Obama administration announces cosmetic surveillance “reforms”

By Thomas Gaist
4 February 2015

The Obama administration on Tuesday officially unveiled minor tweaks to regulations covering the National Security Agency’s mass electronic surveillance and data mining programs. The new set of reforms is outlined in a report posted Tuesday by the Office of the Director of National Intelligence (ODNI) entitled “Signals Intelligence Reform: 2015 Anniversary Report.”

In an official statement also released Tuesday, the White House touted the essentially meaningless regulatory changes as “substantial progress” and proof of the intelligence establishment’s “commitment to greater transparency.”

Aside from a few token references to democratic norms, the White House statement made clear that the NSA’s mass espionage operations are central pillars of US foreign and domestic policy and will continue to have vast resources placed at their disposal.

“At the same time, we must ensure that our Intelligence Community has the resources and authorities necessary for the United States to advance its national security and foreign policy interest,” an official White House statement said.

“As we continue to face threats from terrorism, proliferation and cyber-attacks, we must use our intelligence capabilities in a way that optimally protects our national security and supports our foreign policy,” the statement said.

Under the new regulations, US personal data collected “incidentally” by the NSA would supposedly be deleted. Elimination of the data, however, would remain entirely dependent on the subjective “determinations” of NSA officials about whether content is “relevant to foreign intelligence.”

All foreign data collected by the NSA, whether incidentally or not, can still be archived for at least five years under the changed regulations. Foreigners will continue to have no legal avenue for challenging the illegal capture of their personal data by the NSA.

The regulatory changes would also give companies the option to publicize their receipt of National Security Letters (NSL) from the government, according to the ODNI report.

By issuing the NSLs, US government agencies are able to demand information from communications providers and other firms without seeking a warrant or pursuing any form of legal process. Previously, the US government enforced a strict gag order requiring firms to keep the NSLs secret from the public.

Given their extensive, ongoing collaboration of the technology and communications corporations with US intelligence and security agencies—which includes giving direct, real-time access to their servers by the NSA and other agencies—the firms are unlikely to jump at the opportunity to further publicize their facilitation of the widely hated mass surveillance programs.

The announcement of the changes coincides with a visit by German Chancellor Angela Merkel to the White House to discuss intelligence sharing arrangements with high-level US officials, suggesting that the regulatory tweaks may be partly intended to placate leaders of other capitalist governments, in the wake of exposures that the NSA spied on the personal communications of Merkel, Brazilian President Dilma Rouseff and others.

Nonetheless, the US National Security Council still oversees a secret list of high priority foreign targets, including heads of state, an unnamed senior US official told the *Times*.

Just like the more recent appointment of the Privacy and Civil Liberties Oversight Board by President Obama, the purpose of the latest round of faux-reforms

is to serve as window dressing for a totalitarian surveillance machine that has, in truth, been completely unleashed from even a minimal level of democratic or legal accountability.

At most, the Obama administration's regulatory tweaks amount to a loosely defined assurance that the government will delete any data that its operatives deem useless. As always, the latest provisions for removal of data from government servers contain mile-wide loopholes to insure that any data deemed to have continuing "national security" relevance can still be retained.

Beginning with the establishment by Congress of the secret Foreign Intelligence Surveillance Court in 1978, a vast edifice of pseudo-law has been erected to rationalize the existence of mass spying programs that flagrantly violate core components of the US Constitution and Bill of Rights.

By distinguishing between "US persons" and "non-US persons," authoritarian legal institutions and conceptions have been developed to legalize indiscriminate spying of global communications in blatant violation of Fourth Amendment protections.

In reality, however, the emergence of an integrated worldwide system of data storage centers across the globe—Google alone maintains at least 13 such data storage facilities in locations across the Americas, Europe and Asia—has rendered this distinction utterly meaningless. Data from US persons is regularly transferred overseas, where the NSA is empowered under Executive Order 12333 to collect all information flowing through foreign servers.