

New York court allows police to cover up mass surveillance operations

By Daniel de Vries
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A Manhattan appellate court has ruled that the New York Police Department (NYPD) may refuse to disclose whether it holds records on individuals swept up in its notorious Muslim spying program. The ruling invoked the Glomar doctrine, a legal principle until now only applied at the federal level, authorizing the government to refuse information requests by neither confirming nor denying the existence of secret operations.

The decision came in response to Freedom of Information lawsuits by two Muslim-American men, Samir Hashmi and Talib Abdur-Rashid. Both believed themselves to be caught up in the New York Police Department's dragnet spying operations, Hashmi as a student at Rutgers University in New Jersey and Abdur-Rashid as an imam at a Harlem mosque. Trial courts ruled against the NYPD in Hashmi's case, but in favor of it in Abdur-Rashid's.

The appellate ruling sanctions the blanket denial of any requests to release information collected during at least 12 years of New York City's mass spying. It also sets a precedent for future use in New York and in states and municipalities around the country.

Under the guise of combating terrorism, New York City's sweeping surveillance program deployed legions of officers and informants to monitor lawful activity by Muslims. In collaboration with the CIA, the NYPD Demographics Unit compiled lists of attendees at prayer gatherings, eavesdropped at Middle Eastern groceries and infiltrated student organizations across New York and neighboring states. No aspect of life was too mundane for tracking. Informing "mosque crawlers" and undercover "rakers" compiled detailed files on where people ate, studied, watched TV, shopped and prayed.

Ethnic origin and racial background, rather than

suspicion, were grounds for extensive monitoring of daily activity. Attempts were made to entrap individuals using the "create and capture" technique, whereby informants create conversations about terrorism and capture the responses in reports to police. Despite these efforts, internal NYPD documents admit the program failed to produce any terror-related charges.

The appeals court decision upholding the city's Glomar defense has potentially far-reaching implications beyond the rights of Hashmi and Abdur-Rashid to know the extent of the attack on their individual rights. It allows police departments and other agencies to cover up potentially wide-scale violations of rights without exposure to state Freedom of Information laws. Citing "anti-terrorism" concerns, requests can be denied without detailing the reasons behind the denial, making it nearly impossible to argue against. Courts generally grant agencies a free hand to invoke Glomar once authorized.

The Federal government has increasingly relied upon Glomar since it was first established in 1976. In *Phillippi v. CIA*, a federal court granted the CIA power to skirt a Freedom of Information Act request from *Rolling Stone* correspondent Harriet Phillippi. The open records request sought information about the CIA's raising of a sunken Soviet submarine by a specially outfitted ship, the Glomar. The court ruled that national security matters trumped transparency obligations under the Freedom of Information Act. Since the September 11, 2001 attacks, the CIA and Department of Defense regularly cite Glomar in denying information requests. The Obama administration relied heavily upon it as a means of cutting off inquiries into its drone assassination program, among other things.

Despite New York City Mayor Bill de Blasio's

claims to have been deeply troubled by the city's spying operation, his administration's continued efforts to keep elements hidden from public scrutiny reveal his policies to be less a change in substance than a change in style. In addition to invoking Glomar, de Blasio's law department argued for dismissal of a civil rights lawsuit seeking to curtail the targeted spying on Muslims. A settlement was reached earlier this year forcing some constraints on NYPD's spying without suspicion.

De Blasio formally disbanded the unit conducting the mass surveillance in 2014, hailing it as a "critical step forward in easing tensions between the police and the communities they serve." Yet within a year, he and his police department commissioner, Bill Bratton, reconstituted an "anti-terror" unit as part of a revamped Strategic Response Force. The new force houses not only NYPD spying operations but also oversees demonstrations and protests in the city. Most recently these "anti-terror" units were deployed, automatic weapons in hand, to monitor demonstrations of striking Verizon workers.

In New York City and around the country, police forces have over the past decade built up substantial "anti-terror" operations, including routine spying on residents and the assembling of military grade weaponry with the active support of the Obama administration. The court ruling allowing police departments to conceal their secret programs in the name of security marks another step in this process.

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