

Unlawful FISA Spying Widespread Under Obama Administration

Relaxation of privacy policies paved the way for FBI and NSA to spy on Americans

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The FBI and the National Security Agency (NSA), under the Obama administration, committed numerous violations of procedures intended to safeguard Americans' personal data and communications collected under Section 702 of the Foreign Intelligence Surveillance Act (FISA).

Under the section, which was part of amendments to FISA passed in 2008 by then-President George W. Bush, the intelligence community has broad powers to collect internet and telephone data to spy on foreign nationals.

Procedures to protect Americans' data collected under the program were weakened under then-President Barack Obama in 2011, allowing the NSA to search through Americans' data using their names. Previously, these types of searches, known as "queries using United States person identifiers," were prohibited.

In its ruling in 2011, the Foreign Intelligence Surveillance Court (FISC) said the "relaxation of the querying rules" would be limited to queries "reasonably likely to yield foreign intelligence information."

The FISC at the time also approved the broader collection of so-called upstream data, which is all internet data traveling through key internet backbone carriers.

However, in subsequent years, policies intended to defend against the misuse of this power, called minimization and targeting procedures, were systematically broken, resulting in numerous violations.





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A declassified top-secret FISC report released in April 2017 revealed that the NSA had an 85 percent noncompliance rate when it came to searches involving Americans.

The 702 system, which was never designed to spy on Americans, but rather to safeguard U.S. national security, had become a powerful spying tool in the hands of the government.

Problems with the FISA system received nationwide attention in February after a declassified House intelligence committee memo revealed that the FBI and the Department of Justice had obtained a FISA warrant on Trump campaign volunteer Carter Page, using information paid for by the Clinton campaign and the Democratic National Committee (DNC).

The initial warrant, and its three subsequent renewals, could have been used to spy on anyone who was in contact with Page, including members of the Trump campaign. The NSA is allowed to analyze communications “three hops” from its original target. Anyone in direct communication with Page is one hop away; anyone in communication with those talking to Page is two hops away; and anyone talking to those who are twice removed from Page is three hops away.

Last year, it was already revealed that top Obama officials, including national security adviser Susan Rice and U.S. Ambassador to the U.N. Samantha Power, used so-called unmasking requests to obtain communications belonging to specific members of the Trump campaign and transition team.

Attorney General Jeff Sessions said on March 7 that he has appointed a person outside of Washington to look into the allegations of FISA abuse. Sessions’s statement came in response to a letter signed by 13 members of Congress calling for the appointment of a second special counsel to investigate the alleged abuse.

Problems With the FBI

According to the declassified top-secret FISC report, the FBI provided access to sensitive 702 data to employees that were not authorized to have access to the data. In some cases, this data was then exported by the employees, and it is unclear how it was subsequently used.

The agency also provided contractors with access to raw 702 data. The contractors maintained access to the data, even after their work for the FBI was finished.

In one case, an unauthorized private entity was given access by the FBI to 702 data. The unnamed private entity is mostly staffed by private contractors, whose access to 702 data was not controlled or monitored.

The “contractors had access to raw FISA information that went well beyond what was necessary to respond to the FBI’s requests,” wrote the FISC, in its report.

The FBI discontinued the private entity’s access to raw FISA data in April 2016, the same month in which the Clinton campaign and the DNC used law firm Perkins Coie to retain Fusion GPS to produce the so-called Trump dossier.

The dossier would eventually lead to the FBI obtaining the FISA warrant on Carter Page in October 2016.

While the FISC did recertify the FBI’s minimization procedures as being constitutional it wrote that it was “nonetheless concerned about the FBI’s apparent disregard of minimization rules and whether the FBI may be engaging in similar disclosures of raw Section 702 information that have not been reported.”

The scope of the FBI’s accessing of Americans’ data is unclear, as the government is not required to provide the FISC with numbers on violations. In the NSA’s case, it told the court that it was unable to provide a number for how many times Americans’ data had been unlawfully accessed. The scope of the NSA’s violations also remains unclear.

In response to the problems, as well as an internal review by the agency, the NSA stopped the collection of what are called multicommutation transactions (MCTs) to minimize violations. The term MCTs refers to the NSA’s mass collection of communications while targeting one communication.

The FBI and CIA will no longer have access to upstream data collected by the NSA at key internet junctions.

In January, President Donald Trump ordered his director of national intelligence to develop procedures for law enforcement agencies to obtain the identities of Americans in intelligence

reports. This practice of unmasking is what was used to spy on the Trump campaign during the elections.