

FISA court documents expose illegal FBI mass surveillance

By Kevin Reed
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In an unprecedented development, the Office of the Director of National Intelligence (ODNI) released redacted Foreign Intelligence Surveillance Court (FISC) documents on Tuesday that disclose details of the illegal FBI electronic surveillance of US citizens.

The disclosures—contained in 20 documents published on the website of the ODNI—show that since 2017 the FBI has been violating provisions of the Foreign Intelligence Surveillance Act (FISA) as well as the Fourth Amendment rights of Americans by searching through their e-mail, text messages and phone calls.

The ODNI document release stems from a FISC order on April 5, 2018, which found that the FBI's procedures concerning the "querying of United States persons" were insufficient, resulting in violations of federal law. The Trump administration appealed the decision to the Foreign Intelligence Surveillance Court of Review (FISC-R), which then affirmed on July 12, 2019, the original 2018 ruling.

The portion of the FISA law that was found to be violated by the FBI is known as Section 702, which grants authority to US intelligence and law enforcement to search the online communications of non-Americans located outside the US under very specific conditions. Section 702 was adopted in 2008 as part of the FISA Amendments Act that modified the original FISA law adopted in 1976 and it specifically bars the targeting of US citizens for warrantless electronic surveillance.

In one episode reported in the FISC documents, in March 2017 the FBI queried the database of e-mail, texts and phone calls of more than 70,000 FBI employees or contractors. According to the *Wall Street Journal*, "The bureau appeared to be looking for data to conduct a security review of people with access to its

buildings and computers—meaning the FBI was searching for data linked to its own employees." The documents say that the agency did so against the advice of its general counsel.

In another example from April 2018, the FBI queried the e-mail addresses and phone numbers of 57,000 US individuals. In both instances, the FBI claimed the searches were necessary as part of an effort to uncover foreign intelligence information.

Several other incidents involved querying the data of specific individuals instead of the batch queries. In these cases, the FISC court of Judge James E. Boesberg determined that the FBI had not provided sufficient justification for its belief that the queries would yield foreign intelligence information.

It should be pointed out that the FISC rulings and documents released by ODNI take as a given the existence of the NSA database of e-mail, text messages and phone calls of everyone. The reprimand of the FBI is that the agency did not properly utilize the database, document its reasons for querying it and dispose of the information obtained after it was collected.

This discrepancy was noted by former NSA contractor and whistleblower Edward Snowden in a tweet on Tuesday: "The worst part? The government argues the existence of a warrantless, internet-scale mass surveillance program isn't the problem, merely the lawless way the FBI uses it against Americans, [because] 'of course' the other 93-97% of the human population have no rights."

Secret US government data collection of e-mail and phone call data has been going on at least since the days following the events of September 11, 2001. The exposures made by Snowden showed that this data collection takes two forms: upstream and downstream (also known as PRISM).

Upstream collection is the interception and storage of communications as they pass through the fiber-optic backbone and infrastructure of the global telecommunications system. This involves the collection of a large mass of data that is filtered based on IP addresses, phone numbers and e-mail addresses and made available to indexing and analysis based on the queries of targeted individuals.

Downstream collection involves government access to the servers of the telecommunications service providers and tech companies such as Verizon, Microsoft, Google, Yahoo, Facebook and Apple and copying the data that resides there. These companies are prohibited from telling their customers that their data has been retrieved by the government.

In describing the 2018 FISC order and its 2019 FISC-R affirmation, the ODNI says, “The Government subsequently submitted amended FBI querying procedures to address the issues, and the FISC found that the amended procedures were sufficient.”

However, this is not the first time that the American people have been told—after secret surveillance of the public was exposed—that the government has stopped violating constitutional rights against unreasonable searches and seizures.

In March 2013, the Director of National Intelligence James Clapper lied during congressional testimony when he said that the NSA did not collect any data on American citizens. Three months later, a massive NSA program that was gathering the electronic communications of everyone was exposed by Snowden.

In March 2014, President Barack Obama promised to end the NSA data collection and surveillance programs only to seek subsequently to reauthorize them multiple times. The Trump administration reauthorized the mass surveillance program in January 2018 and has called for the program to be permanently activated when it expires at the end of this year.

The publication of the FISC documents by the ODNI exhibit some features of the intensifying warfare between the Trump administration and the Democratic Party and US intelligence community in Washington, D.C.

Like the impeachment drive that is narrowly focused on Trump’s political skullduggery during one phone call, when the Republican President has violated the

constitution multiple times on other issues such as the treatment of immigrants, the claim that the FBI’s misuse of the procedures for “querying United States persons” is a violation of the Fourth Amendment pales in comparison to the NSA’s mass system of surveillance.

Meanwhile, differences of opinion over the meaning of the ODNI revelations have been expressed in the Congress. An anonymous congressional aide told the *Washington Post* that the FBI’s violations were not “not particularly alarming,” while Senator Ron Wyden (Democrat-Oregon) said, “Today’s release demonstrates how baseless the FBI’s position was.”

Given its record of lying about spying on the public, nothing published by the ODNI should be accepted at face value and without a very high degree of skepticism. Under the FISA law, the FISC court—which has undergone a significant transformation since its establishment following the exposure of criminal activities by then-President Richard Nixon in the 1970s—operates in complete secrecy as an arm of US military-intelligence.

Many questions remain as to why, when the secret court approves 99.967% of the surveillance requests that come before it, the FISC has chosen to rebuke the FBI for violating procedures.

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