as a non-US person, when he or she was in fact a US person or presumed US person.

The report does not give any indication as to who the FBI has targeted in these thousands of NSLs. In general, the target of an NSL request will never find out that his or her information has been turned over to the government.

The information collected in this way can be extremely invasive, allowing the government to determine who is connected with whom, and thereby broaden the target range. The report states, "Analysis of subscriber information for telephone numbers and e-mail addresses also can assist in the identification of the investigative subject's family members, associates, living arrangements, and contacts."

The information obtained in this manner has been disseminated to a broad array of intelligence and police

agencies, and has been made available for criminal prosecutions. In the reports distributed by the FBI, the fact that intelligence comes from an NSL is generally obscured, making it impossible to determine the extent that this information is being used.

The report noted that the FBI reported 26 violations of NSL policy from 2003 to 2005. But the inspector general's own examination of a selection of 293 letters found 22 additional violations—or about 7.5 percent of the letters. The violations included improper authorization and improper requests for information (that is, the FBI requested more information than it was legally allowed to receive). If one extrapolates to the entire pool of 143,000 letters, this suggests that with about 10,000 of them, illegal procedures were used in the collection of information.

Highlighting the intimate ties between the telecommunications industry and US intelligence agencies, the report also states that on 739 occasions “the FBI obtained telephone toll billing records or subscriber information from 3 telephone companies without first issuing NSLs or grand jury subpoenas. Instead, the FBI issued so-called ‘exigent letters’ signed by FBI headquarters Counterterrorism Division personnel who were not authorized to sign NSL’s.”

The “exigent letters” were accompanied by a promise that an NSL or a court subpoena would follow, but this was rarely done. The 739 exigent letters covered about 3,000 different telephone numbers.

This is simply blatant lawlessness on the part of FBI officials, who demanded information without any legal or court sanction, information that the telecommunications companies dutifully handed over. The report states, “We also were troubled that the FBI issued exigent letters that contained factual misstatement indicating that ‘subpoenas requesting this information have been submitted to the US Attorney’s Office who will process and serve them formally...as expeditiously as possible.’ ” In examining a sample of exigent letters, “we could not confirm one instance in which a subpoena had been submitted to any United States Attorney’s Office before the exigent letter was sent to the telephone companies.”

Throughout the report, the inspector general attempts to soften the impact of the revelations, stating that the unlawful actions were the product of misunderstandings and confusions and not willful disregard for the law. However, the extraordinary extent of the illegal actions suggests otherwise.

The Bush administration has scrambled to soften the impact of the report, with FBI director Robert Mueller taking personal responsibility and Attorney General Alberto Gonzales pledging that any violations would be rectified. The administration, however, has no intention of allowing executive spying powers to be diminished.

The response of the Democratic Party to this latest revelation of government spying has been characterized by a traditional level of hypocritical posturing. Edward Kennedy, a leading

Democrat on the Senate Judiciary Committee, declared, “The Patriot Act was never intended to allow the Bush administration to violate fundamental constitutional rights” and “It’s up to Congress to end these abuses as soon as possible.”

In fact, this was precisely the intent of the Patriot Act, which included a raft of anti-democratic measures. The act sought to loosen legislation that had been put in place in response to revelations of massive violations of the constitutional rights of US citizens. It should be recalled that the Democratic Party voted overwhelmingly to pass the Patriot Act in 2001, and then to reauthorize certain measures that were expiring in 2006. The former vote was 98 to 1 in the Senate and 357 to 66 in the House, and the latter was 89 to 11 in the Senate and 280 to 138 in the House.

The vote for the reauthorization of the Patriot Act came after a November 2005 *Washington Post* article reporting that the FBI was issuing 30,000 NSLs a year, a number that far exceeded public reports, but turned out to be very close to the actual number of letters that have been issued.

Once again, confronted with blatantly illegal action on the part of the Bush administration, the Democrats have refused to even suggest impeachment or any other measures that would seriously impede the administration. Whatever criticisms the Democrats raise, they never call into question the basic rationale provided by the Bush administration—that all this spying is necessary in order to conduct a “war on terror.” Senate Majority Whip Richard Durbin insisted, “We should give the government all the tools it needs to fight terrorism”; however, he said, the Patriot Act requires more “reasonable checks and balances.”

The “war on terrorism” has been used as a pretext to carry out a massive assault on basic democratic rights. With the complicity of the Democrats, the Bush administration has sought and received authorization to override whatever legislation exists protecting the privacy of those living in the US, including American citizens. The government is accumulating large databases of communications, e-mails, and other information. The ultimate aim of all these spying operations is to monitor the development of any form of opposition to the policies of the American ruling elite, at home and abroad.

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